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THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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

EL11-025

=====

Transcript of Proceedings  
December 6, 2011

**ORIGINAL**

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

COMMISSION STAFF  
John Smith  
Ryan Soye  
Demaris Axthelm  
Ross Pedersen

APPEARANCES

Brett Koenecke, Xcel Energy  
R. Alan Peterson, Southeastern Electric Cooperative

Reported By Cheri McComsey Wittler, RPR, CRR

**RECEIVED**

**DEC 16 2011**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

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TRANSCRIPT OF PROCEEDINGS, held in the  
above-entitled matter, at the South Dakota State Capitol  
Building, Room 412, 500 East Capitol Avenue, Pierre,  
South Dakota, on the 6th day of December, 2011,  
commencing at 1 o'clock p.m.

=====

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(Staff Exhibits 1 through 10 are marked)  
(Xcel Exhibit 1 through 4 are marked)  
(Southeastern Exhibits 1, 3, 6, 7, and 8 are marked)

1 CHAIRMAN HANSON: Ladies and gentlemen, we will  
2 begin the hearing in Docket EL11-025, In the Matter of  
3 the Complaint by Northern States Power doing business as  
4 Xcel Energy against Southeastern Electric Cooperative,  
5 Incorporated for a violation of the service territory  
6 laws.

7 The time is approximately 1 p.m. Today's date  
8 is December 6, 2011. We are in the hearing room in  
9 Room 414 of the State Capitol in Pierre, South Dakota.  
10 I'm Gary Hanson, Commission Chair. With me today are  
11 Commissioners Chris Nelson and Kristie Fiegen.

12 I'm presiding over this hearing. This hearing  
13 was noticed pursuant to the Commission's Order For and  
14 Notice of Hearing issued December 1, 2011.

15 The issues at this hearing are, first, whether  
16 the 2009 Order in Docket EL09-021 affected a change in  
17 the territorial boundary between Xcel and Southeastern in  
18 accordance with the agreement forming the basis of the  
19 2009 Order.

20 Secondly, whether the territory into which  
21 Southeastern has extended service is within the boundary  
22 as established by the 2009 Order. And, third, whether a  
23 basis in fact and law has been established for Xcel to  
24 obtain relief from the 2009 Order. And, fourth, if a  
25 basis in fact and law has been established for Xcel to

1 obtain relief from the 2009 Order, what relief is  
2 appropriate based on the facts established in the Order  
3 and applicable law.

4           Forgive me. I -- as I was reading through that,  
5 I recognized we have Cheri today transcribing what we are  
6 proceeding with. And sometimes when we read documents --  
7 and I would remind everyone of this. When we read we  
8 have a tendency to speak more quickly, and that's just  
9 not fair. So I'd remind people as they testify to make  
10 certain that they're not speaking like an auctioneer.

11           John Smith, the Commission's Counsel, will act  
12 as Hearing Examiner as we do in hearings of this nature.  
13 He will conduct the hearing subject to the Commission's  
14 oversight. He may provide recommended rulings on  
15 procedural and evidentiary matters. The Commission may  
16 overrule its counsel's preliminary rulings throughout the  
17 hearing. If not overruled, the preliminary rulings will  
18 become final rulings.

19           With that, we will turn it over to counsel,  
20 General Counsel Mr. Smith, to conduct the hearing.

21           MR. SMITH: Thank you. Pardon me, Mr. Chairman.

22           CHAIRMAN HANSON: No. You're on schedule.

23           MR. SMITH: Thank you, Mr. Chairman. And we'll  
24 begin the formal part of the hearing then.

25           I'd like to welcome everyone. And you get to be

1 here on the day of the Governor's budget address, which  
2 makes parking extra fun. So with that, we'll proceed.

3 First we'll take the appearances of the  
4 parties, and we'll start with the Complainant, Xcel.  
5 Mr. Koenecke.

6 MR. KOENECKE: Thank you, Mr. Smith. My name is  
7 Brett Koenecke. I'm a lawyer from Pierre, and I'm  
8 representing Xcel Energy today.

9 MR. SMITH: Thank you. Thank you. Do you have  
10 anyone else to introduce, or do you want to do that when  
11 you do your calling?

12 MR. KOENECKE: I've always heard that Jim Wilcox  
13 from Xcel needed no introduction. But, nonetheless, he's  
14 here with me today seated to my left.

15 MR. SMITH: Thank you. Mr. Peterson.

16 MR. PETERSON: Thank you. R. Alan Peterson of  
17 the Lynn Jackson firm in Sioux Falls representing  
18 Southeastern Electric. And with me today is Brad  
19 Schardin, the manager, and Tim Chance, the operations  
20 manager.

21 MR. SMITH: Thank you, Mr. Peterson.

22 Mr. Soye.

23 MR. SOYE: Thank you. This is Ryan Soye, along  
24 with Ross Pedersen on the part of staff.

25 MR. SMITH: Thank you.

1           With that, let's turn to preliminary matters.

2           As I understand it from some conversations that  
3 occurred prior to us convening the hearing here today,  
4 the parties apparently have reached a stipulation as to  
5 admission of their various exhibits.

6           Am I correct in that, counsel?

7           MR. PETERSON: Yes.

8           MR. KOENECKE: Yes, Mr. Smith.

9           MR. SMITH: So then I don't know whether it's  
10 you, Mr. Koenecke, or which of you. Would you like to  
11 proceed with that order of business at the outset?

12           MR. KOENECKE: I would. I think that makes the  
13 most sense. I'll probably move up to the witness stand  
14 to start that.

15           MR. SMITH: Please do so.

16           MR. KOENECKE: Thank you. We've marked large  
17 exhibits here. Xcel has 1 through 4. Mr. Wilcox has  
18 smaller sheets to hand out. But I'll start with Xcel 1  
19 is the Lincoln County excerpt from the Commission's  
20 official maps.

21           Xcel 2 is a combination of the exhibit from  
22 the '09 docket laid next to the territory at issue  
23 here. Xcel 3 is a schematic of Xcel facilities currently  
24 in the area. And Xcel 4 is the Exhibit A from the '09  
25 docket.

1           And we would ask that they be stipulated into  
2 the record at this time.

3           MR. PETERSON: No objection.

4           MR. SMITH: Staff?

5           MR. SOYE: No objection from Staff.

6           MR. SMITH: Xcel 1 through 4 are admitted.

7           MR. KOENECKE: Thank you.

8           MR. SMITH: Are we going to take all the  
9 stipulations up front, or how do you want to do that?

10          MR. KOENECKE: I believe so. I'd like to do it  
11 that way and get them all out of the way.

12          MR. SMITH: Mr. Peterson, would you proceed then  
13 with yours. And if you want to do it right there at your  
14 spot, that's fine.

15          MR. PETERSON: Thank you. I have five  
16 Southeastern exhibits that we've stipulated to. They are  
17 Exhibit 1, which is a general area map to orient the  
18 Commission and the witnesses as to the location of the  
19 contested area.

20                 What is marked as Southeast Electric 3, which is  
21 an enlargement of the 2009 map that was submitted as part  
22 of the joint request. Southeast Electric Exhibit 6,  
23 which is a map showing the installation of the facilities  
24 that Southeast Electric has in the contested area.

25                 Southeast Electric 7, which is a copy of the



1 EL09-021 Order granting approval of the electric service  
2 territorial boundary changes. And Southeastern  
3 Electric 8, which is a GSA map of the contested area.

4 Those are the exhibits in addition to what has  
5 already been stipulated that we anticipate may be used.

6 MR. SMITH: Thank you. Are you offering those  
7 now?

8 MR. PETERSON: Yes, please.

9 MR. KOENECKE: No objection.

10 MR. SOYE: No objection from Staff.

11 MR. SMITH: Okay. Then the exhibits -- and if  
12 I'm correct, it's Southeast 1, 3, 6, 7, and 8?

13 MR. PETERSON: Correct. I have smaller versions  
14 to be handed out. Are we handing those out now?

15 MR. SMITH: However you guys want to handle it.  
16 Why don't we get the stipulation done, and then we'll do  
17 a little shuffle and do the handout. How is that?

18 Okay. Mr. Soye, do you want to proceed?

19 MR. SOYE: On the part of Staff we are offering  
20 Staff Exhibits 1 through 10. The first 7 exhibits are  
21 maps that Staff has created. They all do have titles.  
22 However, it will be difficult for me to describe the maps  
23 as they are all GIS, Geographical Information System,  
24 recreation maps in dispute. But we did label them for  
25 identification purposes.

1           And then Staff's Exhibit 8 is the 1976 Territory  
2 Agreement between Xcel and Southeastern with the attached  
3 Exhibit E legal description. Staff Exhibit 9 is the  
4 EL00-026 Commission Order. And Staff Exhibit 10 is  
5 09-021 agreement with the map and the other attachments  
6 that were included to the Commission.

7           MR. SMITH: Okay. With that, Counsel, we've  
8 stipulated to those?

9           MR. KOENECKE: No objection.

10          MR. PETERSON: No objection.

11          MR. SMITH: Okay. Thanks. Then Staff's 1  
12 through 10 are admitted.

13           And I think we're done with that. Do you want  
14 to pause a minute now and do your handing out?

15          MR. KOENECKE: I would like to.

16          MR. SMITH: Okay. Why don't we get that over  
17 with, and then we'll get going with the work here.

18                           (Discussion off the record)

19          MR. SMITH: With that then, are we ready to  
20 proceed?

21          MR. KOENECKE: I'm ready, Mr. Smith.

22          MR. SMITH: Do you wish to make an opening  
23 statement?

24          MR. KOENECKE: I'll waive an opening statement  
25 if the other parties will.

1 MR. PETERSON: We will waive.

2 MR. SMITH: Okay. No opening statements. Then  
3 let me ask one more thing. Are there any other  
4 preliminary matters before we get to testimony?

5 MR. KOENECKE: No, Mr. Smith.

6 MR. SMITH: Okay. Thank you.

7 Then, Mr. Koenecke, please proceed with your  
8 direct case.

9 MR. KOENECKE: I would call James C. Wilcox to  
10 the stand.

11 (The witness is sworn by the court reporter)

12 DIRECT EXAMINATION

13 BY MR. KOENECKE:

14 Q. Good afternoon, Mr. Wilcox. Would you state your  
15 name and business address for the record, please.

16 A. I'm James Wilcox, 500 West Russell Street in  
17 Sioux Falls 57104.

18 Q. Can you tell me who your employer is?

19 A. I work for Xcel Energy in South Dakota.

20 Q. And what do you do for Xcel Energy?

21 A. My title is Manager of Government and Regulatory  
22 Affairs.

23 Q. And how long have you been so employed?

24 A. I've been with Xcel Energy and its predecessor  
25 company for 35 years.

1 Q. What's your educational background?

2 A. I have an undergraduate degree in electrical energy  
3 from South Dakota State University and an MBA from St.  
4 Thomas University in St. Paul, Minnesota.

5 Q. Thank you. Do your job responsibilities entail the  
6 filing of dockets and responding to actions here at the  
7 Commission?

