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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE COMPLAINT  
BY NORTHERN STATES POWER  
D/B/A XCEL ENERGY AGAINST  
SOUTHEASTERN ELECTRIC COOPERATIVE,  
INC. FOR A VIOLATION OF THE  
SERVICE TERRITORY LAWS

EL1-025

=====

Transcript of Proceedings  
February 14, 2012

**ORIGINAL**

=====

BEFORE THE PUBLIC UTILITIES COMMISSION,  
CHRIS NELSON, CHAIRMAN  
KRISTIE FIEGEN, COMMISSIONER  
GARY HANSON, COMMISSIONER

COMMISSION STAFF  
John Smith  
Rolayne Ailts Wiest  
Karen Cremer  
Kara Semmler  
Ryan Soye  
Greg Rislov  
Ross Pedersen  
Brittany Mehlhaff  
Matthew Tysdal  
Chris Daugaard  
Brian Rounds  
Demaris Axthelm  
Joy Irving

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**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

APPEARANCES

Brett Koenecke

Reported By Cheri McComsey Wittler, RPR, CRR

1 APPEARANCES BY TELEPHONE

2 Alan Peterson

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4

5 TRANSCRIPT OF PROCEEDINGS, held in the  
6 above-entitled matter, at the South Dakota State Capitol  
7 Building, 500 East Capitol Avenue, Pierre, South Dakota,  
8 on the 14th day of February, 2012, commencing at  
9 2:30 p.m.

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1           CHAIRMAN NELSON: EL11-025, In the matter of the  
2 Complaint by Northern States Power d/b/a Xcel Energy  
3 against Southeastern Electric Cooperative for a violation  
4 of the service territory laws.

5           And we will start with Xcel. Mr. Koenecke.

6           MR. KOENECKE: Thanks, Commissioner. Good  
7 afternoon. I don't have anything to say, Commissioner.  
8 Were you looking for arguments?

9           CHAIRMAN NELSON: If there was anything further  
10 to add, I would have taken it.

11          MR. KOENECKE: I really don't have much else to  
12 say. It's clear to me there was a mistake made here, and  
13 the question is how does it get straightened out. And I  
14 think we've laid it out in our brief.

15          We did not file a reply brief. We think it's  
16 been covered. The testimony was clear, and I won't take  
17 up anymore of your time this afternoon. If you've got  
18 questions --

19          CHAIRMAN NELSON: And we may well, but we'll  
20 hold those until we hear from the other parties. Thank  
21 you.

22          Mr. Peterson.

23          MR. PETERSON: Good afternoon. I'm in the same  
24 position. That is, I have nothing to say in terms of  
25 introductory remarks. I'm very happy to address any

1 questions but believe the issue has been fully briefed  
2 and is before the Commission.

3 CHAIRMAN NELSON: Very good. Okay. Staff.

4 MR. SOYE: Staff is in line with the parties.  
5 We have nothing further to add. But we stand by for  
6 questions if needed.

7 CHAIRMAN NELSON: Thank you.

8 COMMISSIONER FIEGEN: Mr. Chairman, I think  
9 everybody has a Valentine date tonight, and they're all  
10 taking their Valentines out for dinner and need to get  
11 out early.

12 CHAIRMAN NELSON: That could be. Questions from  
13 the Commission.

14 COMMISSIONER HANSON: Mr. Chairman.

15 CHAIRMAN NELSON: Commissioner Hanson.

16 COMMISSIONER HANSON: Thank you, Mr. Chair. I  
17 have a curious question, and just a comment that folks  
18 might wish to comment on my comment.

19 If someone can tell me, I do not remember -- I  
20 know that there's a development right adjacent to this  
21 property. Is this property on the verge of being  
22 developed?

23 CHAIRMAN NELSON: Mr. Schardin, would you like  
24 to answer that?

25 COMMISSIONER HANSON: I know it's practically

1 surrounded by development from at least the north and the  
2 west, it seems.

3 MR. SCHARDIN: Yes, Commissioner Hanson. Thanks  
4 for the question.

5 The development line right now is just to the  
6 north of where we're at here. There is one lot that I  
7 think is in the questionable area that Xcel's questioning  
8 on the territory from the 2009 agreement.

