

EL 97-008

CW/5W

MB-En. v. Northern

DOCKET NO.

EL 97-008

In the Matter of — IN THE MATTER OF THE COMPLAINT
FILED BY JOHN BYRE, SIOUX FALLS,
SD, AGAINST NORTHERN STATES
POWER COMPANY REGARDING A
BILL

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
4/17/97	Filed and Recited
7/29/97	Order Pending Probable Cause and Notice Requiring Answer,
8/15/97	Answer to Complaint;
9/18/97	Order for and Notice of Hearing;
10/10/97	Deposits of Jim Helgeson, Chuck Hesse and Chuck Hoyer,
10/23/97	Transcript of Hearing held on 9/29/97
12/2/97	Legal Bill and Decision; Notice of Entry of Order,
12/2/97	Matet Closed

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

IN THE MATTER OF THE COMPLAINT FILED)
BY JOHN BYRE, SIOUX FALLS, SD, AGAINST)
NORTHERN STATES POWER COMPANY)
REGARDING A BILL)

ORDER FINDING
PROBABLE CAUSE AND
NOTICE REQUIRING
ANSWER
EL97-008

On April 17, 1997, the South Dakota Public Utilities Commission (Commission) received a complaint from John Byre (Byre), Sioux Falls, SD, against Northern States Power Company (NSP) regarding a bill. Byre states that he feels he is being unfairly charged for moving a cable that was installed incorrectly by NSP. Byre further states that the drawings and work order are specific about where the cable was to be placed, and that NSP changed the route because of a dirt pile. Because the original contract states that the owner must clear the route before NSP begins underground installation, Byre alleges that NSP's reason for changing the route is invalid. Byre has requested the Commission to cancel the bill and hold NSP responsible for their actions.

Pursuant to ARSD 20:10:01:08.01 and 20:10:01:09, if a complaint cannot be settled without formal action, the Commission shall determine if the complaint shows probable cause of an unlawful or unreasonable act, rate, practice or omission to go forward with the complaint.

On July 15, 1997, at its regularly scheduled meeting, the Commission considered the matter along with comments from Byre, NSP and Staff.

The Commission has jurisdiction over this matter pursuant to SDCL 49-34A and ARSD 20:10:01:08.01 and 20:10:01:09. The Commission unanimously voted to find probable cause. It is therefore

ORDERED, that probable cause has been found in this matter and that the complaint shall be forwarded to NSP and NSP shall file with the Commission its answer in writing within twenty (20) days of service of this order.

Dated at Pierre, South Dakota, this 29th day of July, 1997.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail in properly addressed envelopes, with charges prepaid thereon.

By Arlene Kaelin

Date 7/29/97

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

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

IN THE MATTER OF THE COMPLAINT FILED	)	ORDER FOR AND NOTICE
BY JOHN BYRE, SIOUX FALLS, SD, AGAINST	)	OF HEARING
NORTHERN STATES POWER COMPANY	)	
REGARDING A BILL	)	EL97-008

On April 17, 1997, the South Dakota Public Utilities Commission (Commission) received a complaint from John Byre (Byre), Sioux Falls, SD, against Northern States Power Company (NSP) regarding a bill. Byre states that he feels he is being unfairly charged for moving a cable that was installed incorrectly by NSP. Byre further states that the drawings and work order are specific about where the cable was to be placed, and that NSP changed the route because of a dirt pile. Because the original contract states that the owner must clear the route before NSP begins underground installation, Byre alleges that NSP's reason for changing the route is invalid. Byre has requested the Commission to cancel the bill and hold NSP responsible for their actions.

At its regularly scheduled July 15, 1997, meeting, the Commission found probable cause of an unlawful or unreasonable act, rate, practice or omission and served the complaint on NSP. NSP filed its response on August 15, 1997.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-34A, and ARSD 20 10 01 15.

The issue at the hearing is whether Mr. Byre should be held responsible for payment of the NSP bill for moving a cable.

A hearing shall be held from 3:00 to 5:00 p.m., on Monday, September 29, 1997, at the Days Inn Empire, located at 3401 Gateway Boulevard, Sioux Falls, South Dakota. It shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearings, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearings or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. The Commission's decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED that a hearing shall be held at the time and place specified above on the issue of whether Mr. Byre should be held responsible for payment of the NSP bill for moving a cable.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 18th day of September, 1997.

CERTIFICATE OF SERVICE

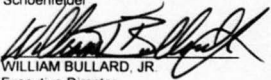
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By

Date

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION
Commissioners Burg, Nelson and
Schoenfelder


WILLIAM BULLARD, JR.
Executive Director

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET
P.O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

GLENN W. MARTENS (BB-1063)
KARL GOLDENFELD (BB-1066)
THOMAS T. ADAM
DAVID A. GERDES
CHARLES W. THOMPSON
ROBERT B. ANDERSON
BRENT A. WILBUR
TIMOTHY W. ENGEL
MICHAEL P. SHAW
ROBERT A. SAHN

October 10, 1997

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OCT 10 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

OF COUNSEL:
WARREN W. MAY

TELEPHONE
605.224.6603
TELECOMEX
605.224.6289

E-MAIL
dag@magt.com

HAND DELIVERED

Mr. William Bullard, Jr.
Executive Director
Public Utilities Commission
State Capitol
500 East Capitol
Pierre, South Dakota 57501

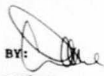
RE: NORTHERN STATES POWER COMPANY/JONN BYRE
EL97-008
Our file: 0185

Dear Bill:

Enclosed are original and ten copies of four affidavits as late
filed exhibits in this matter. These are filed at the request of
the Commission.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mv

Enclosures

cc/enc: Jonn Byre
Camron Hoseck (hand delivered)
cc: Jim Wilcox

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

OCT 10 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT FILED) EL97-008
BY JONN BYRE, SIOUX FALLS, SD, AGAINST)
NORTHERN STATES POWER COMPANY) **AFFIDAVIT OF**
REGARDING A BILL) **Jim Wilcox**

State of South Dakota)
) ss
County of Minnehaha)

Jim Wilcox, being first duly sworn, deposes and says that he is employed as Manager of Government and Community Relations for Northern States Power Company ("NSP") and makes this affidavit to supplement the record in the above-entitled matter as a late filed exhibit at the request of the Commission.

1. I understand that this matter involves a complaint filed by Jonn Byre with the Commission involving the moving of one of NSP's cables located on Mr. Byre's property near a construction site at 2701 East Brookshire Place, Sioux Falls, South Dakota. It is my further understanding that the Commission has asked the record to be supplemented with the information stated in this affidavit.

2. The information stated in this affidavit is based upon my personal knowledge in my capacity as Government and Community Relations Manager employed by NSP.

3. In previous testimony I provided information that indicated that the cable "incident" at 2701 East Brookshire Place on January 8, 1996 led to damage of NSP facilities and an outage to customers in that neighborhood. Although several NSP employees still believe that an outage did occur, I cannot confirm that an outage did occur from our records from that day.

What we do know is that NSP crews were alerted to an "exposed" cable situation. That NSP crews did de-energize the affected section of cable and that NSP crews were asked that day to assist in the further moving and relocation of this cable from the corner of the building site being excavated. NSP crews on some later date did re-route and replace this cable section returning service to the normal condition.

Whether there was an outage or not is uncertain but irrelevant to this matter. The issue at question is: Did NSP relocate a cable so that Mr. Byre could continue with excavation of his apartment building and should Mr. Byre be held responsible for the cost of that cable relocation.

Further affiant sayeth not.

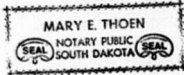
J. Wilcox

Subscribed and sworn to before me this 9th day of Oct., 1997.

Mary E. Thoen
Notary Public

(SEAL)

Notary Print Name: MARY E. THOEN
My Commission Expires: 7-11-2003



RECEIVED

OCT 10 1997

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT FILED) EL97-008
BY JONN BYRE, SIOUX FALLS, SD, AGAINST)
NORTHERN STATES POWER COMPANY) **AFFIDAVIT OF**
REGARDING A BILL) **Chuck Wiese**

State of South Dakota)
) ss
County of Minnehaha)

Chuck Wiese, being first duly sworn, deposes and says that he is employed as a Line Crew Foreman for Northern States Power Company ("NSP") and makes this affidavit to supplement the record in the above-entitled matter as a late filed exhibit at the request of the Commission.

1. I understand that this matter involves a complaint filed by Jonn Byre with the Commission involving the moving of one of NSP's cables located on Mr. Byre's property near a construction site at 2701 East Brookshire Place, Sioux Falls, South Dakota. It is my further understanding that the Commission has asked the record to be supplemented with the information stated in this affidavit.

2. The information stated in this affidavit is based upon my personal knowledge in my capacity as a Line Crew Foreman employed by NSP to investigate and repair electrical facilities.

3. On January 8, 1986 I was called to a construction site near 609 North Cleveland Avenue in Sioux Falls, South Dakota. I examined a 7,970 Volt cable that had been exposed by workmen on the construction site of a new apartment building. I performed switching operations at transformers "K" and "V" to de-energize the cable. I don't recall the conversation I had with anyone on the site that day, but I do recall being asked to assist with moving the cable. I remained on the scene throughout that afternoon and did help the further uncovering of the previously exposed cable in such a manner as to move it from the corner of the building site so that excavation and construction could continue. When I left the site that day the cable remained de-energized as a safety precaution and I believed that we would have to come back at a later time to replace this cable in a new location in order to

allow completion of the construction of the apartment building and to re-establish NSP's normal system configuration.

Further affiant sayeth not.

Chad W. ...

Subscribed and sworn to before me this 9th day of Oct., 1997.