8 A. That's correct.

9 Q. And were you here this afternoon when we marked and  
10 stipulated exhibits into the record?

11 A. I was.

12 Q. And are you familiar with all of those?

13 A. I believe I am.

14 Q. Okay. Are you aware that Sections 7 and 12 are at  
15 issue in this proceeding?

16 A. That's correct. I believe that's the case.

17 Q. And have you been to the locations that we've  
18 described?

19 A. Yes, I have.

20 Q. Okay. I guess my first question for you,  
21 Mr. Wilcox, is are Sections 7 and 12 square sections?

22 A. Can we -- can I show it on the exhibits?

23 Q. If you'd like. Would you put up Staff Exhibit 1.

24 A. Yes.

25 Q. Let's put up Xcel Energy 1.

1 A. Yeah. Let's start with that.

2 MR. SMITH: I think it's -- is it upsidedown?

3 THE WITNESS: Can't you see things upsidedown?

4 MR. SMITH: Hey, Jim, when you sit back can you  
5 pull that mic. up then and maybe push it a little bit out  
6 of the way turn it that way. Your head is talking to  
7 Brett. Thanks.

8 A. I'd start with this overview map, I think. It is  
9 Appendix A to a contract that we have with Southeastern  
10 Co-op in our 1976 contract. And if you look carefully  
11 you can see that -- as you know, most sections in rural  
12 South Dakota are 1 mile square.

13 But with the exception in this northern tier of  
14 sections in Lincoln County. You can even see it on this  
15 map. It's a short tier of sections. In fact, those  
16 sections are only about three-quarters of a mile in  
17 length north to south. In fact, Section 7 is just a  
18 shade less than a mile east to west.

19 So to answer your question, Mr. Koenecke, yes, these  
20 sections are -- this section is not a full normal  
21 section.

22 Q. It is not square?

23 A. It is not square.

24 MR. KOENECKE: Are the Staff exhibits up at the  
25 table, Mr. Soye?

1 MR. SOYE: Yes. We should have the originals at  
2 the table, yes.

3 Q. Mr. Wilcox, I'd like to direct you to Staff  
4 Exhibit 8, the 1976 agreement.

5 A. Thank you.

6 THE WITNESS: That's 10.

7 A. Yes. I'm familiar with this.

8 Q. Would you tell the Commission what this is?

9 A. Staff Exhibit No. 8 is a contract that was  
10 established between Northern States Power Company and  
11 Lincoln Union Electric Company, now Southeastern Electric  
12 Co-op, and Xcel Energy were both successor companies to  
13 those organizations.

14 This contract followed a statutory change in 1975  
15 that caused the Commission to become involved in  
16 establishing service territory boundaries for all the  
17 electric providers in South Dakota.

18 Prior to that time we had really some problems with  
19 assigning who got to serve what customers, and there were  
20 quite a number of court cases and some litigation  
21 throughout the 1960s and early '70s.

22 And it all resulted in a statutory change in 1975  
23 that essentially caused lines to be drawn on maps and a  
24 service territory to be assigned to all electric  
25 providers.

1           And in those statutes they also directed this  
2 Commission and the Staff to gather up all the facilities  
3 maps that existed at that time, and someone from the  
4 Staff -- I think it was Martin Bettmann. I'm not sure if  
5 he did it by himself. But he took all of the facilities  
6 maps that we all provided, laid them down, and sort of  
7 merged them together so that he could see where our  
8 facilities lied. And then applied a statute that said  
9 that lines should be drawn equidistant between  
10 facilities.

11           He drew lines on maps to establish service  
12 territory, and that's kind of the history of how we  
13 established this map in particular.

14           And then the statute also called for all neighboring  
15 companies in South Dakota to come together and develop a  
16 contract that would help define these maps and assign  
17 some legal descriptions to these lines and come together  
18 to agreement so that we would not have these ongoing  
19 questions about who got to -- which company served new  
20 customers.

21           So this contract that's now labeled Exhibit Staff 8  
22 is the result of a contract that was signed between  
23 Xcel Energy and Southeastern Co-op in 1976.

24           I think the important aspect of this contract, if I  
25 could, I would direct your attention to the bottom of

1 page 2 of this contract. Now, if you recall, I talked  
2 about Martin Bettmann drawing lines on maps. So the maps  
3 came first. And then someone came along later and  
4 attempted to describe those maps with legal descriptions.  
5 And they became a part of Exhibit B that we'll talk about  
6 later.

7 But on the bottom of page 2 the parties in this  
8 contract contemplated that there might be a conflict  
9 sometime between a map and these legal descriptions of  
10 Exhibit B. And here so at the bottom of page 2 is  
11 language that provided for this day when they agreed that  
12 it's mutually understood and agreed by and between the  
13 parties pursuant to the law that the descriptions of  
14 Exhibit B attached in the map of Exhibit A to the map --  
15 I'm sorry. I'm misreading.

16 Q. Jim, why don't you just read that paragraph into the  
17 record, if you would, verbatim.

18 A. "It is mutually understood and agreed by and between  
19 the parties submitting this map, Exhibit A, pursuant to  
20 SDCL 49-34A-44, that the descriptions, Exhibit B which  
21 are attached to this map, are not controlling. If there  
22 is any conflict between the written description of areas  
23 and the maps submitted, in each instance where there is a  
24 conflict between the map, Exhibit A, and the written  
25 description, the map shall in all respects be conclusive



1 proof of the assigned service area of each utility."

2 And that's an important principle I think in our  
3 case today really. So that is --

4 Q. Jim, if I could direct your attention then to Staff  
5 Exhibit 1, do you have that in front of you?

6 A. I do.

7 Q. And could you explain to the Commission -- why don't  
8 you just leave up Xcel 1. And I think everyone has a  
9 copy of Staff 1. Could you explain what you believe the  
10 picket graphic depiction is there?

11 A. Yes. Well, this Staff Exhibit 1 is, as I understand  
12 it, an expanded version of this Exhibit A from the  
13 contract, the big map that I've been speaking to on the  
14 easel over here.

15 And because this northern tier of sections in  
16 Lincoln County is shorter than the typical section, about  
17 three-quarters of a mile, I believe that there were  
18 facilities both by Xcel Energy and Southeastern Co-op --  
19 Xcel had facilities along 57th Street which is at the top  
20 of this map. And I think the Co-op probably had  
21 facilities along 69th Street, which is in the middle of  
22 this map. And so that caused these blue lines to be  
23 drawn equidistant between our existing facilities.

24 And so within Section 7 the left half of Section 7,  
25 that blue line is -- if you measure with a ruler, it's

1     apparent to me that -- and I believe that line is  
2     equidistant between the top of that section and the  
3     bottom of that section. And that's -- and that's, you  
4     know -- that's how I see this map.

5     Q.    Thank you. Thank you. Mr. Wilcox, I'd like to  
6     direct your attention to Staff Exhibit 9. Do you have  
7     that in front of you?

8     A.    I do.

9     Q.    Were you involved in the Docket that resulted in  
10    Staff Exhibit 9?

11    A.    Yes, I was.

12    Q.    It appears to me like Staff Exhibit 9 also discusses  
13    Section 7. Is that the same Section 7 we're speaking of?

14    A.    It is not.

15    Q.    And what's the difference?

16    A.    This is another section, coincidentally No. 7, about  
17    6 miles to the west. We had a very similar matter to  
18    this case in the year 2000 where we appeared before this  
19    Commission in a hearing much like this one and a very  
20    similar situation.

21            We had another line on a map that we believed was  
22    equidistant north to south between 57th Street and  
23    69th Street. And we prevailed in that case and  
24    established a precedent, I think, to move forward.

25    Q.    Thank you. Now I'll turn our attention to the

1 2009 Docket, which I believe is Staff Exhibit 10.

2 A. Yeah.

3 Q. What was your involvement in the 2009 Docket?

4 A. As a manager of regulatory affairs for Xcel Energy,  
5 I was asked to put a cover letter on the agreement and  
6 file it with the Commission for approval.

7 Q. Did you negotiate the particulars?

8 A. I did not.

9 Q. Do you know who did?

10 A. I understand that Pam Osthus from our office, a  
11 designer, now retired, was involved with the -- from  
12 Xcel Energy in negotiating this agreement.

13 Q. Jim, I'll have you take a look at the page 2 of  
14 Exhibit 10, and I'll direct your attention to numbered  
15 sentence 5 right in the middle of the page.

16 A. Okay.

17 Q. Can you read that allowed, please.

18 A. "Then south along South Southeastern Avenue or  
19 476th Avenue to the existing boundary line, which is  
20 one-half mile north of 69th Avenue or 269th Street."

21 Q. Jim, that sentence isn't correct, is it?

22 A. There's several -- a couple of, I think,  
23 inaccuracies or mistakes, yes.

24 Q. What would they be?

25 A. Well, the existing boundary line, in my view, is

1 not -- is not one-half mile north of 69th Street. It's  
2 not avenue.

3 Based on my understanding of our 1976 contract and  
4 these maps, that line is more like three-eighths of a  
5 mile north of 69th Street, not one-half mile.

6 Q. So you see two problems with the sentence in No. 5?

7 A. I think so, yes.

8 Q. Okay. Let's turn the page then to the next -- it  
9 would be page 3 of Exhibit 10. And you see there in  
10 green towards the bottom where it says "existing boundary  
11 line"?

12 A. Correct.

13 Q. Is it your contention that the existing boundary  
14 line is correct on this map?

15 A. I do not. I believe that Xcel Energy made a  
16 mistake -- and maybe both parties apparently made a  
17 mistake -- in believing that that was the existing  
18 boundary line.

19 I believe that the existing boundary line was about  
20 600 feet to the south of that line that is called  
21 existing boundary line. So I believe we made a mistake  
22 in accepting that as the existing boundary line.

23 Q. Looking further at this map, can you describe -- it  
24 appears that there was a trade of some relatively equal  
25 sized parcels of property.

1 A. That's correct. As is the case in many housing  
2 developments where we have the lay on territory line  
3 between the companies, we'll work cooperatively with our  
4 neighbors to try to resolve those so that the line  
5 doesn't actually bisect anyone's house. So we've done  
6 this many times in the past.

7 We've worked cooperatively in this case to come  
8 together to a mutual agreement that, you know, working  
9 around what we thought was the proper boundary line to  
10 trade some lots to make a fair exchange.

11 Q. Was there any property or territory, I should say,  
12 traded that's not pictured on this map?

13 A. I don't think so, no.

14 Q. Thank you. Whose signature is on page 2 of  
15 Exhibit 10 for Xcel Energy?

16 A. That is Larry Crosby, vice president of operations  
17 management, who is no longer with the company.

18 Q. I'd like to direct your attention back -- or still  
19 on page 2 to sentence 6. And if you would put up Xcel  
20 Exhibit No. 3, I believe. I'm sorry. Pick up No. 2,  
21 please.

22 Would you please describe this exhibit to the  
23 Commission.

24 A. This exhibit attempts to combine the map that was  
25 prepared in the '09 Docket that's up in the upper left

1 corner with the current case, the Whispering Woods  
2 Development case. It's kind of on the right  
3 two-thirds -- east of Southeastern Avenue is the  
4 Whispering Woods Development.

5 So it depicts in my mind where I believe my friends  
6 at the Co-op think the territory boundary should be, the  
7 red line. And the blue line is where I believe that this  
8 line should be drawn.