9 COMMISSIONER HANSON: That was just a curiosity.  
10 It doesn't have anything to do with my decision. But I  
11 am -- the comment that I would like to make is that it  
12 seems like we're on -- we as a Commission are on a --  
13 somewhat of a colliding course with our  
14 responsibilities.

15 One, as I look at them, in 49-34A-55, the  
16 Commission's approval of such agreements shall be based  
17 on the public interest, and those include avoidance of  
18 unnecessary duplication of facilities, adequate electric  
19 service to all areas and customers affected, and  
20 promotion of the efficient and economical use and  
21 development of the electric systems.

22 And in trying to tie this together and look at  
23 what seems to make the best sense from that perspective,  
24 at least in my mind it starts to collide with the  
25 testimony that we've received in that it would seem best

1 that we -- that this is all within the Northern States  
2 Power landscape.

3           However, the documents clearly show location as  
4 opposed to verbiage. And testimony was irrefutable  
5 that -- because it came from NSP, stating that NSP had  
6 made the mistake. And generally instruments are -- legal  
7 instruments are interpreted to the benefit of the party  
8 that did not draw them up.

9           And, number one, the mapping -- I guess number  
10 two. The mapping is, in fact, the superior criteria that  
11 is used in making the determination of where the line is.  
12 So that goes in favor of Southeastern.

13           So I struggle with it a little bit from those  
14 two perspectives of what I think might be in the very  
15 best interests of the citizens as opposed to making the  
16 decision that I think I'm constrained to make under  
17 South Dakota Law. So I'd be interested in hearing what  
18 either of the parties have to make on that.

19           That's what I'm struggling with. Right now I'm  
20 leaning towards doing what I believe the law tells me to  
21 do.

22           CHAIRMAN NELSON: We'll give Mr. Koenecke a shot  
23 at that, or do you want me to go to Mr. Peterson?

24           MR. KOENECKE: If Mr. Peterson's ready, please  
25 go forward.

1           CHAIRMAN NELSON: Mr. Peterson, any response to  
2 that?

3           MR. PETERSON: Certainly. I'd be glad to  
4 respond to that.

5           I understand the position you're arguing, and I  
6 think you understand the equities very well. I think  
7 that the public interest here is best served under two of  
8 those criteria.

9           First of all, the one that I would simply  
10 summarize as efficiency. Once there is a decision made,  
11 entered, and ordered, it seems to me that the public  
12 interest in efficiency, efficient electrical service, is  
13 best served by allowing the parties to rely on the  
14 certainties of the decisions that have been granted.

15           In this case there was an order clearly in  
16 place, and to change that order, the yellow 9-021, at  
17 this point leads to inefficiency. Therefore, there is no  
18 public interest in that decision.

19           And the second criteria that's specifically  
20 begging here is the one that I summarize as calling the  
21 not requiring waste. In this case in relation on the  
22 other party as well as the order of the Commission,  
23 Southeastern Electric has invested significant monies,  
24 and to rule otherwise promotes waste of the installed  
25 service.

1           And that too is not in the public interest in  
2 general and, specifically, not in the interest of the  
3 service of the members of Southeastern Electric who will  
4 jointly pay for this lack of efficiency caused by this  
5 waste.

6           So I believe the public interest is very well  
7 served by refusing to grant the Complaint that's been  
8 filed.

9           CHAIRMAN NELSON: Thank you. Mr. Koenecke.

10          MR. KOENECKE: Thank you, Mr. Chairman, and for  
11 the question, Commissioner Hanson.

12          I guess on the flip side then it's difficult for  
13 me to accept such a glaring error by, I think, everybody  
14 in the understanding of where the boundary line was  
15 leading to the '09 Docket. I don't think it's only Xcel.  
16 I think it's also Southeastern, and I think it's also  
17 somewhat on the Commission and on the Staff. I'm not  
18 sure what the process was inside.

19          It should be up to the parties to present a  
20 request that's laid out correctly and properly. And then  
21 that didn't happen. How that wasn't caught until  
22 development started to occur is certainly frustrating to  
23 me and I suspect everybody involved. We're late in the  
24 process in that regard.

25          I think it would be incumbent upon everybody to



1 look to perhaps a different remedy, one that doesn't  
2 cause waste. And I don't know if the Commission feels  
3 constrained only to order that the service in that area  
4 be turned over to Xcel and not allow Southeastern  
5 continue with its plans there.