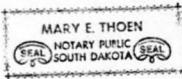
Mary E. Thoen

Notary Public

(SEAL)

Notary Print Name: 7-11-2003

My Commission Expires: MARY E. THOEN



RECEIVED

OCT 10 1997

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT FILED	)	EL97-008
BY JONN BYRE, SIOUX FALLS, SD, AGAINST	)	
NORTHERN STATES POWER COMPANY	)	AFFIDAVIT OF
REGARDING A BILL	)	Chuck Meyer

State of South Dakota)
) ss
County of Minnehaha)

Chuck Meyer, being first duly sworn, deposes and says that he is employed as a Senior Engineer for Northern States Power Company ("NSP") and makes this affidavit to supplement the record in the above-entitled matter as a late filed exhibit at the request of the Commission.

1. I understand that this matter involves a complaint filed by Jonn Byre with the Commission involving the moving of one of NSP's cables located on Mr. Byre's property near a construction site at 2701 East Brookshire Place, Sioux Falls, South Dakota. It is my further understanding that the Commission has asked the record to be supplemented with the information stated in this affidavit.

2. The information stated in this affidavit is based upon my personal knowledge in my capacity as Senior Engineer employed by NSP to review the cable relocation issue.

3. NSP standards for underground distribution construction include "looping" electrical circuits that extend "laterally" from the NSP main line power feeders. The NSP overhead distribution construction standard does not include "looping" lateral circuits.

"Looping" underground circuits improves NSP's reliability of service. A damaged overhead facility can be readily identified and repaired in a relatively shorter period of time than an underground facility. Because of the nature of underground systems, the identification of damaged facilities and the subsequent necessary repair process takes some period of time that is normally much longer than the time it takes to identify and repair overhead systems. An underground cable is not normally within view of a repair crew. Often an electronic device is needed to "locate" the damaged point on the underground cable

and the spot at which to begin excavation. During winter months frozen ground further hinders excavation. Once uncovered the cable has to be cleaned and spliced and the hole filled. These activities normally take several hours up to 10 or 12 hours.

Because the NSP underground system is largely looped, damage to NSP underground facilities can be isolated and power re-routed independent of and prior to the repair process. An outage of up to 12 hours in duration to any customer and especially during winter would be a long period of time. A winter outage of this duration would likely cause customers problems with freezing pipes and other cold weather concerns.

The expense of providing looped service is normally minimized and would normally only include the expense of the length of wire between the middle transformers that complete the loop.

When a segment of a looped lateral is damaged, NSP is able to quickly restore service by re-routing power. Repair of a damaged circuit segment is necessary to restore that "looped" system to the normal state. Until the segment is repaired, customers on the radially fed system are vulnerable to further cable damages.

For these reasons NSP normally provides looped lateral underground service.

Further affiant sayeth not.

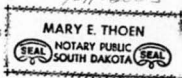
Charles F. Dyer

Subscribed and sworn to before me this 8th day of October 1997.

Mary E. Thoen
Notary Public

(SEAL)

Notary Print Name:
My Commission Expires:



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OCT 10 1997

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT FILED) EL97-008
BY JONN BYRE, SIOUX FALLS, SD, AGAINST)
NORTHERN STATES POWER COMPANY) AFFIDAVIT OF
REGARDING A BILL) Jim Wilcox

State of South Dakota)
) ss
County of Minnehaha)

Jim Wilcox, being first duly sworn, deposes and says that he is employed as Manager of Government and Community Relations for Northern States Power Company ("NSP") and makes this affidavit to supplement the record in the above-entitled matter as a late filed exhibit at the request of the Commission.

1. I understand that this matter involves a complaint filed by Jonn Byre with the Commission involving the moving of one of NSP's cables located on Mr. Byre's property near a construction site at 2701 East Brookshire Place, Sioux Falls, South Dakota. It is my further understanding that the Commission has asked the record to be supplemented with the information stated in this affidavit.

2. The information stated in this affidavit is based upon my personal knowledge in my capacity as Manager of Government and Community Relations employed by NSP in South Dakota.

3. From NSP's books and records, the following table further details the materials, labor, transportation and overhead costs of relocating the cable for Mr. Byre:

15KV 1/0 Cable	60 feet @ \$1.34787 per foot	\$80.87
Cable Connector	1 package of 2 connectors	\$5.37
Heat Shrink Kit	1 package of 2 seals	\$4.35
Cable Splice	1 package of 2 splices	\$27.13
Labor & Benefits	2 people x 5 hours each	\$388.22
Transportation	1 truck x 5 hours	\$94.20
Overhead	Engineering, Supv, A&G	\$53.39
	Total	\$653.53

Exhibit 2 previously provided in my answer to the Commission is a listing of the cost of the activities needed to replace this cable.

As such, the data on exhibit 2 contains a melding of these specific costs in a way that assigns each of these above components to the respective construction related activities.

Further affiant sayeth not.

J. Wilcox

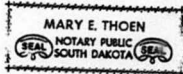
Subscribed and sworn to before me this 9th day of Oct., 1997.

Mary E. Thoen
Notary Public

(SEAL)

Notary Print Name: 7-11-2003

My Commission Expires:



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OCT 23 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

1997-009
EL97-008

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED)
BY JOHN BYRE, SIOUX FALLS, SD,)
AGAINST NORTHERN STATES POWER COMPANY))
REGARDING A BILL)

Commission Counsel: Rolayne Wiest

Commissioners: Jim Burg, Chairman
Pam Nelson
Laska Schoenfelder

Commission Analyst: Dave Jacobson

John Byre appearing pro se.

Staff Attorney: Camron Hoseck, Esquire
State Capitol
Pierre, SD 57501-5070

Northern States Power: David Gerdes, Esquire
503 South Pierre
Pierre, South Dakota 57501

The above-entitled matter came on for hearing on
September 29, 1997, commencing at the hour of 3:35 p.m.,
at the Days Inn Empire, 3401 Gateway Boulevard, Sioux
Falls, South Dakota, before Angela Weller, RPR, and Notary
Public in and for the State of South Dakota.

Advanced Reporting
P. O. Box 510
Sioux Falls, South Dakota 57101
(605) 332-9050

INDEX

Witness

Examination

JOHN BYRE.....	5
(Mr. Gerdes).....	6
(Mr. Hoseck).....	14
(Mr. Gerdes).....	23
BILL KULLANDER... (Mr. Gerdes).....	24
(Mr. Byre).....	29
(Mr. Hoseck).....	32
(Ms. Wiest).....	38
(Mr. Gerdes).....	40
(Mr. Byre).....	43
JIM WILCOX..... (Mr. Gerdes).....	47
(Mr. Byre).....	53
(Mr. Hoseck).....	55
(Ms. Wiest).....	68
(Mr. Gerdes).....	73

EXHIBITS

Exhibit	Marked	Received
Exhibit No. 1.....	3	10
Exhibit No. 2.....	3	10
Exhibit No. 3.....	24	47

Certificate of Shorthand Reporter..... 83

Advanced Reporting
P. O. Box 510

Sioux Falls, South Dakota 57101
(605) 332-9050

1 (Exhibit Nos. 1-2 were mark'd for
2 identification.)

3 MR. BURG: I'll begin the hearing in docket EL97-008 in
4 the matter of the complaint filed by John Byre. Is that
5 correct?

6 MR. BYRE: Byre.

7 MR. BURG: Byre. Sioux Falls, South Dakota against
8 Northern States Power Company regarding a bill. The time
9 is approximately 3:35 p.m. The date is September 29,
10 1997, and the location of the hearing is the Days Inn
11 Empire, 3401 Gateway Boulevard, Sioux Falls, South
12 Dakota.

13 I'm Jim Burg, commission chairman. Commissioners
14 Pam Nelson and Laska Schoenfelder are also present. I'm
15 presiding over this hearing. Hearing was noticed pursuant
16 to the commission's order for and notice of hearing issued
17 September 18, 1997. The issue at this hearing is whether
18 Mr. Byre should be held responsible for payment of
19 Northern States Power Company bill for moving a cable.

20 All parties have the right to be present and be
21 represented by an attorney. All persons so testifying
22 will be sworn in and subject to cross-examination by the
23 parties. The commission's final decision may be appealed
24 by the parties to the state circuit court and state
25 supreme court.

1 Rolayne Wiest will act as commission counsel. She
2 may provide recommended rulings on procedural and
3 evidentiary matters. The commission may also overrule its
4 counsel's preliminary rulings throughout the hearing. If
5 not overruled, the preliminary rulings will become final
6 at this time.

7 I will turn it over to Rolayne at this time to
8 conduct the hearing.

9 MS. WIEST: First I'll take appearances of the parties.
10 Mr. Byre, you represent yourself?

11 MR. BYRE: Yes, ma'am.

12 MR. GERDES: My name is David Gerdes of Pierre, South
13 Dakota. I represent Northern States Power Company.

14 MR. HOSECK: Camron Hoseck on behalf of staff.

15 MS. WIEST: Does anyone wish to make opening statements on
16 this matter? Mr. Byre? Anyone else?

17 MR. GERDES: I have no opening statement, Your Honor, but
18 I would like to pass out a short brief, if I may, for the
19 use of the parties and the commission that I've prepared.
20 Thank you.

21 MS. WIEST: If there are no opening statements, we'll
22 begin with you, Mr. Byre. Since you're the complainant,
23 if you would, just state what facts you want on the record
24 with regard to your complaint. First you need to be sworn
25 in by the court reporter.

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JOHN BYRE,

being first duly sworn, was examined and
testified as follows:

MR. BYRE: I just want to state that I constructed an
apartment house at 2701 Brookshire Place, and there was a
Northern States Power cable running through my lot that
had to be moved. And I didn't have a problem with
Northern States Power moving it, but they thought I should
pay to have it moved onto the area where all of the
exhibits show it should be.

Before we started, we had a site plan that showed
where all of the utilities were. There was nothing that
would be anywhere close to where I was building the
building because I was building it way off into the middle
of the lot.