9 Q. You believe the blue line is equidistant between  
10 57th and 69th?

11 A. That was my intent when I drew this line, yes.

12 Q. And then is the red line a half a mile north of  
13 69th?

14 A. That's correct. That's what I believe is the  
15 difference, yes.

16 Q. Is the Whispering Woods division on the right?

17 A. It is to the east, to the right, of Southeastern  
18 Avenue. Called a boulevard, but actually it's avenue.

19 Q. And has Southeastern Co-op extended their facilities  
20 into territory north of the blue line in Section 7?

21 A. Yes. That's my understanding, that the leftmost --  
22 two blocks north to south between the blue and the red  
23 lines have facilities that have been stubbed up already.

24 Q. And are there facilities then south of the red line?

25 A. That's correct. North of the blue line.

1 Q. North of the blue line, south of the red line?

2 A. That's correct.

3 Q. And east of Southeastern Avenue?

4 A. That's correct.

5 Q. Looking back at Staff Exhibit 10, in sentence 6 on  
6 page 2 can you read that into the record for us?

7 A. It reads "Then east one-half mile to the northeast  
8 corner of the southwest quarter of Section 7 of Township  
9 100 North, Range 49 West."

10 Q. Can you make sense of that sentence, given  
11 everything else that you know about this joint request?

12 A. Well, I have to admit I'm confused by that sentence.

13 Q. It appears to take you into the center -- the very  
14 center of Section 7; correct?

15 A. Yes.

16 Q. And it appears then like Xcel gave up some  
17 territory in Section 7 and got nothing in return. Is  
18 that correct?

19 A. Well, you could draw that inference that that was  
20 the intent of that sentence.

21 Q. But that would be inconsistent with the territory  
22 swap that was contained on the third page, the exhibit to  
23 the '09 Docket; is that correct?

24 A. I think that's correct. It would be extraneous  
25 really to the territory swap that we were working on in

1 '09. And, you know, it's inadvertent. Probably a  
2 mistake for us to have allowed that to have gone into  
3 this document. But it's there.

4 I would add, the map of the -- in '09 does not  
5 extend a line, a map drawing of any kind, into Section 7.  
6 So in my mind the map that still controls Section 7 is  
7 the original territory map of the 1976 contract.

8 Q. Do you ever -- does Xcel ever give away territory?

9 A. Not to my knowledge.

10 Q. But you routinely swap territory?

11 A. Yes, we do. I'd say I've done a dozen of these over  
12 the last 20 years. This was the first time I was not  
13 involved in the development contract.

14 Q. Mr. Wilcox, is that the Whispering Woods addition to  
15 the east of Southeastern?

16 A. It is.

17 Q. What's Xcel's intention for the Whispering Woods  
18 addition?

19 A. I have another map.

20 Q. Please put it up.

21 A. That's Xcel 3.

22 Q. Xcel 3. Thank you. Does Xcel Energy intend to  
23 provide electrical services to the residence of  
24 Whispering Woods?

25 A. That's correct. We have prepared and planned to



1 provide service, electrical service, to the customers  
2 that will reside in our part of the Whispering Woods  
3 Development.

4 It's kind of a busy map, and I apologize for that.  
5 It's an electrical map used by our designers and  
6 engineers. But the highlights, I suppose, are you'll see  
7 dotted and dashed blue lines that run along 57th Street  
8 and then down along Southeastern Avenue. That is an  
9 overhead 13.8 kv three-phase power line.

10 And then all the red lines that sort of snake in and  
11 out of the neighborhood, the housing lots and the current  
12 part of Whispering Woods that has been developed, those  
13 red lines are underground facilities that go to serve all  
14 of those houses.

15 And so we've been planning and preparing to serve  
16 what we believe is our portion of the Whispering Woods  
17 housing development.

18 Q. When you say what you believe is your portion, do  
19 you mean down to the blue line?

20 A. That's correct. I have not drawn what I believe the  
21 territory lines are on this map.

22 Q. When did you become aware of Southeastern's  
23 extensions into Whispering Woods?

24 A. This summer.

25 Q. And what state of construction were they at?

1 A. Well, I'm not quite sure. I think they were  
2 planning to provide facilities, prepare to develop or  
3 install facilities. And they had a conversation with one  
4 of our designers. And he came to me and showed me a map.

5 And it's at that time I became aware that they were  
6 preparing to put facilities in what I believed to be  
7 assigned territory to Xcel Energy. And so that's when we  
8 sort of started this conversation.

9 Q. Have they actually installed anything?

10 A. My understanding is that they have. I've been there  
11 to see the site, and there are some facilities that I  
12 believe are on Xcel Energy's side of the assigned  
13 territory line.

14 Q. When you say "some facilities," can you be more  
15 descriptive or not?

16 A. Well, the terms are "stubbed up." They're  
17 apparently underground facilities that will serve future  
18 homes. So there's orange pipes sticking out of the  
19 ground in each lot that would show where those wires come  
20 out of the ground and are ready to be connected to a home  
21 when it's constructed.

22 Q. And has Xcel also invested time and money in the  
23 Whispering Woods?

24 A. Yeah. No question. Our distribution feeder that  
25 goes on two sides of the Whispering Woods, we already

1 have red lines that serve lots in the northern part of  
2 this Whispering Woods Development now, and they can  
3 easily be extended. And we are planning to extend them  
4 as the houses are developed.

5 Q. Finally, Mr. Wilcox, what -- does Xcel have a remedy  
6 in mind that it thinks is appropriate?

7 A. Well, certainly we're not interested in asking  
8 Southeast Co-op to pull out, to tear out their  
9 facilities. I think there could be a territory trade  
10 that we could come up with that would remedy this.

11 We'd let them continue serving those 12 or so lots  
12 that they've already constructed facilities to on our  
13 side of the territory in exchange for 12 lots somewhere  
14 further east on their side of the territory. I think we  
15 can work that out once we determine what the baseline  
16 is -- base territory line should be.

17 Q. Or if the Commission imposed that, you would find  
18 that satisfactory?

19 A. Yes.

20 MR. KOENECKE: I have nothing further at this  
21 time. Thank you.

22 MR. SMITH: Mr. Peterson, cross-examination.

23 MR. PETERSON: Thank you. Good afternoon,  
24 Mr. Wilcox. I'm not very familiar with this room, and  
25 it's a little awkward this way. I may come over your way

1 to deal with a couple of exhibits.

2 MR. SMITH: Pull the mic. in, would you please,  
3 Alan. These are weird. You've got to get your mouth  
4 pretty darn close.

5 MR. PETERSON: Okay. How is that?

6 MR. SMITH: That's good.

7 MR. PETERSON: Okay. Thanks.

8 CROSS-EXAMINATION

9 BY MR. PETERSON:

10 Q. Mr. Wilcox, I understood that you were not  
11 involved in negotiations that led to your submission of  
12 October 23, 2009. Did I understand that --

13 A. That's correct.

14 Q. So do you know when the negotiations began for this  
15 territory swap?

16 A. I do not.

17 Q. Do you know what back and forth negotiations  
18 occurred in creating this document?

19 A. I do not.

20 Q. All you know is that at some point you submitted  
21 this to the PUC?

22 A. That's correct.

23 Q. And, in fact, you are the one who submitted it;  
24 correct?

25 A. That is correct.

1 Q. And it uses the language this is an agreement  
2 between and you Southeastern; correct?

3 A. That is correct.

4 Q. Apparently a new contract was reached?

5 A. This contract.

6 Q. Yes.

7 A. Yes.

8 Q. Okay. And Order EL09-021, which is Southeastern  
9 Electric Exhibit 7, is the PUC Order incorporating your  
10 request?

11 A. Yes. I believe that's the case.

12 Q. And the PUC in that Order that they issued  
13 incorporated exactly what you asked them to; correct?

14 A. That's correct.

15 Q. Now if you turn with me to page 2 of Exhibit 10,  
16 Staff Exhibit 10, do you have that in front of you, sir?

17 A. I do.

18 Q. Okay. In the introductory paragraph about in the  
19 middle it specifically indicates that this language is an  
20 exact replacement for provisions 104 and 105 of Exhibit B  
21 to the 1976 agreement. Is that correct?

22 A. That's correct.

23 Q. And if you turn to page 4 of that same agreement,  
24 that's the Exhibit B to which we're talking about.

25 A. Yes.

1 Q. So on that exhibit, Exhibit B, page 4 of Staff 10,  
2 104 and 105 you have agreed should be replaced by the  
3 language included on page 2 of Staff Exhibit 10, items 1  
4 through 6.

5 A. Yes.

6 Q. In addition to agreeing to that language, in  
7 submitting that language, you submitted a map that  
8 incorporates that request; correct?

9 A. That's correct.

10 Q. And we find that on page 3 of Staff Exhibit 10?

11 A. Yes.

12 Q. So at that time you have asked the PUC to submit a  
13 new territorial map that defines the difference between  
14 your territory and Southeastern Electric's territory?

15 A. That's correct.

16 Q. And you highlight that in your introductory letter  
17 by saying that the green line near the bottom of the  
18 diagram depicts the existing service territory boundary  
19 line between Xcel Energy and Southeast Co-op that runs  
20 between Southeastern Boulevard to the existing railroad  
21 track to the west; correct?

22 A. That's correct.

23 Q. So if we turn to page 3 of Exhibit 10, we see a  
24 green line crossing the bottom.

25 A. Yes.

1 Q. Did you add that green coloring?

2 A. You know, I don't recall who prepared this map.

3 Q. Well, this map would have been prepared by someone  
4 at Xcel; correct?

5 A. If it is, then I don't recall if -- it might have  
6 been Pam Osthus, I suppose. She was the designer  
7 involved, and I expect that she may have prepared this  
8 map.

9 Q. And your letter confirms that this map highlights in  
10 green what you then considered the existing boundary line  
11 between your territories?

12 A. That's correct.

13 Q. And, in fact, it extends to the east; correct?

14 A. To Southeastern Avenue.

15 Q. And extends beyond Southeastern Avenue in green,  
16 does it not?

17 A. I believe that's an inadvertent mark on this map.  
18 This map only extends to Southeastern Avenue and does not  
19 depict any territory east of Southeastern Avenue.

20 Q. So it's your testimony today that the map where  
21 someone apparently from your Staff has extended that line  
22 past Southeastern into range 7 was simply an error?

23 A. Yes.

24 Q. You were actually asked by the PUC Staff to provide  
25 additional detail of that area with measurements;

1 correct?

2 A. Yes. I think that's correct.

3 Q. And I'm going to show you Exhibit 3 from  
4 Southeastern.

5 I have an enlargement of that I'll put up here, but  
6 I believe you have the same thing in front of you. Do  
7 you recognize southeast Exhibit 3 as a supplemental map  
8 that you submitted to the PUC?