6 I think we've been -- from Xcel's side -- up  
7 front from the get-go that we thought tearing out the  
8 installation there already was an extreme and drastic  
9 remedy and that it made perhaps more sense to give Xcel  
10 some territory in exchange that might be developed later  
11 on in the future.

12 And so I want to, you know, reiterate that  
13 position. We've been, I think, fairly clear certainly  
14 with Southeastern going forward in that regard.

15 So I guess the final thing I'd say is it's tough  
16 for me to see the territory laws -- you know, ignored is  
17 way too strong a word. Perhaps given less regard than I  
18 think I've been taught in the 10 years I've been doing  
19 regulatory law. The territory law is, you know -- I've  
20 sat with Warren May and been told of the stories about  
21 how the territory laws came to be, and perhaps I hold  
22 them in deeper personal regard because of that, having  
23 heard the stories of where we were and where then we came  
24 to in 1975 and moved forward.

25 If you've been granted territory, the maps mean

1 something. Commissioner Hanson has certainly heard me  
2 get up here and talk about the maps' meaning. That  
3 they're the gospel, and anything else after that is held  
4 in lower regard.

5 So I guess I'll just leave you with that  
6 perspective, that to me the maps mean something, and when  
7 the maps weren't correct from the get-go, then I'm  
8 looking for a way to get back to where the map is again  
9 controlling and in charge of where the territories are.  
10 So thank you.

11 CHAIRMAN NELSON: Thank you. Commissioner  
12 Hanson, any follow-up questions?

13 COMMISSIONER HANSON: No. Thank you, Mr. Chair.

14 CHAIRMAN NELSON: Commissioner Fiegen.

15 COMMISSIONER FIEGEN: I believe if both parties  
16 were negotiating in good-faith, there was a mistake.  
17 But, Xcel, I would like to bring you up and ask you a few  
18 more questions because now there is a build out. And as  
19 Commissioner Hanson has already stated, now there's a  
20 duplication of service.

21 And you just said -- and I didn't know that or I  
22 wasn't listening the last time, but I'm going to ask you  
23 again. So they have spent money in this process. How do  
24 we remedy that?

25 And is your only remedy a swap, or do you have

1 other remedies in mind so the Commission can make sure  
2 there's not a duplication of service and that  
3 Southeastern is held harmless in their expenses that  
4 they've already put in to the infrastructure?

5 MR. KOENECKE: Thank you for the question,  
6 Commissioner.

7 I think that duplication of services is a  
8 laudable goal and one that the Commission should try to  
9 achieve whenever possible. I think that there's a --  
10 that the way to put Xcel back in the closest position to  
11 what it would have been -- you know, we can never back  
12 the clock up, and we have to come up with a remedy that  
13 works.

14 I think the tradeoff between delayed development  
15 of a parcel of land in that area is worth to the  
16 Commission and to the public interest, let's say, that  
17 which would be lost by having Southeastern tear out  
18 what's already been done.

19 We think that's a drastic and extreme remedy,  
20 having them tear out and back up from their plans. And  
21 so instead having a grant of some territory in that area  
22 which is commensurate and delayed for development is a  
23 trade that's in the public interest, that the Xcel  
24 customers' expectation of having a growing system there  
25 and spreading out rates over a larger pool would be

1 balanced by not having Southeastern tear out what they  
2 have done.

3 I can't speak for how the Commission might feel  
4 constrained to make that happen. And that's a decision  
5 I'll have to leave, you know, in your hands. That might  
6 be difficult, but that strikes Xcel as a remedy that  
7 makes sense and has from, you know, before the time the  
8 Petition was filed.

9 So we thought the way to bring the issue up was  
10 to -- for a violation of the service territory laws. And  
11 I regret that I'm not as polished on what remedies the  
12 Commission has found for that in the past. I don't  
13 recall having a service territory issue of where  
14 something had been built already, and that means you're  
15 plowing new ground here. Difficult to do.

16 I hope that's helpful. I'm willing to try and  
17 answer further if you'd like more.

18 COMMISSIONER FIEGEN: Thank you.

19 CHAIRMAN NELSON: Further questions?

20 If not, I've got a few questions. And I'd like  
21 to start with Mr. Peterson. I admit to being confused as  
22 to your client's position on whether that entire line  
23 was changed and -- I mean, boundary line was changed in  
24 2009.

