

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE REQUEST BY XCEL)	FINDINGS OF FACT AND
ENERGY FOR A DETERMINATION OF ITS)	CONCLUSIONS OF LAW;
TERRITORY BOUNDARIES)	NOTICE OF ENTRY OF
)	ORDER
)	EL00-026

On September 15, 2000, the Public Utilities Commission (Commission) received a request from Xcel Energy (Xcel) to determine a territorial boundary dispute. Xcel stated that Xcel and Southeastern Electric Cooperative, Inc. (Southeastern) do not agree on a service territory boundary located in southwest Sioux Falls. Xcel stated the following:

The area in question is known as the "Sunset Ridge Addition." It lies in northern Lincoln County just west of Interstate 29, in Section 7 of Township 100 North, Range 50 West. I am under the understanding that Southeast Coop believes the territorial boundary should be drawn at what is known as 61st Street. Xcel believes that the territorial boundary should be drawn somewhat south of 61st Street at what will be known as Bakker Park Drive.

The hearing was held as scheduled on October 5, 2000, beginning at 10:00 a.m. in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The issue at the hearing was to determine the electric service boundary between Xcel and Southeastern in Section 7, Township 100 North, Range 50 West, in Lincoln County. Briefs were filed following the hearing.

At its November 2, 2000, meeting, the Commission considered this matter. The Commission allowed the admission, as an exhibit, of the transcript of the original proceeding that established the territorial boundaries. With respect to the merits of the case, the Commission found that the territorial map of the Commission establishes that the southern boundary of Excel's service area is the line equidistant between the northern and southern boundaries of Section 7, Township 100 North, Range 50 West, in Lincoln County.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On September 15, 2000, the Commission received a request from Xcel to determine a territorial boundary dispute. Xcel stated that Xcel and Southeastern do not agree on a service territory boundary located in southwest Sioux Falls. The boundary line at issue is located in Section 7, Township 100 North, Range 50 West, in Lincoln County (hereafter referred to as Section 7). Exhibits 1-4.
2. Excel maintained that its southern boundary is a line equidistant between the south section line and the north section line of Section 7. Tr. at 16-17.

3. Southeastern contended that the boundary line was not equidistant between the south section line and the north section line of section 7, but was located further north, which would place the boundary line near 61st Street. Tr. at 79-81. Southeastern contended that the written description of the location of the territorial boundary placed the line near 61st Street and that the map was consistent with the written description. *Id.*

4. In 1976, Southeastern and Excel (formerly Northern States Power Company) entered into a contract in which they came to an agreement as to the location of their territorial boundaries. Exhibit 2. Attached to the contract was a map showing the boundaries and written descriptions of each utility's service area. *Id.* The written description describes the disputed section as follows:

1. Beginning at the north center line of section 7, R50W, T100N.
2. Then south to the center point of section 7, R50W, T100N.
3. Then east along the half mile line to the center of I29 in section 7, R50W, T100N.

5. Section 7 is a fractional section and it is not a full mile from south to north. Tr. at 20-21, 30. When dealing with a fractional section, the term "half mile line" is a surveyor's term that generally requires a surveyor to start at the southeast quarter and go a half mile to the north to find the "half mile line." Tr. at 30. This would put Xcel's southern boundary near 61st Street. Tr. at 31. However, the written description also contains some terms that are not commonly used surveying terms and can be interpreted in different ways. Tr. at 22-23, 39-41, 60-61, 63, 76, 108-110. A Southeastern witness agreed that the written description was quite possibly written by a lay person trying to describe a map that was already drawn. Tr. at 109-110. The Commission finds that the written description of the disputed area as attached to the contract is ambiguous.

6. The contract provided that if there was any conflict between the map and the written description, "the map shall in all respects be conclusive proof of the assigned service area of each utility." *Id.* at 3. The map attached to the contract shows that the disputed boundary line is located equidistant between the north and south section lines. Tr. at 10-11; Exhibits 2, 3.

7. On July 1, 1976, the Commission approved the official electrical territorial maps for all territorial boundaries in the Sioux Falls area. Exhibit 15. The Commission's order stated that "the Official Electrical Territorial Maps attached hereto and being hereby incorporated as if set forth in full herein constitutes the aforementioned territorial boundary agreements and stipulations by the parties." *Id.* at 1 (finding of fact IV). The Commission then ordered that the Official Electrical Territorial Maps establish the assigned service areas of the electric utilities. *Id.* at 2 (ordering clause).

8. Exhibit 1 is a copy of the official territorial map on file with the Commission. Tr. at 53-54. Exhibit 4 is an enlarged Exhibit 1. Tr. at 13. The official territorial map as filed with the Commission shows that the boundary line in Section 7, that depicts the southern boundary of Xcel's territory and the northern boundary of Southeastern's territory, is a line

equidistant between the south section line and the north section line of Section 7. Tr. at 16-17, 42, 61-62, 89.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL 49-34A-42 through 49-34A-44, inclusive.
2. The Commission finds that the official territorial map as approved by the Commission shows that the boundary line in Section 7, that depicts the southern boundary of Xcel's territory and the northern boundary of Southeastern's territory, is a line equidistant between the south section line and the north section line of Section 7. Tr. at 16-17, 42, 61-62.
3. The Commission further finds that the written description of the disputed area as attached to the contract is ambiguous. Exhibit 2. The Commission finds that the map attached to the contract also shows that the disputed boundary line was located equidistant between the north and south section lines. Tr. at 10-11; Exhibits 2, 3.

It is therefore

ORDERED, that the southern boundary of Xcel's territory and the northern boundary of Southeastern's territory is a line equidistant between the south section line and the north section line of Section 7.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 9th day of November, 2000. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 9th day of November, 2000.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Melanie Kalbo</u>
Date:	<u>11/9/00</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