9 A. Yes.

10 Q. Your supplemental map also extends or identifies  
11 where the existing boundary is; correct?

12 A. Yes.

13 Q. And it also extends in yellow on this map past  
14 Southeastern into Section 7; correct?

15 A. I don't believe so. I think it ends at Southeastern  
16 Avenue.

17 Q. Well, do I see yellow extending?

18 A. Yeah. I don't think that it's intended to describe  
19 any territory east of Southeastern Avenue.

20 Q. So the map shows it in two occasions, but you  
21 believe it was just a mistake you made twice?

22 A. That's correct.

23 Q. If you look at the joint submission at item 5, this  
24 specifies that the boundary line --

25 A. I'm sorry. Which exhibit?



1 Q. I'm sorry. Exhibit 10. Staff Exhibit 10.

2 A. Okay.

3 Q. Page 2.

4 A. Okay. Thank you.

5 Q. Item 5.

6 A. Okay.

7 Q. Identifies the location of the boundary line as  
8 being one-half mile north of 69th Avenue; correct?

9 A. That's correct.

10 Q. That would be a modification of the 1976 agreement;  
11 correct?

12 A. Would be a modification of Exhibit B of the 1976  
13 agreement.

14 Q. And that's what the maps identify, isn't it?

15 A. To the extent that they modify section -- territory  
16 in Section 12, I would agree.

17 Q. Proceeding to item 6 on this same page, from that  
18 identified point, one-half mile north you proceed east;  
19 correct?

20 A. That's correct.

21 Q. And you proceed to a corner. I'm going to show you  
22 another map, see if you can help us identify that corner.

23 Southeast Eight is an additional map. Are you  
24 familiar with that map?

25 A. I have seen it, yes.

1 Q. Do you have any idea where it's from?

2 CHAIRMAN HANSON: Excuse me, Mr. Peterson. When  
3 you're up to the -- would you use the mic., the second  
4 mic. there, please. Thank you.

5 Q. Have you had a chance to look at Exhibit 8? Excuse  
6 me. Have you had a chance to look at Exhibit 8?

7 A. No. Not lately. I have seen -- I have seen this  
8 map before.

9 Q. Okay. And does that identify the corner that is  
10 referred to on item 6 of Staff Exhibit 10?

11 A. I'm not clear where it would be, I guess, on this  
12 map.

13 Q. So you're not sure what that corner is?

14 A. You know, I'm not sure where that corner is, and I  
15 guess I'd just go back to the map that we did include  
16 with the '09 agreement.

17 And in my mind although we have -- I see we have  
18 agreed to amendments to Exhibit B of the 1976 contract,  
19 we have made no amendments to the original map of the  
20 1976 contract.

21 Q. Well, sir, I guess that's what we'll leave up to the  
22 PUC decision. But, in fact, you not only submitted a  
23 written narrative that changed the territory, but you  
24 attended a specific map on two occasions that changed the  
25 territory?

1 A. I don't believe that's to the case.

2 Q. You indicated you had been involved in the 2000  
3 Docket concerning the territorial dispute?

4 A. Yes.

5 Q. And you understand the difference between center  
6 points and a measurement of one-half mile?

7 A. I'm not a surveyor by training so I cannot say that  
8 I am 100 percent certain in my understanding of the  
9 surveying terminology.

10 Q. So you just submitted what you have been told to  
11 submit?

12 A. In '09 or --

13 Q. In '09.

14 A. In '09, yes.

15 Q. With no idea what was negotiated?

16 A. That's correct.

17 Q. And no idea of the understanding of the people that  
18 gave it to you to submit?

19 A. That's correct.

20 Q. Are you maintaining that Mr. Chance or someone from  
21 Southeastern tricked Xcel into signing these documents?

22 A. I don't know. I know that we believe we made a  
23 mistake. We thought that the existing boundary line that  
24 was the subject of the '09 agreement was where we thought  
25 it should be, about 600 feet south of there.

1 I think Pam Osthus made a mistake in her  
2 understanding and, you know, both parties maybe made a  
3 mistake. That's about the extent of what I might  
4 think.

5 Q. Well, Mr. Wilcox, you weren't involved. You don't  
6 know if there was a mistake?

7 A. Well, I think the company believes there's a mistake  
8 because this existing boundary line as it was called is  
9 in the wrong place.

10 MR. PETERSON: I don't have anything further.

11 MR. SMITH: Thank you.

12 Staff, cross-examination?

13 MR. SOYE: Thank you.

14 CROSS-EXAMINATION

15 BY MR. SOYE:

16 Q. All right. Bear with me here, Jim. I've got a few  
17 things that I feel like I need to clear up.

18 During your questioning by Brett Koenecke you were  
19 looking at Staff's Exhibit 8, the 1976 agreement?

20 A. Yes.

21 Q. And you had stated the maps came first. Then we  
22 developed descriptions. And then you read off the map's  
23 control paragraph all of the maps override the  
24 description paragraph on page 2. And then you explained  
25 the sort of equidistant of a fractional section.

1           Could you again look at that 1976 agreement or Staff  
2 Exhibit 8 and turn to the second to the last page? And  
3 when you were referring to Staff's Exhibit 1 you  
4 explained that you viewed a line --

5 A. Excuse me right now. Are you back in Exhibit B  
6 then?

7 Q. Yes. Sorry. Exhibit B, page 7.

8 A. Page 7.

9 Q. And this is what contains the legal description for  
10 Section 7 through 12?

11 A. Yes.

12 Q. And when you were viewing Staff's Exhibit 1 you said  
13 you viewed the line as a equidistant between the northern  
14 and southern border of the fractional section?

15 A. Yes.

16 Q. Now when you read 104 and 105 do you read then north  
17 one-quarter mile to the center point of Section 12, Range  
18 50, T 100 North, then east along the half-mile line to  
19 the center point of Section 7?

20 A. Yes.

21 Q. So on and so forth.

22 A. Uh-huh.

23 Q. So actually I just want to be clear then. In this  
24 case unlike the 2000 Docket, the legal description here  
25 on the map are not actually in direct conflict. Would

1 you agree with that?

2 When you're referring to a center point of a  
3 fractional section, these would actually match up  
4 here.

5 A. No. Again, I'm not a surveyor so I don't know the  
6 terminology of surveying. And I'm not clear that the  
7 center point in surveying terminology is exactly the  
8 center point of a section in a fractional section.

9 I've talked to surveyors and I understand that there  
10 might be a difference. But I can't explain it any  
11 further than that.

12 Q. Okay. From your understanding would you find the  
13 center point to be the dead center of a section?

14 A. Well, that seems to make sense, yes.

15 Q. But there may be a difference on the --

16 A. That's correct.

17 Q. But in the 2000 Docket it was also determined that  
18 this description was not necessarily written by a  
19 surveyor. Do you remember that?

20 A. I don't. But it's reasonable.

21 Q. Okay. I want to just review a little bit of the  
22 Staff's Exhibit 10, the 2009 agreement.

23 A. Okay.

24 Q. And you said you did not have any part in this --  
25 negotiating this agreement other than attaching a cover

1 letter and submitting it to the Commission.

2 What were you given? Were you given all the  
3 documents included here except for the cover letter?

4 A. That's correct.

5 Q. And do you remember who gave them to you?

6 A. Pam Osthus.

7 Q. Pam Osthus?

8 A. A designer in our office.

9 Q. And when she gave them to you did she tell you  
10 anything about it?

11 A. I think we had a conversation. Certainly, I can't  
12 recall the extent of that. Other than I have this  
13 recollection of asking her about the map on page 3 and  
14 asking her about this existing boundary line.

15 And I was -- I oversaw -- I made this mistake then.  
16 I had a conversation with her, and I asked her is this  
17 line in the right place? I mean, I think that's exactly  
18 what I phrased it. And she said yes, it is.

19 And so that's when I -- I thought we had sort of  
20 settled this issue in the 2000 Docket so that we wouldn't  
21 have this issue again. And I'm not even sure -- well --  
22 to answer --

23 Q. So you had a discussion with Pam Osthus?

24 A. Yes.

25 Q. So you had some particulars?

1 A. Yes.

2 Q. And you questioned the existing boundary line and,  
3 as Section 12 and Section 7 had never been modified until  
4 2009, that line is supposed to correspond to the 1976  
5 map?

6 A. Correct.

7 Q. And I have to bring up something that you talked  
8 about earlier. You said two different comments. At one  
9 point you said Xcel put this together and the green line,  
10 you believe, just as you've stated, was in the wrong  
11 position. And then you've also stated that you also  
12 think it was mistake that the green line was extended  
13 into Section 7?

14 Is it both or one? Because that I feel that the  
15 inappropriate placement of the line and whether or not  
16 the line should extend into Section 7 are two different  
17 things.

18 A. Yeah. I would agree they're two different things,  
19 certainly.

20 Q. Okay. And you agree that both of those were a  
21 mistake?

22 A. I do.

23 Q. Okay. And from the map on Staff Exhibit 10, so  
24 page 3, when you look at that map -- and I'm just  
25 comparing it to the exhibit offered by Southeastern which



1 looks like it was made as a copy, just as this one does.

2 But when you look at Staff's exhibit, that existing  
3 boundary line, does that look yellow?

4 A. We're talking about this?

5 Q. Yes.

6 A. Yes. Well, my copy it looks more green than yellow.

7 Q. Okay. So if it's green it's only meant to signify  
8 the existing boundary line and not the -- well, let's see  
9 what your cover letter says. The modified territory?  
10 Oh, here it is. The overlay of the new territory. Is  
11 that correct?

12 A. The yellow line?

13 Q. Yeah.

14 A. It is intended to describe the agreement that we had  
15 to adjust lots to accommodate so the line didn't cut  
16 across any lots.

17 Q. So the new territory is signified by -- yeah. So  
18 the new territory was signified by the yellow line, and  
19 the existing boundary was the green line?

20 A. That's correct.

21 Q. When you were being questioned by Mr. Koenecke you  
22 said that you believe the existing boundary line that is  
23 shown on the same map I was just referring to should have  
24 been about 600 feet to the south.

25 A. Yeah. I believe that's the case.

1 Q. If you moved this line 600 feet to the south, then  
2 the area that you traded, Southeastern actually belonged  
3 to you in the first place.

4 A. Yes. That's correct.

5 MR. SOYE: No further questions.

6 MR. SMITH: Thank you. Mr. Koenecke, redirect?

7 MR. KOENECKE: Nothing, Mr. Smith. Thank you.

8 MR. SMITH: Thank you. With that then, we'll go  
9 to Commissioner questions of Mr. Wilcox.

10 Chairman Hanson.

11 CHAIRMAN HANSON: Thank you, Mr. Smith.

12 Mr. Wilcox, in some of the questions that were asked of  
13 you you stated that Xcel Staff told you, and it was  
14 Pam Osthus that you were having the conversation with and  
15 she stated the line was in the right place.

16 THE WITNESS: Yes.

17 CHAIRMAN HANSON: Can you direct me to the  
18 exhibit you're referring to?

19 THE WITNESS: Yes. Go to Staff Exhibit 10.

20 CHAIRMAN HANSON: Okay.

21 THE WITNESS: On the third page is a map.

22 CHAIRMAN HANSON: Right.

23 THE WITNESS: Has yellow and green lines. And  
24 the green line is labeled existing boundary line. And I  
25 believe Pam thought that line was 600 feet south of where

1 it actually is. And I relied on that when she gave me  
2 that information.

3 CHAIRMAN HANSON: And that is -- and she was in  
4 the negotiations or privy to the information that  
5 transpired in the negotiations with Southeastern; is that  
6 correct?

7 THE WITNESS: That's correct.

8 CHAIRMAN HANSON: Did Xcel prepare the -- I know  
9 that -- whose exhibits they are, but did Xcel prepare the  
10 maps that show where these lines are?