25 And I'm looking -- I'm going back to the

1 testimony from the hearing that we held, and I'm looking  
2 at the transcript of Tim Chance's testimony. I'm on  
3 page 70 of that transcript.

4 And I specifically asked him, and I said, "So  
5 it's your testimony that you were in 2009 changing the  
6 whole line across there?" And his response was "Yes.  
7 Because it's two parts. 105 and 104 I believe it is. So  
8 when you change that description the whole description of  
9 the whole line was changed."

10 And so he's telling us, yep, 2009 changed that  
11 whole line.

12 In your Reply Brief, however, you indicate  
13 that -- and I'm going to quote off page 2. You said  
14 "Xcel and Southeastern Electric representatives had a  
15 clear understanding of where the boundary lines were.  
16 The swap did not include territory in Section 7, and the  
17 parties simply reiterated where the boundary was in that  
18 section using the most precise measurements and  
19 descriptions available to them."

20 So what is the position of your client? Was  
21 there a change in Section 7 or was there not in the 2009  
22 agreement?

23 MR. PETERSON: In hindsight, I'm not going to  
24 attempt to tell you for sure what Witness Chance meant by  
25 that testimony. Because as I reread it here, I can't

1 tell you for sure what he had in mind. And I'm sorry we  
2 don't have him here to ask more questions about that.

3 But my understanding of his position and my  
4 client's position as was shown on the maps submitted by  
5 Xcel, that there was an existing boundary line and there  
6 was an understanding of what the existing boundary line  
7 was and that it continued into Section 7 to a  
8 termination point that they have marked on what I believe  
9 is Exhibit 8 and that the swap of land to the west was  
10 basically a tit for tat area that was swapped in terms of  
11 the parcels that were swapped but it returned to the same  
12 point that they understood continued into Section 7. And  
13 there actually was no alteration of that continued line  
14 into Section 7.

15 CHAIRMAN NELSON: So if your position is that  
16 there was no change in the line in Section 7, then is it  
17 correct that your position is that that line in both  
18 Sections 12 and Section 7 was a half-mile north as  
19 opposed to the center of that section?

20 Is that correct?

21 MR. PETERSON: I believe that's correct. Hang  
22 on for just a minute.

23 CHAIRMAN NELSON: Certainly.

24 MR. PETERSON: I guess I really don't get -- I  
25 mean, yes, the answer to that question is yes, that is my

1 understanding.

2 CHAIRMAN NELSON: Okay. If that was your  
3 understanding, then I want to go back to the 2009  
4 agreement. If the line was, in fact -- just give me a  
5 moment here.

6 I don't think I have any further questions on  
7 that. No further questions at all.

8 Other Commissioner questions?

9 Seeing none -- yes, Mr. Smith.

10 MR. SMITH: This is probably for both parties,  
11 but have the two parties had any discussions at all,  
12 Mr. Koenecke and Mr. Peterson or Brad or whomever, about  
13 where we might look for that as yet undeveloped chunk if  
14 we were to try to reach an equitable settlement here?

15 Because I think that's the right thing to do. I  
16 mean, to me it seems like it is if we could find  
17 something that would work. Do we know where that is and  
18 how to achieve that? Honestly, I guess I'm asking is  
19 that something we should have a process or something for  
20 trying to figure out a way to accomplish it that way?

21 And, again, I don't know what Southeastern's  
22 position is on Mr. Koenecke's idea of what might be a  
23 fair outcome here, but I'd be interested to know that  
24 too. What do you think about that as a fair outcome?

25 MR. PETERSON: Alan Peterson here. I would

1 decline answering myself and let Brad address those  
2 questions directly. I have not been involved in any such  
3 discussions personally.

4 MR. KOENECKE: And, Mr. Smith, I have not  
5 either. I know that Mr. Wilcox and Mr. Schardin have had  
6 those discussions on probably two occasions, and I was  
7 not directly involved either and was not a witness to  
8 them. So I'll let Mr. Schardin answer that for you.

9 MR. SCHARDIN: Brad Schardin again here. Thank  
10 you for the question.

11 Mr. Wilcox and I have visited on where we're at  
12 on that, and my offer was to drop a half a block south  
13 into that territory, and his offer was still another  
14 block further south of that territory.