So that's about -- I guess I just don't think I
should be charged to move a cable that probably wasn't
installed where it was supposed to be in the first place.

MS. WIEST: Anything else?

MR. BYRE: Just that the drawings, although they say not
to scale, are as far as I'm concerned pretty specific as
to where that line runs. And the one that NSP apparently
sent to you that says not to scale also is blatantly out
of line as far as where my building sits and where they
put my building to be.

014114.18

1 MS. WIEST: Anything further? Any cross, NSP?

2 EXAMINATION

3 BY MR. GERDES:

4 Q. Mr. Byre, it's true, is it not, that before the cable
5 had to be moved, it was cut by a crew excavating for you
6 to build that apartment house?

7 A. I believe it was cut.

8 Q. Do you know that? Who was doing the excavation?

9 A. First Rate Excavating was doing my excavating.

10 Q. Do you know what the one call system is?

11 A. Yes, I know what it is.

12 Q. Did you call the one call before that excavation was
13 started?

14 A. I did not. I didn't feel I had any reason to.

15 Q. Why is that?

16 A. Oh, just because of the lay of the land and the
17 drawing that -- the site plan that I had from the
18 developer that showed where the utilities were run.

19 Q. Are you familiar with the language of the one call
20 statute that says no excavator may begin any excavation
21 without first notifying the one call notification center?
22 Are you familiar with that?

23 A. Probably not to the extent --

24 Q. I don't want to be unfair to you. The brief I just
25 handed you quotes that statute right in the middle of the

1 page, the first sentence.

2 A. I guess regardless of whether there would have been a
3 call or not, the line was still so far over into my lot,
4 it wouldn't have made any difference.

5 Q. Do you agree with me that if you had called the one
6 call center -- you said you were familiar with it -- that
7 that would have obligated NSP or someone on their behalf
8 to come out and mark their line?

9 A. I'm sure they would have.

10 Q. Okay. And then you would have known where the line
11 was before you started the excavation; isn't that true?

12 A. We would have known approximately where the line would
13 have been.

14 Q. How about -- you said their name was First Rate
15 Excavation; is that correct?

16 A. That's correct.

17 Q. Did they call the one call center? Do you know?

18 A. I'm not aware if they did or not.

19 Q. What was the purpose of this excavation?

20 A. That was to put in footings for the apartment building
21 that I built.

22 Q. And was that apartment building eventually going to
23 require electrical service?

24 A. Yes, it has electrical service.

25 Q. It didn't have electrical service at the time you were

01411428

1 digging, though?

2 A. No, it did not.

3 Q. So at some time you would have had to have contacted
4 NSP to obtain the electrical service for the building that
5 you were starting to construct with this excavation; isn't
6 that true?

7 A. Well, yes. There is a transformer right on the lot
8 line.

9 Q. So the moving of this cable by NSP only occurred after
10 the distribution cable had been cut by this excavation; is
11 that true?

12 A. I was called by somebody from Northern States Power
13 that said that it was uncovered and that it would have to
14 be moved because it was too close to the footing.

15 Q. Did any of your tenants in your existing buildings --
16 there were existing buildings near where this excavation
17 was occurring, were there not?

18 A. What do you mean by near?

19 Q. You have existing apartment houses within several
20 hundred feet of where this excavation was occurring?

21 A. Yes.

22 Q. Didn't you?

23 A. Yes. I didn't own them at the time, but I do own them
24 now.

25 Q. But there were existing buildings there?

- 1 A. Yes.
- 2 Q. Did you hear anybody complain about the power having
3 been out because of the cable having been cut?
- 4 A. No, I didn't hear anybody complain about it.
- 5 Q. Did the people from First Rate Excavation tell you
6 that they may have cut a power cable when they were
7 excavating?
- 8 A. I don't know if they even told me they cut a power
9 line.
- 10 Q. Did they complete their excavation?
- 11 A. Yes, it's completed.
- 12 Q. No, at that time when they first started excavating.
13 Did they complete it? Did they finish the excavating?
- 14 A. I think I got a call from Northern States Power that
15 informed me there was a cable uncovered in the area where
16 we were working.
- 17 Q. Were you at the site when this excavation was
18 occurring?
- 19 A. When it was occurring, no.
- 20 Q. Did you go out and look at the site after NSP called?
- 21 A. Yes.
- 22 Q. Did you see a cable?
- 23 A. Yes.
- 24 Q. Did you see a cable that was cut?
- 25 A. Did I see a cable that was cut? No. When I was

1 there, it was not cut.

2 Q. But you did see a cable that had been uncovered; is
3 that correct?

4 A. Yes.

5 Q. And that cable was located where you wanted to put the
6 footings for your apartment house; is that correct?

7 A. It was right -- yes, right on the corner of the
8 building there.

9 MR. GERDES: Now, Mr. Chairman, may I ask, is Mr. Byre's
10 complaint a part of the record?

11 MS. WIEST: It hasn't been admitted yet, but we can do so
12 at this time. I have it listed.

13 MR. GERDES: I noticed that. I do want to inquire of
14 Mr. Byre concerning some of the things that are a part of
15 his complaint.

16 MS. WIEST: Is there any objection to admitting Exhibits 1
17 and 2 at this time?

18 MR. HOSECK: None from the staff.

19 MR. GERDES: No objection.

20 MS. WIEST: It would be your complaint, Mr. Byre, and
21 NSP's answer.

22 MR. BYRE: I just received NSP's answer, but that's fine.

23 MS. WIEST: Exhibits 1 and 2 have been admitted. Do you
24 need any time to read the answer?

25 MR. BYRE: I glanced through it.

1 MR. BURG: Just a question. What we just got was NSP's
2 brief. There was another answer dated August 12.
3 MR. BYRE: They just handed it to me as we walked in.
4 MR. GERDES: That answer was filed with the commission
5 some time ago, and I assumed that you had copies of it.
6 If you don't, I have copies.
7 MR. BURG: I do. That's why I was questioning if there
8 was a difference between -- he wasn't distinguishing
9 between the brief and the answer.
10 MR. GERDES: He has both.
11 MS. SCHOENFELDER: But I want to know how long he's had
12 the answer.
13 MR. GERDES: I handed it to him right before the hearing
14 started.
15 MS. SCHOENFELDER: You didn't have this before the
16 hearing?
17 MR. BYRE: No.
18 MS. SCHOENFELDER: Thank you.
19 Q. (BY MR. GERDES) Mr. Byre, if you would look at
20 Exhibit B to your complaint, which is an NSP route
21 sketch.
22 A. Yes.
23 Q. Now, is that the drawing that you're talking about
24 when you say that the fact that it's listed as no scale
25 should have no significance? Is that the drawing you're

1 referring to?

2 A. You guys are the ones that alluded to no scale being
3 of no significance. I can look at it and say it looks to
4 me like the line runs that way where the dotted line is.
5 What I'm showing is where it actually -- the corner of the
6 building where it actually had to be moved from.

7 I also have a site plan here that, you know, shows
8 the exact measurements that was submitted through city
9 approval.

10 Q. What does the term "no scale" mean to you?

11 A. Well, no scale would obviously mean it wouldn't be
12 exact, but it should be within relatively reasonable
13 range.

14 Q. Now, it's true, is it not, that the service form
15 provides that the customer, that is the person that owns
16 the property, can change the routing? You mentioned that
17 in your complaint, I think.

18 A. The service form? I didn't sign a service form. That
19 was signed by the developer.

20 Q. Right.

21 A. What do you want to know?

22 Q. That was the person that owned the property.

23 A. That's who I purchased it from, yes.

24 Q. Mr. Bennett, correct?

25 A. Correct. What exactly are you asking?

- 1 Q. I'm looking at your complaint, first of all, and you
2 say the drawings and work order are very specific about
3 where the cable was to run. NSP claims they can change
4 the route because of a dirt pile. This excuse is invalid
5 because the original contract clearly states that prior to
6 NSP starting work, the owner must make sure the route of
7 NSP's underground installation is accessible to NSP's
8 equipment and all obstructions must be removed. Then you
9 make the point see point No. 2 in the original contract.
- 10 A. In Exhibit D.
- 11 Q. All right. Now, have you talked to Mr. Bennett about
12 where that service was located?
- 13 A. No, I haven't.
- 14 Q. Have you talked to Mr. Bennett about whether or not he
15 issued instructions to change the routing of that service
16 because there was something in the way as it was
17 originally drawn?
- 18 A. I have had no contact with Mr. Bennett except for when
19 I bought the properties from him and the plans that went
20 along with it.
- 21 Q. Have you talked to anyone from NSP who has told you
22 that the route of that service had to be changed and was
23 changed with the permission of Mr. Bennett?
- 24 A. Have I talked to anybody about that?
- 25 Q. Have you talked to anybody from NSP who said the route

1 had to be changed because of some construction and that

2 Mr. Bennett approved of that route change?

3 A. No, I had not talked to anybody about that. Is that
4 some agreement somewhere?

5 Q. Unfortunately, I can't answer the questions. I can
6 just ask them. You can ask questions of the NSP
7 witnesses.

8 A. Okay.

9 MS. NELSON: I have a question. Did you say you were
10 comfortable with not having had an opportunity to read any
11 of this stuff you received when you walked in the door,
12 because we certainly can wait and see?

13 MR. BYRE: Oh, by the way, here. I'm not going to hold it
14 up. Let's just continue with it.

15 MR. GERDES: That's all of the questions I have. Thank
16 you.

17 MS. WIEST: Staff?

18 MR. HOSECK: Yes.

19 EXAMINATION

20 BY MR. HOSECK:

21 Q. Mr. Byre, Camron Hoseck. I represent the commission's
22 staff in this matter. I have a few questions of you.

23 I want to explore a little bit this matter of your
24 relationship with the developer. You used this term
25 "developer" here so far today. Did you buy this property

1 from another individual; is that the case?