11 THE WITNESS: I believe so, yes. That is Xcel  
12 Energy facility's map there is a base map. So I believe  
13 that it's a map that we prepared, yes.

14 CHAIRMAN HANSON: All right. Thank you. Thank  
15 you, Mr. Smith.

16 MR. SMITH: Other Commissioner questions?  
17 Commissioner Nelson?

18 COMMISSIONER NELSON: No questions.

19 MR. SMITH: Commissioner Fiegen?

20 COMMISSIONER FIEGEN: No questions.

21 MR. SMITH: I'm assuming not, but are there any  
22 follow-on questions by any of the attorneys to  
23 Commissioner Hanson's questions?

24 MR. PETERSON: No.

25 MR. SOYE: No.

1 MR. KOENECKE: No.

2 MR. SMITH: Thank you. I think, Mr. Wilcox, you  
3 can step down.

4 We're going to give the reporter a quick break.  
5 We'll take a breather here. What do you say 10 minutes?  
6 Is that adequate?

7 CHAIRMAN HANSON: I'd like to say 15.

8 MR. SMITH: 2:11 so --

9 CHAIRMAN HANSON: 25 after.

10 MR. SMITH: Okay. 25 after we'll reconvene.  
11 Thank you, everybody.

12 (A short recess is taken)

13 MR. SMITH: We're going to reconvene the hearing  
14 following a short recess.

15 Mr. Peterson, you may begin with your direct  
16 case.

17 MR. PETERSON: Thank you. Call Tim Chance.

18 MR. KOENECKE: Mr. Smith, I don't think I've  
19 rested yet. Mr. Peterson --

20 MR. SMITH: Pardon me.

21 MR. KOENECKE: Mr. Peterson was not going to  
22 call Mr. Schardin, the manager, so I thought I would.

23 MR. SMITH: I apologize. I misunderstood. I  
24 thought that was all you were going to have,  
25 Mr. Koenecke.

1 MR. KOENECKE: And I thought so until about  
2 three minutes ago.

3 MR. SMITH: With that, please proceed with your  
4 case in chief.

5 MR. KOENECKE: Thanks. I'll call Mr. Schardin  
6 from the Co-op then.

7 (The witness is sworn by the court reporter)

8 DIRECT EXAMINATION

9 BY MR. KOENECKE:

10 Q. Good afternoon, Mr. Schardin. My name is  
11 Brett Koenecke. I'm a lawyer with Xcel. I apologize.  
12 We haven't met before today. I didn't realize you  
13 weren't going to be called as a witness so I've got just  
14 a couple of questions for you.

15 A. No. That's fine.

16 Q. First off, would you state your name and business  
17 address for the record.

18 A. Yes. Brad Schardin, general manager at Southeastern  
19 Electric Cooperative. I don't know our street address.  
20 501 South Broadway, Marion, South Dakota.

21 Q. Oh, thank you. And just if you would tell the  
22 Commission briefly what your education and business  
23 background is.

24 A. Yes. I have a business degree from Black Hills  
25 State and have worked for the electric cooperatives for

1 28 years now.

2 Q. And how long have you been employed by Southeast?

3 A. I began working for Turner Hutchinson Electric in  
4 1990, and we merged Lincoln Union Turner Hutchinson in  
5 together, consolidated in 2000, and McCook Electric in  
6 2006. So since 1990.

7 Q. And how long have you been the general manager?

8 A. The whole time. Since 1990, yeah.

9 Q. Very good. Thanks. Is it your signature that I see  
10 then on page 26 Staff Exhibit 10?

11 A. Yes. That is correct.

12 Q. And did you review the information contained on that  
13 sheet before you signed the document?

14 A. Yes. Tim had been visiting with me from I would say  
15 2007 through until about 2009 on the discussions with the  
16 Xcel Energy, which you guys have already identified those  
17 employees.

18 Q. Thank you. Turning the page then to Exhibit A?

19 A. Yes.

20 Q. Is it your position that the green line entitled  
21 existing boundary line is correct?

22 A. Yes. That would be correct.

23 Q. And so that was your understanding when you signed?

24 A. Based on the territorial discussions and the swap  
25 area that Tim had with Pam Osthus and Rollie Heidebrink,

1 yes.

2 Q. Had Southeast constructed facilities south of or  
3 below the yellow line on Exhibit A? It would be page 3.

4 A. We have facilities in the proposed area, I believe.

5 Q. Did you have --

6 A. The trade area.

7 Q. Okay. Thank you. Did you have them there at the  
8 time?

9 A. I guess I couldn't answer that for you. I do not  
10 believe we did because that was a water retainage area  
11 that we traded at that point in time, and I don't think  
12 it came until maybe shortly thereafter. But I believe  
13 Mr. Chance could probably answer that one for you. He's  
14 the operations manager.

15 Q. I will ask him that. You did not prepare the second  
16 page of Exhibit 10?

17 A. You're saying Exhibit A or --

18 Q. No. The second page of Exhibit 10, the joint  
19 request for service territory boundary change.

20 A. No. I think that was a discussion with operations  
21 manager Chance and the Xcel Energy employees that were  
22 identified.

23 MR. KOENECKE: That's all I have then. Thank  
24 you.

25 THE WITNESS: You're welcome.

1 MR. SMITH: Any questions from Mr. Peterson?

2 MR. PETERSON: I have no questions.

3 MR. SMITH: Staff.

4 MR. SOYE: Thank you, just one.

5 MR. SMITH: Mic.

6 MR. SOYE: Just one.

7 CROSS-EXAMINATION

8 BY MR. SOYE:

9 Q. Mr. Koenecke asked you if you thought the green line  
10 was correct on that map, Exhibit A. Sorry. Exhibit A of  
11 Exhibit 10, I guess it would be, but the map included on  
12 the 2009 agreement.

13 A. Yep. Exhibit A. Yep.

14 Q. And since it is listed as existing boundary line,  
15 you would agree that that is meant to correspond to the  
16 1976 map?

17 A. I guess I relied on Tim and his discussions with  
18 them to bring that to me and --

19 Q. Okay.

20 A. And sign the document and send it on to Mr. Wilcox.

21 Q. Okay. So at that point it was everyone who was  
22 negotiating, it was everyone's understanding that the  
23 1976 map -- that you were involved with?

24 A. Yeah. I have no reason to believe that it was  
25 anything different than that.



1 MR. SOYE: Okay. Thank you.

2 MR. SMITH: Any Commissioner questions of  
3 Mr. Schardin?

4 Seeing none, any follow-on, Mr. Koenecke?

5 MR. KOENECKE: No, Mr. Smith.

6 MR. SMITH: Thank you. You may step down then,  
7 Brad.

8 THE WITNESS: Thank you.

9 MR. SMITH: Does that conclude your case in  
10 chief, Mr. Koenecke?

11 MR. KOENECKE: It does.

12 MR. SMITH: Okay. Thank you. Now,  
13 Mr. Peterson.

14 MR. PETERSON: Thank you.

15 MR. SMITH: Begin your direct testimony.

16 MR. PETERSON: Call Tim Chance. Thank you.

17 (The witness is sworn by the court reporter)

18 DIRECT EXAMINATION

19 BY MR. PETERSON:

20 Q. Would you please state your name and business  
21 address.

22 A. Tim Chance. I work out of the Alcester office,  
23 which is 605 South Dakota Highway 11, Alcester.

24 Q. And for whom do you work?

25 A. Southeastern Electric Cooperative.

1 Q. What is your position with the cooperative?

2 A. I am the operations manager.

3 Q. And what does that mean?

4 A. I handle all the maintenance and construction duties  
5 for the lines serving the members.

6 Q. How long have you had that position?

7 A. Since 1995.

8 Q. What did you do prior to 1995?

9 A. I started as temporary help, and then I went through  
10 a apprenticeship program to become a journeyman lineman.  
11 And then I went to being a foreman. After being a  
12 foreman in '92 I become a assistant operations manager,  
13 and then in '95 I was operations manager.

14 Q. And what is your educational background?

15 A. Graduated high school, one year of vo-tech, the  
16 apprenticeship training program for four years through  
17 Lincoln Union at the time.

18 Q. Okay. In front of you is a Southeast Exhibit 1 on  
19 the easel. Do you recognize that map?

20 A. Yes, I do.

21 Q. Just for general orientation could you identify  
22 there where the area in question is and point out some of  
23 the other relative areas of Sioux Falls so that we have a  
24 general orientation of what we're talking about here?

25 A. Okay. Well, I guess on this map here it's just a

1 general map of the area, showing the Interstate 29 and  
2 229 coming up through here. These are the townships that  
3 are in question and question -- the question is 12 and 7  
4 here is the two sections that are in question.

5 Q. And just for reference, where is Harrisburg?

6 A. Harrisburg is just due south here.

7 Q. And could you identify the major streets that are  
8 the boundaries of the area that we're talking about and  
9 trace them with your finger just so we all are oriented?

10 A. Okay. This would be 57th Street. This here is  
11 69th. This would be 85th. And so this here would be  
12 Southeastern (indicating).

13 Q. Okay. So the area we're talking is really on the  
14 very southeastern edge of Sioux Falls development at this  
15 point?

16 A. Yes.

17 Q. Okay. Go ahead and take a seat again. Did you have  
18 some involvement in the land or territory swap between  
19 Xcel and Southeastern Electric that occurred in the late  
20 2000s?

21 A. Yes.

22 Q. What was your involvement?

23 A. In the exchange of the 2007?

24 Q. Yeah. How did this all come up, and what did you  
25 have to do with it?

1 A. I was contacted by Pam Osthus, and she was designing  
2 some area in the Oxford Estates. And she asked me that  
3 there is a road there that we didn't have facilities  
4 really close by. And she asked if we would want to trade  
5 that area because it would be very easy for them to serve  
6 and difficult for us to get our facilities in. And so I  
7 talked to Brad, and we decided that was a good thing for  
8 Southeastern to make that trade.

9 Q. Okay. And who is it that you actually negotiated  
10 with?

11 A. I talked to Pam and I also talked to Rollie  
12 Heidebrink. I went to his office, and this is where we  
13 came up with the plan.

14 Q. Give me an idea of the tenor of your discussion.  
15 What was it that you discussed?

16 A. We discussed where the existing boundary line is and  
17 the changes to be made and where it's going to end up to.

18 Q. Did you discuss the maps that we've been looking at  
19 here today?

20 A. Yes.

21 Q. Can you tell me which map forms the most accurate  
22 basis of what you guys looked at to talk about this  
23 switch?

24 A. Well, the map that was presented to me -- you know,  
25 that Xcel did. And then that GSA map that we have here.

1 Q. And just for reference, are we referring to  
2 Exhibit 8? I'll be glad to pull that up.

3 Do you have Exhibit 8 there before you?

4 A. Yes.

5 Q. Is that the map you're referring to?

6 A. Yes.

7 Q. And then also Exhibit Xcel 3? Is that a map you had  
8 at that time?

9 A. No.

10 Q. What is the other map to which you made a reference?

11 A. It would be that -- the bigger map of this one here,  
12 of the Oxford Estates and --

13 Q. This one?

14 A. Well, something like that or the bigger one.

15 MR. SMITH: I think he's talking Exhibit 4 -- or  
16 Exhibit A of the agreement.

17 Q. Exhibit 4, Tim?

18 A. Yes. Yes.

19 Q. Okay. As a part of your discussion did you discuss  
20 item 6 of the joint proposal which talks about extending  
21 east one-half mile to the northeast corner of the  
22 southwest quarter of Section 7 of Township 100 North,  
23 Range 49 West?