15 So I thought we made some -- we had a good  
16 compromise I felt from my position. He felt he had a  
17 good compromise from his position, which kind of split  
18 the pickle in the middle from what Southeastern had  
19 proposed to Xcel Energy through Mr. Wilcox actually back  
20 before the hearing process ever started when we met on  
21 September I think it was 9th.

22 So move our service territory from where we  
23 thought the agreed -- where we thought the agreed line  
24 was based on '09, half a block to the south further yet  
25 to kind of split the area.



1           Maybe you have more questions before I get down.

2           CHAIRMAN NELSON: No. Go ahead.

3           MR. SMITH: Well, I guess if we're looking for  
4 equity -- and, again, I'm viewing that, and I'm just  
5 going to -- I'm going to postulate this just my own  
6 personal view is that to me this happened as a result of  
7 an error. And you've acted in reliance of that and spent  
8 money now. Southeastern has.

9           Again, there would be more than one way to skin  
10 that cat probably. I mean, one of them would be to have  
11 some kind of restitutorial way of looking at it, you  
12 know, and just restore the line to where it originally  
13 was.

14           I guess what I'm getting at then, do you think,  
15 Brad, that the giveback ought to restore an equivalent  
16 amount of territory to Xcel, that it through sheer mutual  
17 error -- and by mutual I mean on everyone's part,  
18 including the Commission's, allowed to have happen and  
19 put them back, in other words, into the status quo ante.

20           MR. SCHARDIN: On my way out here today I was  
21 thinking about where we're at and where we've been and  
22 discussions that Mr. Wilcox and I have had already to  
23 date on this. Looking back to what the changes we made  
24 in 2009, whether we agree they were mutual mistakes or  
25 they weren't mutual mistakes but what we thought is the

1 area in the Oxford Addition, which I believe is  
2 Section 12 -- don't get me wrong. Because Tim Chance and  
3 the Xcel Energy people were the ones that used that. I  
4 just worked out the details and signed the paperwork,  
5 similar to what Mr. Wilcox did. We did that back in  
6 2009, which has been two, come this year, three years ago  
7 already on that side.

8 I think the area on Section 7 where Mr. Wilcox  
9 and I visited about where I attempted to move the line  
10 south but it wasn't far enough south for Mr. Wilcox  
11 because he was believing that, well, we should try to  
12 compensate for the other side on Section 12 yet. And I  
13 didn't believe that should be the case since it's already  
14 been three years ago since we put those services in place  
15 and installed those services.

16 So my view and my vision on that, Mr. Smith, was  
17 what are we doing in Section 7, and can we compromise and  
18 utilize our facility there? If we can move it to a half  
19 a block south, which means we would serve the south half  
20 of that block, they would serve the north half and it's  
21 divided right actually down the block line then as  
22 opposed to splitting any blocks in the middle because  
23 that always gets difficult for us no matter what we could  
24 do. When we could go right down the city street. We  
25 would take the south side of the street. They would take

1 the north side. I thought that was fair.

2 But then again, but I believe Mr. Wilcox's  
3 discussion was, well, that doesn't compensate us enough  
4 for what was on the other side in Section 12. And my  
5 comment was, well, that's been three years ago already  
6 now that we've had those services in place come in  
7 spring. So I didn't know how we could make that change  
8 in relation to some of those. That's where the  
9 difficulty lies.

10 MR. SMITH: Thank you. One of the questions I  
11 did have is -- because we didn't really have any  
12 testimony to speak of at hearing time regarding  
13 Section 12 and what the status is there. So you're  
14 saying you've built up into that area in Section 12?

15 MR. SCHARDIN: Yes. Yes, Mr. Smith. We have --  
16 actually we're built over to I think it's, I believe,  
17 Southeastern Avenue, which was the dividing line on that  
18 first 2009 Docket where it then dropped down a short  
19 distance and then went across to the east into the half  
20 of that section. We are built totally on the west side  
21 of Southeastern Avenue that is Oxford Estates. We have  
22 those services all in place existing today.

23 We have one service, I believe, that's in the  
24 disputed area right now on the east side of Southeastern  
25 Avenue which is in what we could call the disputed area

1 here today.

2 MR. SMITH: Okay.

3 MR. SCHARDIN: Plus the line going across that  
4 whole area that we brought in as the main service line  
5 for everything to the south.