2 A. Yes. I bought it from Raymond Bennett.

3 Q. And what does the term "developer" mean? In other
4 words, what did he do for you?

5 A. I don't know that it means anything except that he
6 built the other buildings that are in that area, so he
7 developed that -- those four or five lots probably.

8 Q. And so that this is clear in my mind, this would be
9 just like an undeveloped lot in a complex of apartments?

10 A. This was an undeveloped lot kind of on a hillside,
11 very difficult to build on. That's probably why nothing
12 had been done on that lot.

13 Q. Okay. So we're talking about new construction here;
14 is that the case?

15 A. Yes, sir.

16 Q. And it's my understanding here that the party that cut
17 the line when the hole was dug was First Rate Excavating?

18 A. That is correct.

19 Q. What was your relationship with First Rate
20 Excavating? Were they a contractor that you hired?

21 A. Yes.

22 Q. And what was the scope of their work? What were they
23 to accomplish for you?

24 A. They are an excavation crew that would dig the
25 footings, backfill it, bring in sand if I needed it for

1 the foundation footings, things like that.

2 Q. So in other words, would I be correct in stating that
3 they did just the dirt work and did no, for instance,
4 foundation work or anything of that nature?

5 A. They dig the foundation, and then a cement crew puts
6 the foundation in.

7 Q. And did you have a written document when you entered
8 into this relationship with First Rate Excavating to do
9 the digging on this property?

10 A. No. My relationship with the contractors in town
11 would be of such that I wouldn't need any written
12 agreement for them to perform work for me.

13 Q. Is First Rate Excavating a company in which you have
14 any personal interest financially or otherwise?

15 A. No.

16 Q. And what was the intent of your contract with them?
17 In other words, what did you tell them to do?

18 A. I gave them the site plan and asked them to dig the
19 footings.

20 Q. Now, with regard to this site plan, who developed
21 this? Who came up with this site plan?

22 A. I came up with this site plan.

23 Q. Did you do the drafting on it then yourself?

24 A. An architect by the name of Jerry Lottman (phonetic)
25 did the drafting on it.

1 Q. And so I'm assuming that was just a part of a bigger
2 set of plans that you had for this project; is that
3 correct? In other words, you had blueprints for the
4 actual structure and things of that nature? Is that a
5 correct assumption on my part?

6 A. I made my own blueprints for it.

7 Q. And so the site plan dictated the location of this
8 building on the vacant lot; is that correct?

9 A. Basically a site plan would be -- when I talk about
10 "site plan," what I'm telling you is what I've got drawn
11 in Exhibit C. That is a site plan for this particular
12 lot.

13 Q. Okay. And is this site plan to scale?

14 A. This site plan is to scale within -- I mean, it's been
15 shrunk to fit on this piece of paper. So to answer your
16 question, I don't know if you can consider this one to
17 scale, although the measurements that are written on here
18 are exact.

19 Q. Who obtained the building permit for this building
20 that you built?

21 A. That may have been obtained by me, or it may have been
22 obtained by Land Title Company. The reason it may have
23 been Land Title Company is because this was done with the
24 intent of using a 1040 tax exchange for tax purposes.
25 Theoretically I had to have somebody else start the

1 project so that -- I mean, it's kind of a -- I'm actually
2 the general contractor on it.

3 Q. So you don't have any recollection as to who obtained
4 a building permit from the City of Sioux Falls?

5 A. I'm not going -- I thought it was Land Title. It
6 might have been -- I might have obtained the footing
7 permit, and they might have obtained the building permit.
8 It all would be my responsibility as far as --

9 Q. Now, you mentioned you were the general contractor.
10 Could you describe for the commission exactly what that
11 job entails? In other words, what was your level of
12 control over the construction of this project?

13 A. What do you mean by "level"?

14 Q. In other words, describe how you controlled the
15 building or what your involvement was in the building of
16 this project.

17 A. Well, I was heavily involved in the building of this.
18 I would have made all of the decisions on it.

19 Q. And you bought the materials; is that correct?

20 A. Yes.

21 Q. And hired someone to actually go up and construct the
22 building?

23 A. That, and I helped construct part of it too.

24 Q. Did you personally check the property at all for
25 any type of pipe or wire locations before any of the

1 excavation commenced?

2 A. I walked through the property. It was on a side hill,
3 fairly steep side hill overgrown with native grass. And
4 you could tell by where they had some transformers sitting
5 around that -- you could say, well, obviously there is
6 wires here. That's about the extent of it.

7 Q. Did you go out with any kind of a metal detector or
8 something of a similar nature to find out if there was
9 anything buried down there at all in terms of pipes or
10 wires?

11 A. No.

12 Q. Were you ever advised in a title opinion or as a
13 matter of title insurance that there was any type of an
14 easement that NSP had across this piece of property?

15 A. I'm sure NSP has an easement to run utility lines.
16 Every utility company does.

17 Q. Did you know that you had an easement on this property
18 at the time that the excavation took place?

19 A. No. I wasn't aware of any easement except for the
20 easement that they have on the property lines.

21 Q. Okay. Do you know if this easement is recorded at
22 all?

23 A. I believe it is not recorded. Because after I started
24 getting word from NSP that there were these things going
25 on, I went down to the couthouse and could not find an

1 easement. I went through it hoping to find something that
2 would clarify this, but I did not.

3 Q. Okay. What is the amount of money that you have been
4 billed for in this case?

5 A. 800 and some odd dollars. I don't know exactly what
6 the amount was.

7 Q. Am I correct in that this was a billing for a
8 relocation of the lines?

9 A. That is what I understand it to be.

10 Q. The question I have was, was the relocation of this
11 line done at your request?

12 A. I didn't request them to. They said they could not
13 leave the line that close to the building. So I said
14 well, if you would like to move it, you have my
15 permission, but I'm not going to pay for it.

16 Q. Perhaps I'm confused on the details here. Was the
17 line actually severed in the excavation process, or was it
18 just exposed?

19 A. I saw it exposed. Was it severed?

20 Q. Do you know coming from your own knowledge whether or
21 not it was ever severed? Is this just a relocation thing
22 we're arguing about here?

23 A. I'm under the assumption it was just a relocation.

24 MR. HOSECK: I don't have any further questions of this
25 witness. Thank you.

1 MS. WIEST: Commissioners?
2 MR. BURG: Just one or two. How many times have you built
3 in Sioux Falls?
4 A. Oh, 10.
5 MR. BURG: Have you called one call before to get approval
6 before?
7 A. Yes.
8 MR. BURG: Isn't it pretty standard practice for any type
9 of digging or whatever to give a location?
10 A. It typically would be, yes.
11 MR. BURG: Why did you not get one on this one? That's a
12 curious thing.
13 A. Because of the way the lot sat, the drawings that I
14 had that showed where the utility lines were running.
15 MR. BURG: And the excavator -- I mean, I always get the
16 impression it's basically the responsibility of both the
17 developer and the excavator. They decided not to also?
18 A. If they decided not to, it was probably under my
19 direction. I mean, I'm not going to blame anybody else
20 for --
21 MR. BURG: I know I had an underground sprinkler put in,
22 and it's only about that deep. They won't even start
23 without getting the okay first.
24 A. Typically on any other type of lot I would call. This
25 was just wide open.

1 MR. BURG: Well, the point is to me, it doesn't cost you
2 anything, does it?

3 A. It does not cost you anything, no. It makes a
4 difference what time of the year it is though.

5 MR. BURG: What's the difference depending on time of
6 year?

7 A. For instance, if it was January and you have some warm
8 days and you call first call and they push you back two
9 days, it could cool off really fast.

10 MR. BURG: No more questions.

11 MS. WIEST: Any other questions?

12 MS. NELSON: I have one. Did you have to have the site
13 plan approved by the City?

14 A. Yes.

15 MS. NELSON: So -- and they look at, don't they -- did
16 they consider where the utilities and stuff were when they
17 allowed you to put it there? They certainly -- wouldn't a
18 code or something tell you if the utility wire can be that
19 close to the building or not that close to the building?

20 A. I think so.

21 MS. NELSON: Thank you.

22 MS. WIEST: Any further questions?

23 MR. GERDES: I have some recross, if I may, that's
24 suggested by prior questions.

25 EXAMINATION

1 BY MR. GERDES:

2 Q. Mr. Byre, would you look at Exhibit D again, which is
3 that underground service form between Mr. Bennett and NSP
4 that's attached to your complaint?

5 A. Yes.

6 Q. Would you read paragraph 1 of that, please?

7 A. "The customer hereby grants NSP the right, privilege
8 and easement to install, operate and maintain its
9 underground facilities on the property as described above
10 and at the approximate location as shown on the attached
11 Exhibit A."

12 Q. So, first of all, that paragraph tells you that the
13 owner prior to you granted NSP an easement to construct
14 its facilities on that property, doesn't it?

15 A. That's exactly what it says.

16 Q. Secondly, it indicates that the facilities will be in
17 the approximate location?

18 A. That's exactly what it says.

19 MR. GERDES: Okay. Thank you. That's all I have.

20 MS. WIEST: Any further questions of this witness?

21 MR. HOSECK: None.

22 MS. WIEST: Thank you. Do you have any further witnesses,
23 Mr. Byre?

24 MR. BYRE: I don't have any witnesses.

25 MS. WIEST: Okay. NSP?

1 MR. GERDES: I call Bill Kullander.

2 (Exhibit No. 3 was mark'd for identification.)

3 BILL KULLANDER,

4 being first duly sworn, was examined and

5 testified as follows:

6 EXAMINATION

7 BY MR. GERDES:

8 Q. Mr. Kullander, I'll show you what's been marked as
9 Exhibit 3. And you have a copy of that, I believe. Would
10 you look at the second page of -- third page of Exhibit 3
11 which is a drawing?