24 A. Yes, we did.

25 Q. That was a specific part of your discussion?

1 A. Yes.

2 Q. Tell me what you recall about the discussion of that  
3 particular item.

4 A. Basically you go through the description, and the  
5 description it tells you what the map is saying. You go  
6 a fourth of a mile north and then, you know, to the  
7 half-mile line to the east. So we followed that  
8 description. And it goes right to the center of  
9 section -- Section 12, I think.

10 Q. And does map 8 identify where the center is that  
11 you're talking about?

12 A. Yes, it does.

13 Q. I'm going to hand you a red marker and ask if you  
14 could step to the enlargement of Exhibit 8 and identify  
15 what you're referring to.

16 A. Well, it's this point right here. It says center of  
17 (indicating).

18 Q. And is there any language on that map that makes a  
19 reference to that?

20 A. Yes. It says "center of."

21 Q. Were you confused of what that language meant?

22 A. No, I was not.

23 Q. Do you have any reason to believe that Pam or Rollie  
24 were confused about that discussion?

25 A. No, they were not.

1 Q. Why do you say that?

2 A. Because we put the agreement together.

3 Q. Pardon?

4 A. Because the agreement was put together because of  
5 that discussion.

6 Q. Well, what was the discussion?

7 A. That it would be to that center point on that No. 6  
8 that you discussed with me.

9 Q. Well, then let me drop back to No. 5 of your joint  
10 agreement. Did you discuss the meaning of the point that  
11 is one-half mile north of 69th Avenue?

12 A. Yes, we did.

13 Q. Tell me what you recall about that discussion.

14 A. That was why we decided -- was the existing boundary  
15 line, and that's where that half-mile line is where we're  
16 making our changes in the Oxford Estates so that that was  
17 that existing line that's shown on that map.

18 Q. Do you have any reason to believe that Rollie  
19 Heidebrink -- and I'll spell that as long as I've got it  
20 here in front of me -- H-E-I-D-E-B-R-I-N-K, was confused  
21 about what item 5 made reference to?

22 A. No.

23 Q. Do you think he was mistaken?

24 A. No.

25 Q. Were you mistaken?

1 A. No.

2 Q. Do you have any reason to believe that  
3 Mr. Heidebrink was confused about what item 6 means?

4 A. No.

5 Q. Can you take that Magic Marker and draw what No. 6  
6 represents on that exhibit, Exhibit 8?

7 A. Exhibit 8 it shows quarter lines. So on the quarter  
8 lines is where they join together. It says quarter line,  
9 quarter line. So there's four quarters in a section so  
10 that's what they call in a surveying thing that there's  
11 four quarter lines are these quarter lines. And it's the  
12 center of that point.

13 Q. And I asked if you could draw the line that would  
14 cross item 7 there.

15 A. Right in that point (indicating).

16 Q. And then draw the point that item 5 refers to, the  
17 half-mile north of 69th Avenue.

18 (Witness complies)

19 Q. Is that your understanding of what the agreement  
20 established as the relative territories pursuant to this  
21 agreement?

22 A. Yes.

23 Q. Whose map is Exhibit 8?

24 A. It's JSA. It's a surveying group from Sioux Falls.

25 Q. Where did you get it?



1 A. I don't know.

2 Q. Okay. But this is the map that you used with Rollie  
3 to discuss this proposal?

4 A. Yes.

5 Q. Please go ahead and take the seat. I'm sorry. I'm  
6 going to ask you to step back up and take a look at the  
7 exhibit behind -- take down Exhibit 8 and take up the  
8 next one.

9 A. This one here?

10 Q. No. The one that's on the easel right now.

11 A. Okay.

12 Q. Okay. What is your understanding of what that map  
13 is?

14 A. That's Xcel's lines designed onto the map.

15 Q. And I'm not going to ask you to write on their  
16 exhibit, but I have a duplicate of that one. Can you  
17 identify on there with a Magic Marker the same red line  
18 that you just identified on Exhibit 8?

19 A. It would be right here (indicating).

20 Q. Then I'm going to ask you to pick up the one with  
21 the pink. Exhibit 6. Southeastern 6.

22 A. Southeastern 6.

23 Q. Tim, the one that looks like this.

24 A. Okay.

25 Q. Could you tell the Commissioners what this map is?

1 A. This is a map of that same area, of Whispering  
2 Woods, and it's showing our facilities in Whispering  
3 Woods.

4 Q. I'm going to give you a blue marker and ask if you  
5 would impose the same line that you just imposed on the  
6 last two maps.

7 (Witness complies)

8 Q. And then on that map there's a series of black  
9 dotted lines. Could you tell the Commissioners what  
10 those black dotted lines represent?

11 A. That represents our main line, three-phase, going in  
12 there and also the distribution lines that we were going  
13 to use -- are using for -- to feed this area.

14 Q. Okay. Then I'd ask you to go ahead and take a seat  
15 again.

16 Following the entry of the PUC Order in 2009  
17 establishing this territorial line as you understand it,  
18 did Southeastern Energy install any infrastructure?

19 A. Yes.

20 Q. And you were just describing it on that map;  
21 correct?

22 A. Yes.

23 Q. Tell the Commission what it is that Southeast Energy  
24 did in reliance on this division.

25 A. We had a request for a service. And so in order to

1 put the service in we needed to extend our lines through  
2 this area to hook up that service.

3 Q. And have you completed that?

4 A. Yes.

5 Q. When did you first hear that Mr. Wilcox thought a  
6 mistake was made in terms of this territorial division?

7 A. August 29.

8 Q. On August 29 what was the status of Southeastern  
9 Electric's infrastructure that had been installed?

10 A. It was pretty much installed. September 2 is when  
11 we hooked up that service. So it was pretty much all in  
12 except for hooking up the service was on September 2.

13 Q. Do you have an estimate of the cost that  
14 Southeastern Electric has incurred in reliance on the  
15 territorial Order of 2009?

16 A. Yes. It's not completely closed out, but the costs  
17 that will be due involved right now is over 95,000.

18 Q. \$95,000?

19 A. Yes.

20 MR. PETERSON: I don't believe I have any other  
21 questions at this time.

22 MR. SMITH: Thank you.

23 Mr. Koenecke.

24 MR. KOENECKE: Thanks, Mr. Smith.

25

CROSS-EXAMINATION

1  
2 BY MR. KOENECKE:

3 Q. Good afternoon, sir. My name is Brett Koenecke.  
4 I'm a lawyer from Xcel Energy. I've got a few questions  
5 for you.

6 Turning back to the JSA exhibit, if I can direct  
7 your attention to that, I'm looking for a description on  
8 there of -- I'm looking for the southwest quarter of  
9 Section 7. Is that listed on there anywhere?

10 A. I guess I don't see it exactly.

11 Q. I don't either. And that's why I'm asking.

12 A. I think on the very right hand -- by the street I  
13 think they're showing a southeast one-fourth there like  
14 in small letters. I can't read it very well there. East  
15 Buckingham Street and there. I think it's going to  
16 maybe -- it says one-fourth center.

17 Q. I'm not sure that's what that says.

18 A. Up on the top side on 57th I think it says the  
19 northwest corner.

20 Q. Right. I see that.

21 A. And then the northeast corner is over there. It's  
22 not showing on the bottom side of these so it's --

23 Q. I'm sorry. I don't want to interrupt you.

24 A. Okay.

25 Q. Do you see where it says Whispering Woods Addition

1 in bold?

2 A. Yes.

3 Q. And do you see below that and to the right it says  
4 north half of Government Lot 7?

5 A. No. I don't see it exactly.

6 Q. Well, if you go just below East Treetop Street and  
7 along Bahnson Avenue right overlaid there doesn't it say  
8 north half of Government Lot 7?

9 A. Okay. Government Lot 4 and Government Lot 3? Is  
10 that what you're saying?

11 Q. That's different. I also see that on there.

12 A. Okay. The bottom part says one half of Government  
13 Lot 7. I see it now.

14 Q. If you go down there towards the bottom, does it say  
15 south half of Government Lot 7?

16 A. Yes.

17 Q. And also then if you go over to the left-hand side  
18 along Southeastern, it says -- does it say Government  
19 Lot 5 and then Government Lot 6 down towards the bottom?

20 A. It says unplatted, and it says Government Lot 6,  
21 yes.

22 Q. I don't see any on there where it says southwest  
23 quarter of Section 7. And so I just want to go over that  
24 one more time. In going over the map did you see  
25 anywhere elsewhere it might say southwest quarter of

1 Section 7?

2 A. I don't see it saying exactly that.

3 Q. Likewise, though, however on the right-hand side it  
4 does seem to indicate -- if I'm looking at this correct,  
5 Block 23 it says northwest quarter of the southeast  
6 quarter.

7 A. Under Block 23 it says north one-fourth of the  
8 southeast one-fourth.

9 So you're talking about that section or that little  
10 square there. That's just part of the quarter?

11 Q. Uh-huh. I don't see where there is any southwest  
12 quarter of that section, though. It's Government lots  
13 instead, isn't it?

14 A. It does say Government lots, yeah.

15 Q. So there's no way then on line 6 of page 26  
16 Exhibit 10 -- we'll go to Staff's Exhibit 10, line 6.  
17 There's no way that it could be correct then that it says  
18 to the northeast corner of the southwest quarter of  
19 Section 7. That doesn't exist.

20 A. No. That does exist.

21 Q. Where is it at on your surveyor map?

22 A. Well, I -- it's a term that you use as -- for even  
23 easements, plotting ground. These Government lots, if  
24 you would look at the description that's put in the  
25 Lincoln County would be Government Lot number -- is it

1 Government Lot No. 3 or you said Government Lot 7 in the  
2 south -- you know, in the northeast one-fourth of the  
3 southeast one-fourth. That would be the description that  
4 you would read plotted in at, you know, Lincoln County.

5 It might not be written on here, but it would be  
6 plotted in the County's. If you had to get an easement,  
7 you would have to use that terminology to get that  
8 easement.

9 Q. I'm going to ask to take your attention to Staff  
10 Exhibit No. 1, which is -- I'll hold it up for you so you  
11 can look at what I've got.

12 A. This here?

13 Q. Yep. That's it.

14 A. Okay.

15 Q. Have you seen that before?

16 A. Yes, I have.

17 Q. When did you see it first? Do you remember?

18 A. Oh, I don't remember.

19 Q. Do you remember if you and anybody from Xcel used  
20 that to develop the agreement?

21 A. Not -- not for sure.

22 Q. Is it more likely that you saw it for the first time  
23 during preparation for this hearing?

24 A. No.

25 Q. Do you have any idea when you saw it for the first

1 time?