6 MR. SMITH: Okay. Thank you.

7 MR. SCHARDIN: Yep.

8 CHAIRMAN NELSON: Okay. Any further questions?  
9 If not, Commissioner Hanson.

10 COMMISSIONER HANSON: Mr. Chairman, this is -- I  
11 don't know that this is -- there is a perfect solution,  
12 but what appears to me to be the best solution at this  
13 time. I'll make a motion and then give us the  
14 opportunity to discuss it.

15 I move that the Commission rule on behalf of  
16 Southeastern on the compromise that they -- that  
17 Mr. Schardin discussed with us in which the dividing line  
18 would be right down the street.

19 CHAIRMAN NELSON: Discussion on that.

20 COMMISSIONER FIEGEN: At least for me, and I  
21 don't know if the rest of the Commission -- I think today  
22 that we have something before us that is important, and I  
23 would prefer that we defer this Docket until I can spend  
24 some time with General Counsel to figure out if that swap  
25 is just and reasonable.

1           Because as a Commission I think that is our job  
2 to make sure that what we do is not unjust and not  
3 unreasonable but it is just and reasonable, if that makes  
4 sense.

5           So I would recommend today that we defer the  
6 docket and try to figure out a swap. And I don't know if  
7 that's the Staff that facilitates that or General  
8 Counsel, but that would be my recommendation today.

9           CHAIRMAN NELSON: I would certainly concur with  
10 that. And, Commissioner Hanson, I appreciate your making  
11 the Motion to try to move this thing along. But the last  
12 thing that I want to do is make any hasty decisions here  
13 without seeing maps.

14           And, frankly, what I would love to do is see a  
15 map of, Mr. Schardin, what you're proposing. I'd love to  
16 see a map of what Mr. Wilcox was proposing. So that we  
17 could eagle eye that and make some determinations on  
18 that.

19           Commissioner Fiegen, is that along the lines of  
20 what you were thinking?

21           COMMISSIONER FIEGEN: Yes. So I'd move to -- a  
22 substitute motion to defer.

23           CHAIRMAN NELSON: Discussion on the substitute  
24 motion?

25           COMMISSIONER HANSON: Yes, Mr. Chair, if I may.

1           CHAIRMAN NELSON: Yes.

2           COMMISSIONER HANSON: That is one of the reasons  
3 why I asked the question up front as to whether or not  
4 there was development that was on the verge of taking  
5 place here in the next 10 minutes on that location.  
6 Because I needed to know whether we needed to act quickly  
7 on this or not.

8           It's obviously been some time that we've had  
9 this before us. And I just wanted to make certain that  
10 we weren't creating some challenges if we did come to the  
11 point of deferring it. The reason I made the motion --  
12 and I can certainly discuss that at a later time but  
13 since we have a motion to defer at this time I'll only  
14 make the statement that I think that represents the best  
15 opportunity for us to draw to a fair conclusion.

16           I will support the motion to defer because I  
17 think that's a proper one at this time.

18           CHAIRMAN NELSON: Thank you. Further  
19 discussion?

20           And I'm just looking for maybe some nods of the  
21 heads from Mr. Schardin, Mr. Koenecke. Are you okay with  
22 our request?

23           MR. KOENECKE: Absolutely.

24           MR. SCHARDIN: Yes.

25           CHAIRMAN NELSON: Very good. I'm seeing yeses

1 from both sides there. We appreciate that.

2 And I appreciate Commissioner Hanson's concern  
3 about moving this thing along. So the quicker we can get  
4 maps and proposals the quicker we can get it put back on  
5 an agenda and get this resolved once and for good.

6 With that, on the substitute motion to defer,  
7 Commissioner Hanson.

8 COMMISSIONER HANSON: Aye.

9 CHAIRMAN NELSON: Commissioner Fiegen.

10 COMMISSIONER FIEGEN: Fiegen votes aye.

11 CHAIRMAN NELSON: Commissioner Nelson votes aye.

12 Motion carries.

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1 STATE OF SOUTH DAKOTA )

2 :SS CERTIFICATE

3 COUNTY OF SULLY )

4

5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter, Certified Realtime Reporter and  
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 14th day of  
11 February, 2012, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 6th day of  
14 March, 2012.

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18 Cheri McComsey Wittler,  
19 Notary Public and  
20 Registered Professional Reporter  
21 Certified Realtime Reporter

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|                                                                     |                                                                                         |                                                      |                                                                                                                                                                                            |                                                                                                                                   |
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