12 A. Yes.

13 Q. And would you tell the commission, please, who created
14 that drawing?

15 A. I will. I drew that drawing about 13 years ago.

16 Q. And for what project did you draw it?

17 A. This was for a project to put in underground cable to
18 serve an apartment complex that was being developed by
19 Mr. Ray Bennett.

20 Q. And specifically that drawing that has the legend
21 below it not to scale, who drew that?

22 A. I drew that.

23 Q. What is your understanding of what not to scale means?

24 A. In the utility business, if we receive a sketch from
25 any of the other utilities or from a contractor or

1 developer or a sketch for any reason and it has no
2 scale -- and before I do any type of work with our
3 underground system for setting poles, I definitely get
4 ahold of the party that drew that to make exact
5 measurements. No scale tells me there are no exact
6 measurements and things could change drastically on it.

7 Q. And you work with a lot of contractors and developers
8 in your business; is that correct?

9 A. Yes, I do.

10 Q. What is your job title?

11 A. Right now I'm area relations representative. Back
12 then I was called a customer service representative.

13 Q. And what is the understanding in the industry -- as
14 far as industry meaning contractors and developers -- as
15 far as what "no scale" would mean on a similar map?

16 A. No scale, it flat means there is no exact
17 measurements.

18 Q. And what does that mean in terms of finding the
19 electrical service that's depicted on such a map?

20 A. It's best to call at this time one call. Back then
21 you had to call each one of the individual utilities and
22 get the location of the cable.

23 Q. You mentioned one call. What is that?

24 A. South Dakota One Call is a system where you can call
25 in with one telephone call and request a location to have

1 a specific area looked at, and you will have locators from
2 all of the utilities there to locate the utilities as
3 they're buried at no charge.

4 Q. Was the one call system in being and operational at
5 the time this cable was cut that's the subject of this
6 hearing?

7 A. I don't believe I can answer that. I was not involved
8 with relocation or any of the design of that. I don't
9 know the answer to that.

10 Q. Okay. In any event, was the route of that cable,
11 which is not to scale, changed at some time from when you
12 drew that drawing?

13 A. Yes, it was.

14 Q. Were you involved in that?

15 A. Yes, I was.

16 Q. Tell us about that.

17 A. I received a telephone call one day while I was in the
18 office designing from our line crew foreman that was out
19 on the site to install this job. And he informed me that
20 there was -- and I don't really remember what the
21 obstruction was, if it was a dirt pile, if there was
22 rubble or lumber, but he informed me there was an
23 obstruction there, that they couldn't install the cable as
24 designed. Either I best get ahold of the contractor and
25 get it moved or they would have to pull off.

1 I proceeded to call Mr. Bennett and tell him the
2 problem. He asked me to meet him out there, which I did.
3 We talked about it, and we decided -- he said, I own all
4 of this property. He said, You can move the cable. It
5 doesn't have to go that route. He said, I want the cable
6 put in. Winter is going to set in. The ground is going
7 to freeze up.

8 As I remember -- I don't see any dates on here, but
9 there should be possibly dates in other sketches that I
10 have. This job was being constructed the latter part of
11 the fall going into early winter. His real concern was --
12 the foreman told him if we pulled off this job and did not
13 build it at that time, it would be two to three weeks
14 before he would be back. The next job he was going on, he
15 had the drawings and materials for, it was about that long
16 of a job to construct.

17 Mr. Bennett was concerned about it freezing up and
18 snowing, and he wouldn't get the cable in before winter.
19 He said, Let's put the cable in in this direction, away
20 from whatever the obstruction was. It was further to the
21 west. And the grade out there, the terrain, as I remember
22 it, the terrain drops off quite rapidly to a lower area.
23 There was a hill or a berm or something that the crew went
24 down to get down to this area. It moved the cable
25 approximately -- some feet to the west from where it was

1 supposed to go.

2 Q. And this was based upon the authorization from

3 Mr. Bennett?

4 A. That's correct.

5 Q. Mr. Bennett was the owner of the property at the time?

6 A. That's correct.

7 Q. When you're locating electrical cable that's under-
8 ground, in your experience is it always a safe bet to
9 assume that the underground cable is a straight line
10 between two transformers that are visible above the
11 ground?

12 A. No, it is not.

13 Q. Why is that?

14 A. There are various reasons why cable would not run in a
15 straight line between two points, obstructions that are in
16 the way. The obstacles could be anywhere from future
17 buildings possibly being proposed to go into the site to
18 rubble or debris or lumber or construction materials that
19 are there.

20 It could be possibly the way you had drawn it, if
21 it wasn't to grade, and you needed to relocate this or
22 move your cable installation over so that it would be in
23 an area that was at grade so grade wouldn't give out.

24 MR. GERDES: That's all of the questions I have. Thank
25 you.

1 MS. WIEST: Staff? I'm sorry. Mr. Byre, do you have any
2 questions?

3 MR. BYRE: I have a couple questions.

4 EXAMINATION

5 BY MR. BYRE:

6 Q. Why do you draw these pictures?

7 A. Basically the way they're originally drawn is the way
8 the developer has come in and sat down with us and said
9 this is the route that you can take, or this is the way I
10 would like it done because of whatever reason.

11 And a couple of the unique things that were on here
12 was, No. 1, he wanted to go between the two garages rather
13 than coming straight down along the side of the apartment
14 house 609. So he sat down with me, and we did sort of an
15 extensive look at the blueprints. And the design was done
16 the way he had requested it to start with. Of course,
17 then it couldn't be completed that way because of debris
18 or whatever he had for an obstacle.

19 Q. My question is, what good are your drawings if you
20 just want to rely on a no scale? If you look at a
21 drawing, doesn't that kind of tell you? I mean, if it
22 goes this way, this is probably where it's going to be and
23 supposed to be?

24 A. Generally, 90 percent of the time a job that is drawn
25 has the continuity between the electrical system. In

1 other words, the cable from one transformer to the other.
2 That cable does not necessarily have to go in a straight
3 line.

4 Q. Typically in your new developments, don't you try to
5 keep your cables on lot line easements, on property lines,
6 and the street easements? I mean, do you ever run them
7 right across somebody's line?

8 A. We do in apartment complexes, yes.

9 Q. Just in apartment complexes?

10 A. Yes. The owner can come to us and request a given
11 route, and he wants that done because the garages or
12 footings or driveways or walkways -- that particular one
13 that's out there Mr. Bennett developed is sort of unique.
14 It has some bridges that cross ravines to get into
15 apartments from the back side and things.

16 That's why I remember this job so well. He had
17 some unique requests. In fact, he even paid for some of
18 those requests to have the cable put where he did have it
19 installed.

20 Q. Why would he move it so far almost to make a lot
21 unusable then? I mean, that's not thinking, I don't
22 think.

23 A. That I can't answer. I know he was concerned about
24 freeze up and winter setting in. He did not want the crew
25 to pull off.

1 Q. So you say you have an agreement signed with him that
2 states the fact that that should be moved over?

3 A. No. We have just the service form he originally
4 signed that this drawing is with. The one you have,
5 that's correct. If he didn't change his copy, then that
6 I'm not responsible for.

7 Q. There is no record of easements that states this line
8 is to be moved over.

9 A. An underground service form is signed with the owner
10 of the property at the time. It's not a filed easement.
11 It's a service form. It's service for his property there
12 only. It does not serve somebody else. It does not
13 require a deed.

14 Q. So this line does not serve any other properties
15 except for the ones that I own in the area? Is that what
16 you're saying?

17 A. The line that runs down the front is an easement that
18 serves other properties. The line that wanders through
19 your apartment complex just serves your apartment complex.

20 Q. Maybe we could have just left it alone.

21 A. Now, that I don't know. I don't know measurements. I
22 wasn't involved.

23 Q. Everything seems to be working fine until they say it
24 needed to be moved.

25 A. I was not involved in the second part of this.

1 Q. Okay. The only thing you have between you and
2 Mr. Bennett is a verbal agreement that you'll just move
3 the line over a little bit and that --

4 A. I believe our permanent records on our permanent maps
5 at the office do show the change.

6 Q. Do they?

7 A. I believe they do.

8 Q. I don't think they would because I know in
9 investigating this whole thing I called several times and
10 never really got to talk to -- did I ever talk to you
11 about this?

12 A. No.

13 Q. Your name was on there. I asked if you were still
14 with the company, and they said yes. But they never would
15 put me in contact with you. I don't know why. But I have
16 no further questions for you. Thanks.

17 A. Thank you.

18 MS. WIEST: Staff?

19 MR. HOSECK: Yes.

20 EXAMINATION

21 BY MR. HOSECK:

22 Q. Mr. Kullander, I'm Camron Hoseck representing the
23 commission's staff today. Was there ever a severing of
24 this cable?

25 A. That I cannot answer. I do not know if there was or

1 not. I wasn't involved in the last stage of this. I just
2 did the original design.

3 Q. Can you tell me why Mr. Byre was billed for this? I'm
4 assuming it's a relocation, but whatever occurred out
5 there, why was Mr. Byre billed?

6 A. That I don't have the answer to either.

7 Q. Does NSP have any type of a typical procedure for
8 indicating where lines are on property for marking them at
9 the surface level?

10 A. Our locators will go out with a copy of the
11 distribution map of that area, and they have their
12 locating equipment. And they will locate the cables, and
13 I have seen locations be as far as 50 feet off from what
14 the map shows where the cable is located. Why they are
15 there, it's probably because there was debris or obstacles
16 in the way when the cable was installed. That's why one
17 call exists so that you do get an exact location of the
18 cable.

19 Q. I'll move that his last comment be stricken from the
20 record as non-responsive. How long had this wire been in
21 this location?

22 A. Since 198- -- fall of 1984.

23 Q. Do you know how much the bill is that's involved here?

24 A. I have had nothing to do with that.

25 Q. Do you know if NSP has a witness who is going to speak

1 to the bill?