2 A. Oh, I -- I would say it's 2007.

3 Q. Did you, in fact, use this in your work on the joint  
4 request for service territory exchange?

5 A. No. Not that I remember.

6 Q. Do you know if anybody from Xcel consulted this?

7 A. I don't know.

8 Q. I'll ask to draw your attention to page 3 of  
9 Exhibit 10. That's this one.

10 A. This one right here?

11 Q. I believe so. Yep.

12 A. Okay.

13 Q. And you see where it says existing boundary line?

14 A. Yes.

15 Q. Did you verify the existing boundary line?

16 A. What do you mean?

17 Q. Have you checked whether the existing boundary line  
18 was drawn in the correct place?

19 A. Yes.

20 Q. When was that?

21 A. 2007.

22 Q. Why do you believe that's in the correct place?

23 A. Because of the description.

24 Q. Did you check any maps in order to verify that?

25 A. Yes. The maps that I -- we discussed there.



1 Q. Which maps would those be?

2 A. The two maps of the -- this one here and the bigger  
3 one of this one.

4 Q. Can you read out the exhibit numbers on those for  
5 the record, please.

6 A. Exhibit 8. And this one says 3, but it's the bigger  
7 one so it would be the page 3. It would be this one here  
8 (indicating).

9 Q. Did you consult the official PUC territory maps to  
10 verify the existing boundary line in Exhibit A of the  
11 2009 agreement?

12 A. I would say yes, we did.

13 Q. And how did you go about doing that?

14 A. Any time we have a dispute you have to look at that,  
15 and then you have to look at the description so you know  
16 how to read the map according to the description.

17 Q. If the map shows a line that's equidistant between  
18 69th and 57th and the agreement says it's a half-mile  
19 north of the 69th, which is correct?

20 A. It's the half-mile north of 69th.

21 Q. And why do you say that?

22 A. Because that's what the description says.

23 Q. So the map doesn't control?

24 A. The map only controls when there is -- the map is  
25 just the map. The description is what tells you what the

1 map reads.

2 Q. And if the PUC had determined in 2000 that  
3 equidistant meant halfway between, does that control?

4 A. In 2000?

5 Q. Yes.

6 A. In 2000 that's what they agreed upon.

7 Q. That controls or doesn't control?

8 A. In 2000 it's what they decided that controlled.

9 Q. Okay. Have you talked ever to a person from Xcel  
10 named Aaron Bickett?

11 A. Yes.

12 Q. And did he speak with you about the territory line  
13 Whispering Woods Addition?

14 A. Yes.

15 Q. Do you remember when that conversation might have  
16 been?

17 A. It started in June.

18 Q. And would he have informed you at that time that  
19 there was a dispute over the boundary line in Whispering  
20 Woods?

21 A. No. He said that he had some lines, and the  
22 question was if we served those lots on that side and if  
23 we had a map of what we served. And the so I sent him a  
24 map of what we would serve.

25 Q. And he never informed you that there was a dispute

1 or a potential dispute?

2 A. No. Not a potential dispute. He just -- he  
3 questioned why we had that line there.

4 Q. Did you take any action other than to provide him  
5 the maps that he asked for?

6 A. Yeah. I provided the maps, and then he also asked  
7 for the agreement that we did in 2009, and I provided him  
8 that.

9 Q. And all that happened in June of this year?

10 A. No. It started in June, and it carried on until  
11 August 29.

12 Q. Okay. Very good. Thank you.

13 MR. SMITH: Are you finished?

14 MR. KOENECKE: Yes.

15 MR. SMITH: Staff.

16 MR. SOYE: Thank you.

17 CROSS-EXAMINATION

18 BY MR. SOYE:

19 Q. Mr. Chance, looking at the Southeastern Exhibit  
20 No. 8.

21 A. Okay.

22 Q. This document here you were just talking about?

23 A. Yes.

24 Q. You had went through and described the four quarter  
25 lines there and that this was prepared by JSA who is a

1 registered professional engineer and land surveyor.

2 In this map for these fractional sections they will  
3 not create four equal parts; correct?

4 A. No, they won't.

5 Q. So they correct it for the fractional sections?

6 A. Yes.

7 Q. Okay. And you stated that at the time you created  
8 this agreement you were not aware of the 2000 Commission  
9 Order that Mr. Koenecke was just referring to; is that  
10 correct?

11 A. I was aware of the 2000 Order, yes.

12 Q. When this was made.

13 A. When this map was made?

14 Q. Yeah. I'm sorry. When you made the 2009 agreement.

15 A. The 2009 agreement?

16 Q. Yeah. Let me clarify that. When you were involved  
17 in discussing the 2009 territory swap were you aware of  
18 the Commission's Order, EL00-026, concerning the  
19 equidistant between the north and south borders of a  
20 fractional section?

21 A. According to that agreement in that 2009, in that  
22 fractional section that was discussed, that was the  
23 decision of them at that time, that that fractional  
24 section should be divided equally.

25 MR. SOYE: No further questions.

1 MR. SMITH: Thank you. Redirect?

2 MR. PETERSON: No redirect.

3 MR. SMITH: Commissioner questions of  
4 Mr. Chance.

5 Commissioner Nelson.

6 COMMISSIONER NELSON: In Staff Exhibit 10 where  
7 we have the description of the 2009 change the initial  
8 paragraph indicates that this is an agreement that deals  
9 with the Oxford Addition.

10 Would you agree with that?

11 THE WITNESS: Yes.

12 COMMISSIONER NELSON: Now going to  
13 Southeastern's Exhibit 8, the GSA map -- or JSA map, is  
14 it your testimony that as you were discussing with the  
15 Xcel representatives the swap of land for the Oxford  
16 Addition that you were also looking at this particular  
17 map of the Whispering Woods Addition? Is that correct?

18 THE WITNESS: Yes.

19 COMMISSIONER NELSON: What is the origin of this  
20 map? Is this something that you provided or that Xcel  
21 provided?

22 THE WITNESS: I believe we both had the map, and  
23 I don't know where we received that map. I can't tell  
24 you where I got the map. It's 2006 that we got it. And  
25 more or less this is what we used.

1           So when we were changing the boundary line and  
2 the boundary line of the two 105 and I think it's 104,  
3 that changes that whole line. So we had to establish  
4 that whole line across there.

5           COMMISSIONER NELSON: So it's your testimony  
6 that you were in 2009 changing the whole line across  
7 there?

8           THE WITNESS: Yes. Because it's two parts. 105  
9 and 104 I believe it is. So when you change that  
10 description, that whole description of that whole line  
11 was changed.

12          COMMISSIONER NELSON: Thank you. No further  
13 questions.

14          MR. SMITH: Other Commissioner questions?  
15 Commissioner Hanson. Chairman Hanson.

16          CHAIRMAN HANSON: Mr. Chance, good afternoon.  
17 What does center point mean to you?

18          THE WITNESS: In a term that is for a surveyor  
19 term it's where they become, you know -- the  
20 cross-sections of the corners of the quarter sections,  
21 and that forms the center point.

22          CHAIRMAN HANSON: So would section center point  
23 have a different meaning to you?

24          THE WITNESS: Section center point?

25          CHAIRMAN HANSON: If someone said this is the

1 center point of the section?

2 THE WITNESS: No. I went by JSA, they're the  
3 surveyor's group, and they said that was the center of.  
4 The last map that I put up there that has our lines on  
5 it, that was a map that was given to us by the developer,  
6 and the developer there says also the center of that  
7 point. And that is the center point of that section for  
8 my -- what I say or what I see and read from them.

9 CHAIRMAN HANSON: Thank you. Thank you,  
10 Mr. Chairman. Excuse me. General Counsel.

11 MR. SMITH: Other Commissioner questions?

12 Mr. Peterson, is there any follow on from the  
13 Commissioner questions?

14 MR. PETERSON: No. No other follow on.

15 MR. SMITH: Okay. With that, I think you may  
16 step down then, Mr. Chance.

17 Mr. Peterson, do you have any other witnesses?

18 MR. PETERSON: No. We'd rest.

19 MR. SMITH: Staff, are you ready to go?

20 MR. SOYE: Yeah. I think we're ready.

21 MR. SMITH: Do you need a minute or two to get  
22 organized there?

23 Okay. You can proceed then with your direct  
24 evidence then, please, Staff.

25 MR. SOYE: Commission Staff would call

1 Ross Pedersen to the stand.

2 (The witness is sworn by the court reporter)

3 DIRECT EXAMINATION

4 BY MR. SOYE:

5 Q. Mr. Pedersen, can you state your name and spell it  
6 for the court reporter, please.

7 A. Ross Pedersen, R-O-S-S P-E-D-E-R-S-E-N.

8 Q. And, Mr. Pedersen, can you please state your current  
9 occupation and how long you've been working there?

10 A. I'm currently an analyst at the Public Utilities  
11 Commission, and I've been there just over 14 months.

12 Q. In your role as Staff analyst for the Public  
13 Utilities Commission, do you work with the Commission's  
14 Geographical Information Systems software or GIS system?

15 A. Yes. I use a software known as ARC map.

16 Q. And what is your general duties in relation to that  
17 GIS software system?

18 A. I utilize it to create maps and update service  
19 territories throughout the state for electric service  
20 territories.

21 Q. There should be a copy of what's marked Staff's  
22 Exhibits 1 through 7 up there, the maps that we've been  
23 referring to. And I just wanted to go through these for  
24 everyone so they can understand what you've done with  
25 these maps, why you've created it.



1           And just to make this flow easily, why don't I just  
2 call off the name of the exhibit, so Staff Exhibit 1, and  
3 I'll ask you what it is and what it's showing.

4           Does that make sense?

5       A.    Yes.

6       Q.    Okay.  So why don't we turn to Staff's Exhibit 1.  
7 And what is this showing?

8       A.    Staff Exhibit 1 is a zoomed in view of the original  
9 1976 map in Lincoln County, specifically the disputed  
10 areas Sections 7 and 12.

11      Q.    And why did you include this map?

12      A.    I included this map to ensure that the maps I  
13 created accurately reflected the disputed area.

14      Q.    Let's move to Staff Exhibit 2 then.  What is this  
15 map?

16      A.    This map is an electric service territory boundary  
17 according to the 1976 agreement map prior to EL09-021.  
18 It is a recreation of Exhibit 1 and the ARC map GIS  
19 program.

20      Q.    And why did you include this?

21      A.    So that you could see the same view in the program I  
22 work on.

23      Q.    Okay.  So just so how it appears, how map one  
24 appears in the overlay system is what you're saying?

25      A.    Yes.

1 Q. Okay. And Staff Exhibit 3, please. And what is  
2 this?

3 A. This is Staff's understanding of what Xcel's  
4 interpretation of the electric service territory boundary  
5 is post EL09-021. And specifically in the west half of  
6 Section 7 the blue line running east and west is located  
7 at the half section line of Section 7.

8 Q. You said at the half section line?

9 A. Correct.

10 Q. I'm sorry. Just for clarification, Mr. Pedersen, I  
11 just noticed something. Do you have Staff Exhibit 10 up  
12 there?

13 A. Yes, I do.

14 Q. It's the 2009 agreement. Could you turn to page 3,  
15 the map. Do you have it in front of you? Yeah. That's  
16 the one.

17 Do you see that green line there?

18 A. Yes.

19 Q. And do you see that it runs through East Baxter  
20 Circle, and then on the other side of that circle it says  
21 East Carlisle Circle?