2 A. Yes, I believe so.

3 MR. GERDES: Excuse me, Counsel. For the record, we're
4 calling Mr. Kullander first and out of order because he
5 has to go to his birthday party. We wanted to get him out
6 of here on time. Ordinarily Mr. Wilcox would have
7 testified first, and you would have known those things.

8 MR. HOSECK: Thank you, Counsel.

9 Q. (BY MR. HOSECK) Is this underground service form that
10 we've been talking about here today -- and I believe it's
11 Exhibit D that's attached to the complaint -- am I
12 understanding this correctly that these are not routinely
13 recorded by NSP?

14 A. Underground service forms are not recorded at the
15 county courthouse. Just easements.

16 Q. Well, so you don't consider this to be an easement?

17 A. We consider this to be an agreement between the
18 property owner and NSP for the service cable on their
19 property to serve their facility.

20 Q. One of the provisions of this Exhibit D is that this
21 talks about an approximate location?

22 A. That's correct.

23 Q. As shown here. Is there any industry standard as to
24 what approximate might mean as far as changing from the
25 alignment of the cable?

1 A. No, there is not.

2 Q. In this case -- and as I'm understanding what you
3 testified to -- it may have been placed as much as -- or
4 at least a few feet off from the intended alignment
5 because of some debris or something on this lot?

6 A. That's correct.

7 Q. Under those circumstances, do you have a policy of
8 going out and either getting a new underground service
9 form or something like that to indicate to the owner that
10 this thing is not where everybody thought it was going to
11 be in the first instance?

12 A. If it's the owner and developer as one and the same
13 and they're the ones that are requesting it, we do not.
14 We have the same service form in place. It's property.
15 There is no given lots in a apartment complex like that.
16 The buildings are set where they would best fit into the
17 parking design and set of the land.

18 Q. Well, would you go so far as to say by virtue of this
19 underground service agreement, you could have put that
20 cable anywhere on his lot?

21 A. That's correct.

22 MR. HOSECK: I don't believe I have any further questions
23 of this witness. Thank you.

24 MS. WIEST: Commissioners?

25 MR. BURG: Are these drawings what are used by the

1 contractor for NSP or your employees to put the line in?

2 A. I will have to answer that yes. However, before our
3 employees or the contractor digs, we go out and do what we
4 call flagging it. We actually stick the metal flags in
5 the ground. That is the route they will take.

6 The reason being from the time the sketch is drawn
7 until it is built, there may be specific reasons why the
8 developer or the contractor that is doing the project
9 wishes to have that cable moved a few feet or several feet
10 one direction or the other. So all they are is a
11 reference guideline. They are not an exact drawing.

12 MR. BURG: So if I understand right, Mr. Bennett or the
13 developer came in and sat down with you?

14 A. Yes.

15 MR. BURG: And said this is where I want to locate
16 buildings?

17 A. Yes.

18 MR. BURG: And this is -- between you and him you decided
19 this was the best route for that line?

20 A. That's correct.

21 MR. BURG: However, when your contractor got to the
22 site -- probably at the flagging stage?

23 A. He arrived at the site approximately three or four
24 days after I had flagged it.

25 MR. BURG: And did you flag it through the debris?

1 A. No. The debris was not there when I flagged it.

2 MR. BURG: When he got there, the debris was there between
3 the time you flagged it and until then?

4 A. That's correct.

5 MR. BURG: So he said I cannot construct with whatever the
6 obstruction was?

7 A. That is correct.

8 MR. BURG: So then you contacted the person you had dealt
9 with?

10 A. Right.

11 MR. BURG: He said let's go out there. You got out there,
12 and he says I want to reroute it?

13 A. That's correct.

14 MR. BURG: In order to be able -- so the contractor
15 doesn't have to stop?

16 A. That's correct.

17 MR. BURG: Since this is totally on his property, not
18 necessary to serve anybody else, not necessary for an
19 easement, you said we'll put it wherever you want it?

20 A. That's right. You're absolutely correct.

21 MR. BURG: That's what took place?

22 A. That's what took place.

23 MR. BURG: That's all I have.

24 MS. WIEST: Any other questions from the commissioners? I
25 have some.

EXAMINATION

- 1
2 BY MS. WIEST:
3 Q. If you go to page 3 of Exhibit 3 --
4 A. Okay.
5 Q. That shows the map; is that correct?
6 A. That's correct.
7 Q. That was done in 1984; is that correct?
8 A. That's correct. There is another piece to this. This
9 map was actually longer. Do we have another piece to this
10 map?
11 Q. The notations there show where NSP line is supposed to
12 be, shows approximate location of building, shows where
13 NSP line was installed. Were those notations made by you?
14 A. No, they were not.
15 Q. And so what you would have on record actually would be
16 the location of where the line was originally supposed to
17 have gone?
18 A. That's what would be on record with this drawing and
19 the service form. That is correct.
20 Q. You would not have any record of where the line
21 actually was installed?
22 A. I believe that would be on our permanent records after
23 the foreman did the job. The foreman usually does a field
24 change on a job and comes in and has it mapped according
25 to the fieldman's record.

1 Q. So that when you contacted one call with the locations
2 of your lines, you're saying that the --

3 A. One call would have no idea where this line laid
4 whatsoever on that property because it is not an easement
5 line. They would just know we had power in that facility
6 to serve various apartment buildings.

7 Q. So how would it have been located?

8 A. They would have notified NSP to go out to 605 or 609
9 North Cleveland, and there was need of a location of cable
10 there because of new construction. We would have gone out
11 and located the cable.

12 Q. You would have located that from your permanent
13 records?

14 A. He would have had a distribution map that we have in
15 our office, the large distribution map, and he would have
16 a copy of that to know a starting point, which would be
17 the transformer that you see to the north. He would hook
18 his locating cables into that, thump it, and follow the
19 line down. He does not follow the sketch. He follows the
20 tone.

21 MS. WIEST: Thank you. Any further questions?

22 MS. NELSON: I thought of one. In your -- in the brief
23 that NSP filed, it says that the cable was definitely
24 severed. Are we --

25 MR. GERDES: We have more witnesses.

1 MS. WIEST: Any further questions from the commissioners?

2 MS. NELSON: No.

3 MS. WIEST: Mr. Byre, any other questions for this
4 witness?

5 MR. BYRE: Well, no, I don't have any more for this
6 witness.

7 MS. WIEST: Any redirect?

8 EXAMINATION

9 BY MR. GERDES:

10 Q. Mr. Kullander, if you would look at the next page on
11 Exhibit 3, which I think is labeled in the upper
12 right-hand corner Exhibit NSP-3?

13 A. That's correct.

14 Q. What does that show?

15 A. That's the other half of the drawing I was looking
16 for. No. I'm sorry. This is the drawing that Lori
17 Tendler, another designer at NSP office, drew evidently
18 when Mr. Byre was building the new apartment building.
19 That's what we call a one line design, electrical
20 continuity, shows the cable running between transformers.

21 And it's all on a given piece of property that
22 Mr. Bennett, I would say, entirely owned at the time I
23 designed it for him. And you can see that cable really
24 wanders and weaves through his apartment complex because
25 of hills and gullies and ravines and the way buildings

1 set.

2 Q. And would that show -- or would this be an example of

3 what your permanent record is at your office?

4 A. That is correct.

5 Q. And is it intended to show the exact location of the

6 cable?

7 A. No, it is not. There are no measurements on this.

8 The scale on this particular large map is 1 to 100. If

9 you wish to scale with that, it would be approximate. It

10 wouldn't be an accurate 1 to 100.

11 Q. If I understood your testimony in response to

12 Ms. Wiest correctly, the way a locator would go out and

13 find one of these service lines is to start at a

14 transformer and then use an instrument to follow the line?

15 A. That's correct. This instrument gives out a tone, and

16 the tones changes as he leaves the cable line itself and

17 becomes louder when he's directly over the cable. He

18 locates it by the tone.

19 Q. That's what should have been done before the

20 excavation started; would that be correct?

21 A. That's correct.

22 Q. You talked about continuity. For those of us in the

23 room that are not electrical engineers, tell us what that

24 means when you say that the drawings, such as this NSP-3,

25 are intended to show continuity primarily?

1 A. Well, transformers are installed either on what we
2 call a radio feed, which is a line going into one or two
3 transformers and then stopping, or what we call a loop
4 feed, which is a line going in which will serve many
5 transformers and then come back out and go to the main
6 feeder again so that you can feed from either direction.

7 This particular system is on a loop feed, so it can
8 be fed from the southern terminal pole, or not shown on
9 here, there is another terminal pole up north.

10 Q. You're getting too technical with me. What are you
11 depicting when you're depicting continuity? Location or
12 what it does electrically?

13 A. Location.

14 Q. With reference to excavation such as Mr. Byre
15 attempted, why does the one call system exist?

16 A. You want me to --

17 Q. Mr. Hoseck asked you a question. You told us why the
18 one call system existed, and Mr. Hoseck asked your
19 response be stricken. I'm giving you an opportunity to
20 say it.

21 A. The one call system basically was designed that it is
22 there so a person, whether they're going to plant a shrub
23 or whether they're going to build an apartment complex,
24 can call one number, and that will be recorded where he is
25 going to be digging. And all utilities will be contacted

0141:14:55

1 by the one call representative, and they will be out
2 there. They usually tell that party if it will be 24
3 hours or 48 hours, the period of time before the locators
4 will be done locating. They will all go out and flag
5 their locations.

6 MR. GERDES: Thank you. That's all I have.

7 MS. WIEST: Does that prompt any further questions?

8 EXAMINATION

9 BY MR. BYRE:

10 Q. Earlier you said that this line supplied the property
11 that Ray Bennett owned. This map here shows it supplies
12 the property on up the hill and over. I guess I
13 misunderstood you earlier.

14 A. If you would look at an area here -- and I'm sorry. I
15 have to get into electrical terminology now. The
16 transformer is here. It shows it open and says n-o, which
17 means not on bus. What we would need to do in order to
18 enclose this -- and I believe that's where your property
19 ends?

20 Q. That's exactly where it ends, yes.

21 A. Okay. So the line that serves your complex, the line
22 is open there. If something would happen to this feed and
23 you would have an outage in your complex, we can come in,
24 and we can open that transformer up. And he can go in
25 there and with a hot stick connect so that we then feed

1 from the north coming down so that we can put you back in
2 service a lot faster.

3 Q. Put me back in service, and also put the tenants -- or
4 the owner that is to the north of me back in service?

5 A. The owner to the north is in service where that is
6 open. He is also on a radio feed coming down to the not
7 on bus. We can back feed either way off that. It is
8 open. It takes care of just your property at this time,
9 and north of that takes care of -- is it Tipper that has
10 the property north of you?

11 Q. No.

12 A. I don't really remember who the developers were. That
13 takes care of the other property owner and his properties,
14 that's right.

15 Q. I don't know if this is a question for you or not. Of
16 what consequence would a one call have done for this
17 project beings that the line was 25 feet into the property
18 where it was built anyways?

19 A. We would have come out and located the line. If you
20 would have met with the locator out there and said I'm
21 putting footings in right here and doing a building, he
22 would have located the line from a transformer that sets
23 north of there and come down to the transformer to the
24 south. He would have located that piece of cable for you.

25 Q. And he would have moved it then?

1 A. No, he would not have moved it. He would have located
2 it. You would have known where it was at. No, he would
3 not relocate it.
4 MR. BYRE: Thank you.
5 MS. WIEST: Any further questions?
6 MS. SCHOENFELDER: On this Exhibit NSP-3, it shows that
7 it's prepared, I believe, and field checked by someone by
8 the name of Lori Tendler?
9 A. That's correct.
10 MS. SCHOENFELDER: So you're testifying, I assume, it's
11 her work rather than your own?
12 A. This is a master bus map that is available to any
13 designer at NSP.
14 MS. SCHOENFELDER: Okay. But you didn't do this work; she
15 did it?
16 A. I did not do that drawing.
17 MS. SCHOENFELDER: Okay. And above there it says South
18 Dakota One Call, and there is an X there. What does that
19 mean?
20 A. That X, I believe -- I'm sorry. I do not have my
21 glasses here. But it stands for -- it's by the yes. It
22 stands for you need to do South Dakota One Call to come
23 out and have locations done before this job is built.
24 MS. SCHOENFELDER: Before what job is built? The design
25 of the electric line?

1 A. That's correct.

2 MS. SCHOENFELDER: So one call would have been notified
3 about where this line runs? Because I didn't think one
4 call operated that way.

5 A. One call simply receives the message that there is
6 going to be construction in the area. They notify all of
7 the u'tilities. The utilities all go out to that address
8 and locate their --

9 MS. SCHOENFELDER: Construction of the line has nothing to
10 do with the apartment house?

11 A. Yes.

12 MS. SCHOENFELDER: Just so I'm reading it right. Thank
13 you.

14 MS. WIEST: Any other questions?

15 MR. BURG: Where you would request one call for something
16 like this, it would be to locate the gas, telephone,
17 anything else, because you would be locating your own if
18 there was anything?

19 A. That's correct. However, we use one call all the time
20 to get the other utilities located. Our own utility
21 response to our construction division by going out and
22 locating our own facilities, we do not go by our maps. We
23 go by what our locators put down for flags.

24 MR. BURG: Okay.

25 MS. WIEST: Any further questions? Thank you. You may

1 call your next witness.

2 MR. GERDES: We call Jim Wilcox.

3 MR. GERDES: Have I offered Exhibit 3?

4 MS. WIEST: No.

5 MR. GERDES: I would offer Exhibit 3.

6 MS. WIEST: Any objection?

7 MR. HOSECK: No.

8 MS. WIEST: If not, it's admitted.

9 JIM WILCOX,

10 being first duly sworn, was examined and

11 testified as follows:

12 EXAMINATION

13 BY MR. GERDES:

14 Q. Mr. Wilcox, I'll ask you to look at what's been marked
15 as Exhibit 2. I'll ask you what that is.

16 A. This is my answer to the complaint of Docket EL97-008.

17 Q. Was that filed by you with the commission shortly
18 after August 12, 1997, when your transmittal letter is
19 dated?

20 A. Yes.

21 Q. Did you send a copy of it to Mr. Byre?

22 A. No.

23 Q. Why?

24 A. I guess in my misunderstanding of the process, I
25 believed that the process had the commission providing

1 both parties with copies.

2 Q. So you didn't intend to mislead Mr. Byre or anything
3 like that?

4 A. No, I did not.

5 Q. Tell us about what happened at that location when the
6 excavation was done on January 8, 1996, according to your
7 knowledge. Was a cable cut?

8 A. Yes. My understanding was on the afternoon of
9 January 8, we received some telephone calls indicating
10 that the power was out in that area. That was our first
11 indication that there was something wrong. And upon
12 investigation, we learned that the cable had been cut near
13 2701 East Brookshire Place by a crew who was constructing
14 an apartment at that location.

15 Q. And what was the cause of the outage?

16 A. My understanding was that the crew in excavating
17 for this apartment complex had cut through a cable
18 interrupting service to that neighborhood.

19 Q. Was NSP able to reestablish power relatively quickly?

20 A. We were able to isolate the problem, and because it
21 was a looped system, because of this normally open
22 transformer there, they were able to isolate the cable,
23 the broken cable, and then reestablish service by closing
24 through the transformer that is normally open. We were
25 able to reroute power and reestablish service to those

1 customers who were without power albeit now on a radial
2 system rather than a loop system because the cable was
3 damaged.

4 Q. Is this what Mr. Kullander was describing just a
5 minute ago?

6 A. Yes.

7 Q. I forgot to ask you, and I apologize. What is your
8 position with NSP?

9 A. My title is manager of government and community
10 relations.

11 Q. What is your educational background?

12 A. I have a bachelor of science degree in electrical
13 engineering from South Dakota State University and an MBA
14 from St. Thomas in St. Paul, Minnesota.

15 Q. According to your knowledge, was any contact ever made
16 with the South Dakota One Call System prior to the
17 excavation that caused the outage?

18 A. We made contact with them, and I have no knowledge or
19 any information to show that there was any contact made by
20 an excavator for this location.

21 Q. And following this cut, is it correct that Mr. Byre
22 requested that the cable be changed -- or relocated,
23 excuse me?

24 A. It was my understanding that following the cable cut,
25 it was obvious that Mr. Byre needed to complete the

1 excavation to complete the construction of the building
2 and so that the location of the cable was no longer
3 acceptable and would have to be moved. So based on that,
4 we began a conversation about moving that cable.

5 Q. Was it ultimately moved?

6 A. It was ultimately moved. We had several
7 conversations, from my understanding, through January,
8 February, and March of that year. We really were not able
9 to come to an agreement. Mr. Byre was declining to pay
10 for the relocation of the cable, and part of the charge
11 for relocation included \$150 for winter construction.

12 So then in April, beyond winter construction
13 season, and because all of the customers were still being
14 carried on a radial feed, we just finally decided we had
15 to get this loop system back in place. And so we went
16 ahead and fixed the cable and relocated the cable. And
17 then because we did it in April, we said, well, there is
18 no need to charge the \$150 winter construction fee. So we
19 waived that aspect of it.

20 Q. Looking at an exhibit attached to your answer entitled
21 NSF-1, what is that?

22 A. That is a proposed Underground Service Form that we
23 had proposed to Mr. Byre to establish service for this
24 location.

25 Q. And has he ever signed it?

1 A. No, not to my knowledge.

2 Q. And then -- and Exhibit NSP-2, also attached to your
3 answer, what is that?

4 A. That's a computer printout from an NSP computer system
5 detailing the items and expenses that comprise the now
6 \$654 charge that we've been asking Mr. Byre to pay for in
7 relocating that cable.

8 Q. And the other components of that charge would have
9 been the \$150 which was waived when the weather got nice;
10 is that correct?

11 A. That's correct. But there would be a 2 percent excise
12 tax.

13 Q. Who gets that?

14 A. The good State of South Dakota.

15 Q. As an electrical engineer, to you, what does the term
16 "no scale" mean when it appears on a map such as that
17 exhibit attached to your answer?

18 A. It means that this is a drawing that shows the
19 approximate locations of facilities. And because there is
20 no scale, I would not rely on this map to be certain of
21 the exact location of any facilities.

22 On this particular map, it was a useful tool, I
23 think, in giving our field crews an indication of
24 approximate locations of where they should be running the
25 facilities but certainly nothing more than that.

1 Q. In your experience as an electrical engineer, what is
2 the primary evidence that a contractor relies on in
3 determining the location of an underground electrical
4 facility?

5 A. Because of the safety nature of high voltage
6 electricity, it is imperative that anyone who is digging
7 near a high voltage electrical facility contact the one
8 call system or contact the operator of that system and
9 ensure that that company locates the exact location of
10 that facility. Otherwise there is a severe risk of death
11 or injury to the crews who are working on that
12 excavation.

13 Q. And, of course, there is another reason for the one
14 call system, and that being to ensure that the customers
15 don't have unanticipated outages?

16 A. That would be an additional benefit of the one call
17 system, yes.

18 Q. Mr. Wilcox, I've asked you some of the things but not
19 all of the things that are on Exhibit 3 -- or excuse me,
20 Exhibit 2, your answer to the complaint. Are all of the
21 statements made in your answer true and correct to the
22 best of your knowledge?