22 A. Yes.

23 Q. I do not see that on your Staff Exhibit 3 or Staff  
24 Exhibit 2. Is it on your map?

25 A. The road is on my map. However, in the current view

1 on this program the layer does not allow those street  
2 labels to appear. In order to have those street labels  
3 appear I would have to zoom in to a point that would not  
4 allow me to view the entire disputed area of both  
5 Section 12 and 7.

6 Q. So the street is actually on here?

7 A. Yes.

8 Q. Can you please identify that?

9 A. It is a street running parallel to East Yorkshire  
10 Street directly south of East Yorkshire Street and  
11 directly northwest of East Tranquility Place.

12 Q. Thank you. I just wanted to make sure that we all  
13 had our bearings in comparison to the other maps.

14 Why don't we flip to Staff Exhibit 4 then. And what  
15 is this map?

16 A. This is Staff's understanding of what Southeastern's  
17 interpretation of the electric service territory boundary  
18 is post EL09-021. Specifically if you focus on the west  
19 half of Section 7, the blue line running east and west  
20 reflects a line at a point one-half mile north of east  
21 69th.

22 Q. And East 69th is the southern border of Section 7 as  
23 well; correct?

24 A. Yes. It's the south section line of Section 7.

25 Q. And Staff Exhibit 5, please. And what is this?

1 A. This is a comparative map post EL09-021. It  
2 incorporates the previous two maps of Staff Exhibit 3 and  
3 Staff Exhibit 4 into one comparative view.

4 Q. Staff Exhibit 6, please. And what are you showing  
5 here?

6 A. This is a map of lines -- of lines and distances  
7 that Staff felt were relevant. Specifically the yellow  
8 line is the literal one-half mile line, which is one-half  
9 mile north of 69th or the south section line of  
10 Section 7.

11 The red line is the half section line established in  
12 the 1976 service territory agreement map. And the blue  
13 line represents the original boundary as identified by a  
14 green line on page 3 in the map, Exhibit A of Staff  
15 Exhibit 10, running along Baxter Circle and Carlisle  
16 Circle.

17 Q. In fact, it looks like the blue line's covering up  
18 that street right now, isn't it?

19 A. Correct.

20 Q. And now we have a weird one. Let's go to Staff  
21 Exhibit 7. What is this?

22 A. This is yet another comparative view map post  
23 EL-09-021, assuming Section 7 was not modified.

24 Q. Now explain to us a little bit what you mean by if  
25 Section 7 was not modified.

1 A. The legal description in EL09-021 is unclear and can  
2 be interpreted in different ways. So in order to do that  
3 I established this map.

4 Q. So one way -- well, why don't you explain the  
5 several ways. I won't put words in your mouth. Why  
6 don't we pull out that legal description.

7 A. Are you referring to page 2 of Staff 10?

8 Q. Yes. If that's what you're referring to.

9 A. Yes.

10 Q. Okay. Why don't you explain this map we're looking  
11 at that description.

12 A. When reading point 5, then south along South  
13 Southeastern Avenue or 476th Avenue to the existing  
14 boundary line, which is one-half mile north of 69th  
15 Avenue or 269th Street, I interpreted that as the red dot  
16 on the map.

17 Point 6 where it states then east one-half mile to  
18 the northeast corner of the southwest quarter of  
19 Section 7 of Township 100 North, Range 49 West is the  
20 blue dot on this map.

21 Q. So if I'm understanding this correctly, the blue dot  
22 that you've placed on here corresponds to your  
23 understanding of where the lines sat on the 1976 map in  
24 Section 7?

25 A. In 1976 that was referred to as the center point. I

1 at first didn't go to that. I first just read this legal  
2 description.

3 Q. I'm sorry. Maybe I wasn't clear. Aside from the  
4 legal description, if you just turn back to Staff  
5 Exhibit 1, this map.

6 A. Oh, Staff Exhibit 1. Yes.

7 Q. Where is the blue dot on that map?

8 A. It is at a point where the northeast corner of the  
9 southwest quarter -- at the center point of Section 7.

10 Q. Okay. Now are you suggesting that this is what the  
11 territory should look like?

12 A. No. This is simply just informative to show how the  
13 legal description is unclear.

14 Q. So when you read the legal description you read it  
15 two different ways, either the way Southeastern has  
16 advanced, which is one-half mile north of the southern  
17 border, or returning to this point that you've identified  
18 in Staff Exhibit 1?

19 A. Yes.

20 Q. Okay. So you were just playing around. No. I'm  
21 just kidding.

22 MR. SOYE: No further questions.

23 MR. SMITH: Thank you. Cross-examination for  
24 Mr. Koenecke.

25 MR. KOENECKE: No questions, Mr. Smith.

1 MR. SMITH: Questions?

2 MR. PETERSON: No questions.

3 MR. SMITH: Okay. Thank you.

4 Any Commissioner questions? Chairman Hanson.

5 CHAIRMAN HANSON: Good afternoon. Mr. Pedersen,  
6 could you tell us looking at the JSA map, for instance,  
7 we have a lot of maps in front of us -- would you agree  
8 that that map would probably take precedence over the --  
9 and I do appreciate the information that you have in your  
10 maps. There's excellent clarification in your exhibits.  
11 For instance, Exhibit 5 which clearly shows the disputed  
12 area. I appreciate that.

13 Would you say that the JSA map would be a map  
14 that would be more reliable from the standpoint of  
15 ascertaining distances and -- in comparison to the maps  
16 that you've provided.

17 A. Yes. Because it was made by surveyors.

18 CHAIRMAN HANSON: Thank you. And that is not in  
19 any way to impugn what you have provided to us. Again, I  
20 appreciate that information. It does help clarify that.  
21 Thank you for your testimony.

22 MR. SMITH: Other Commissioner questions? Any  
23 follow on in response to the Commissioner questions?

24 Mr. Soye?

25 MR. SOYE: No further questions, no.

1 MR. SMITH: Thank you. I think you may step  
2 down then, Mr. Pedersen.

3 Does that then conclude Staff's direct case?

4 MR. SOYE: Yes, it does.

5 MR. SMITH: Okay.

6 Mr. Koenecke, are you ready to proceed?

7 MR. KOENECKE: Proceed with what, Mr. Smith?

8 MR. SMITH: Do you have a rebuttal case?

9 MR. KOENECKE: I do not.

10 MR. SMITH: You do not. I think as far as that  
11 goes, then I think we're done.

12 MR. KOENECKE: I would agree with you.

13 MR. SMITH: Any disagreement, Mr. Peterson?

14 MR. PETERSON: I am happy to be done.

15 MR. SMITH: Okay. Well, that includes the  
16 evidentiary portion of the hearing today. Why don't we  
17 move on now then to what happens next. And I will let  
18 the Commissioners know, and I have mentioned this  
19 previously, you were aware that we had a prehearing  
20 conference during which I inquired of counsel for all  
21 parties whether they would prefer to do the follow on to  
22 this via oral argument standing alone here today or to go  
23 with the briefing route.

24 And the universal preference of all of the  
25 counsel involved was to go the briefing route where they



1 can take what the evidence -- what we heard here today  
2 and carefully attempt to explain how the law addresses  
3 that.

4 And I guess that would be my preference as well.  
5 Honestly, it would. We discussed the following dates for  
6 briefing. And my recollection -- and, again, I have it  
7 written down somewhere here in my pile, but I'm not going  
8 to dig it out. Anybody's free to have changed their mind  
9 anyway.

10 As I recall our discussion, it was simultaneous  
11 initial briefs due 30 days following the date of this  
12 hearing with also simultaneous reply briefs to occur --  
13 or to be due, filed and served, 15 days after that.

14 Am I remembering that correctly, Counsel?

15 MR. KOENECKE: I think so, Mr. Smith. The only  
16 caveat is I don't know when we'll have a transcript.

17 MR. SMITH: That's true.

18 (Discussion off the record)

19 MR. SMITH: Mr. Peterson, you seemed to have the  
20 most concern about schedule because of some other matters  
21 you have pending.

22 MR. PETERSON: As long as we're out that far,  
23 I'm fine.

24 MR. SMITH: If we're out 30 days, you're okay  
25 with that?

1 MR. PETERSON: Yes.

2 MR. SMITH: Mr. Koenecke?

3 MR. KOENECKE: I think that's fine. If  
4 something happens in the court reporter's life that we  
5 don't get a brief, I assume we can all get on the phone  
6 and figure out something different.

7 MR. SMITH: Yeah. I don't think it's -- you  
8 know, those dates, if need be, can be adjusted based on  
9 any number of contingencies that might happen.

10 MR. KOENECKE: I think Mr. Soye had the worst  
11 schedule compression problem, if I recall.

12 MR. SMITH: He has a bad one, but I don't know  
13 if that's solvable here, at least on the latter part.  
14 But in terms of that 10 days on transcript, you're okay  
15 with that, are you Ryan?

16 MR. SOYE: I'll be okay on the 10 days on  
17 transcript, yes.

18 MR. SMITH: When do you leave?

19 MR. SOYE: I'll be leaving the 30th so actually  
20 once Christmas break hits I'll be pretty much done.

21 MR. SMITH: All righty. Does that work for all  
22 counsel in the case, the 30 days for all simultaneous  
23 initial briefs and then a follow on brief if you want to  
24 do one 15 days after that?

25 MR. KOENECKE: It works for me, Mr. Smith.

1 Thank you.

2 MR. PETERSON: Just to clarify, we're talking  
3 30 days from the transmittal of the transcript?

4 MR. SMITH: Is that what you mean is 30 days  
5 from that? I meant 30 days from that.

6 MR. PETERSON: I'm fine with that. I just want  
7 to make sure what the dates were.

8 MR. SMITH: Because remember -- well, we talked  
9 some about once we get into the legislature and that for  
10 at least I know Mr. Koenecke and some of the rest of us  
11 that gets to be somewhat problematic.

12 MR. PETERSON: No. I'm not concerned about the  
13 date. I just wanted to make sure I knew what it was.

14 MR. SMITH: No. 30 days from today's date is  
15 what I was referring to. That also works for Mr. Soye  
16 who's got an unusual circumstance. It's a good one,  
17 though.

18 MR. SOYE: I don't know how unusual it is.

19 CHAIRMAN HANSON: You're calling marriage  
20 unusual?

21 MR. SMITH: It's just not something that happens  
22 every day.

23 MR. SOYE: Unusual in my life.

24 CHAIRMAN HANSON: Okay.

25 MR. SMITH: With that, I'm going to ask the

1 Commissioners if that posthearing schedule works for you  
2 or if there's any objections to that?

3 Okay. Hearing no objection and seeing some nods  
4 of the head, is there any other business then from any of  
5 the parties or the Commissioners to come before this  
6 proceeding today?

7 MR. PETERSON: No.

8 MR. SMITH: Seeing and hearing no indication of  
9 that, the hearing today in Docket EL11-025 is adjourned.  
10 Thank you very much.

11 (The hearing is concluded at 3:25 p.m.)  
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STATE OF SOUTH DAKOTA )

:SS

CERTIFICATE

COUNTY OF SULLY )

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

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 6th day of December, 2011, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Onida, South Dakota this 15th day of November, 2011.



Cheri McComsey Wittler,  
Notary Public and  
Registered Professional Reporter  
Certified Realtime Reporter

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