23 A. To the best of my knowledge, they are.

24 MR. GERDES: Thank you. That's all I have.

25 MS. WIEST: Mr. Byre?

EXAMINATION

BY MR. BYRE:

Q. Mr. Wilcox, were you ever at the site?

A. I have been at the site just recently, yes.

Q. As recently as the past couple months or when this incident occurred?

A. No, in August of 1997.

Q. So you weren't at the site --

A. No.

Q. Where did you get your information from?

A. From employees Lori Tendler, and Rollie Hydebrink (phonetic) in our office.

Q. Why wouldn't either one of those, if there is a problem out there, want to meet me?

A. I believe they have attempted to make contact and have several meetings with you.

Q. I wouldn't have not wanted to. If there is a problem, we need to take care of it. So you weren't out there when the footings were in?

A. That's right.

Q. You say the line was severed. When I was there and the footings were in, I guarantee the line was not severed. I could see the line. Were you there when it was severed? I mean, obviously it was severed; somebody lost power.

1 A. That's right.

2 Q. I'm just trying to understand when that would have
3 been severed on July 8.

4 A. No, it was severed on January 8.

5 Q. January 8, excuse me.

6 A. Yes.

7 Q. The only thing I'm wondering is if it was severed when
8 they put water and sewer in. Did anybody go out when it
9 was severed, Michelle or this Rollie?

10 A. Lori Tendler went on the site along with our crews
11 when they were investigating.

12 Q. Who does this loop system benefit the most? Does it
13 benefit the consumer or NSP? What do I need a loop system
14 for?

15 A. It improves the reliability to the customers in that
16 area. And in this case it worked very well in that we had
17 a cable that was cut, and we were able to reroute power
18 and reestablish service within a matter of an hour or hour
19 and a half.

20 Q. So it was a nice thing to have for your customers?

21 A. Yes.

22 Q. But I really don't, for practical purposes, need a
23 loop system on my property because we have power in the
24 street and going to all of the buildings?

25 A. Yes.

1 Q. For some reason, all of a sudden I get a collection
2 agency letter that I owe 800 and some odd dollars. Now
3 you're telling me I owe 600 and some dollars. Why would
4 there be a discrepancy there?

5 A. Well, because we were finally able to and finally did
6 fix the cable in April, and that's outside of our normal
7 winter construction period of time. We decided to waive
8 the \$ 50.

9 Q. So you decided to waive that after I got a letter from
10 the collection agency?

11 A. I'm not familiar with this letter.

12 MR. BYRE: Okay. I have no further questions. Thanks.

13 MS. WIEST: Any further questions?

14 MR. HOSECK: Yes.

15 EXAMINATION

16 BY MR. HOSECK:

17 Q. Mr. Wilcox, if I'm understanding the situation from
18 NSP's point of view, there was a severing of the cable and
19 then a subsequent relocating of the same cable; is that
20 correct?

21 A. That's correct.

22 Q. So at some point in there, there was a splicing, is
23 that also --

24 A. No, that's not correct. We didn't splice this cable.

25 Q. So it was replaced? Is that the process?

- 1 A. That's correct. In normal circumstances, we probably
2 would splice it and get the service back in service. But
3 because we discovered that there was an apartment building
4 about to be placed on top of this cable, that we had a
5 need, the customer needed us to move that cable or leave
6 it deenergized and not repair it so that Mr. Byre could
7 complete the construction of this apartment building.
- 8 Q. And so this bill that's in the records I think twice
9 now, but as a part of your response marked as NSP-2,
10 Exhibit NSP-2, for \$653.53, what's the service or act that
11 NSP is billing Mr. Byre for in this matter?
- 12 A. The relocation of the cable so that he could place an
13 apartment building on the site, former site of this cable.
- 14 Q. This is not a billing -- in layman's terms -- to patch
15 the old one?
- 16 A. No.
- 17 Q. The decision to make a relocation of the cable at this
18 point in time, was that decision made as a matter of your
19 decision-making processes within NSP or as a matter of
20 request by Mr. Byre?
- 21 A. Well, we believe that it was a matter of request by
22 Mr. Byre because of his need to complete construction of
23 his apartment building.
- 24 Q. Okay. But did Mr. Byre call up anybody in NSP, to
25 your knowledge, and say move that cable?

- 1 A. Not to my knowledge, no.
- 2 Q. Would you look at that bill, please? What are these
- 3 items? What's the first item that says cable? I'm
- 4 assuming, am I correct, that is the new cable that you put
- 5 in this location? Is that correct?
- 6 A. It is.
- 7 Q. And quantity of 60, how would you explain that unit
- 8 cost?
- 9 A. I believe that is 60 feet of cable.
- 10 Q. Okay. And the next thing is dig auger, splice hole,
- 11 two units. Would you explain that, please?
- 12 A. On either end -- there are two units because there
- 13 will be two holes necessary to reconnect or splice this
- 14 new 60 foot piece of cable into the old existing cable.
- 15 There would be two holes required.
- 16 Q. And the term "splice" in there, two units there, what
- 17 does that indicate?
- 18 A. That would be a device that would allow the piece of
- 19 cable to be connected to the other piece of cable, and it
- 20 would seal around that cable to hold it physically and
- 21 seal it from water and protect that connection.
- 22 Q. And then trench and backfill, I'm assuming, is the new
- 23 location of the cable; is that correct?
- 24 A. That's correct.
- 25 Q. And there were 50 units there. So that's --

- 1 A. Approximately 50 feet.
- 2 Q. So why did you have 60 foot of cable and 50 feet of
3 trench?
- 4 A. You need a few feet sticking into the hole to make the
5 connections.
- 6 Q. Now, these prices that you're charging for this splice
7 and the cable, are those retail prices, or how are these
8 costs derived?
- 9 A. I believe these to be NSP's internal costs for these
10 items. This is an internal cost accounting report.
- 11 Q. Is there any mark-up involved in those amounts?
- 12 A. No.
- 13 Q. It's strictly at cost?
- 14 A. That's right.
- 15 Q. In other words, what you pay a supplier for cable and
16 a supplier for this splice mechanism, that's what you're
17 passing on to Mr. Byre here?
- 18 A. Right.
- 19 Q. And how do you come up with the prices for the holes
20 and the trenching?
- 21 A. I don't know the answer to that.
- 22 Q. Well, is there any fat in this bill?
- 23 A. I don't believe so.
- 24 Q. Do you think it's reasonable?
- 25 A. I do.

1 MR. HOSECK: Okay. I don't think I have any further
2 questions of this witness. Thank you.

3 MS. SCHOENFELDER: I have a couple. Mr. Wilcox, you
4 didn't generate this bill, though; is that true?

5 A. That's true.

6 MS. SCHOENFELDER: So you said you believe that's 60 feet,
7 but you don't know that's 60 feet?

8 A. I believe it is because this is the record that was
9 generated by the folks who are responsible for making that
10 repair and producing the order to our crews that actually
11 did the work.

12 MS. SCHOENFELDER: But you testified you didn't see the
13 cable cut, and you weren't out there. So are you going to
14 have people here that are going to testify whether they
15 saw the cable cut and whether they know this is what that
16 bill is for?

17 A. We could, Commissioner, I guess. We hadn't planned on
18 that.

19 MS. SCHOENFELDER: I also want to know if on this bill if
20 built into your trenching and your backfill if there is
21 labor costs there. And, obviously, NSP doesn't -- at
22 least their people aren't supposed to work for nothing.
23 So I would like to know if there is labor involved in here
24 also. I understand you forgave the \$150 winter
25 construction fee and that sort of thing.

1 Obviously there is labor and equipment involved in
2 trenching and in splicing and in backfilling and usually
3 heavy equipment, some fairly large equipment. Sixty foot
4 of cable at \$162, what little bit I know about it, sounds
5 fairly reasonable to me. The trench would be the physical
6 trenching. \$108 seems rather cheap to me there.

7 I would like to know -- I would like this broken
8 down more, if I could possibly.

9 A. I don't have that information now, but we can get it.

10 MR. GERDES: We can late file.

11 MS. SCHOENFELDER: Could you do that, please? If this is
12 something that's under tariff that you ordinarily do under
13 tariff for a relocate and NSP then absorbs part of the
14 cost, I want to know that also. I would like you to at
15 least verify that by the people that actually do that.
16 That's all I have.

17 MS. NELSON: Well, are we going to have people come
18 that -- I mean, I have some doubt in my mind -- I want to
19 know for sure that somebody saw a severed cable because
20 Mr. Byre says he was there, and it wasn't severed. I
21 would like to know who really severed the cable. I think
22 those are important questions.

23 MS. SCHOENFELDER: Can we have an affidavit about that or
24 something?

25 MS. NELSON: When I read your brief, it says that the

1 relocation of the cable was necessitated because it was
2 severed. So is that -- to your knowledge, is that why
3 you're relocating it? It looks like it might have been --
4 would you have had to have relocated it anyway, and
5 severing it had nothing to do with relocating it?

6 What would it cost if you patch the cable versus
7 patch the -- what's the difference in cost of -- what do
8 you do, patch it together versus --

9 A. Splice.

10 MS. NELSON: Splice versus replace.

11 A. I believe it would be impractical to have spliced it
12 in this instance because the location of the cable was
13 lying where the building was about to be placed, and so
14 there was -- for Mr. Byre to complete construction of the
15 building, the cable needed to be moved.

16 MS. NELSON: I haven't conceded it had to be moved
17 either. But I am conceding you could have maybe -- I'm
18 conceding either you could have spliced the cable that
19 existed as well as moving it. I mean, you're charging him
20 \$162 for a new cable when maybe all you had to do was
21 splice it, even if you did relocate it. Is that not a
22 possible option?

23 A. I'm not sure -- normally I don't believe that we would
24 pull a cable out of the ground and then move that cable.
25 Maybe some insulation would be damaged in that process.

1 Normal procedure is to replace -- or when you relocate a
2 cable is to go back to a certain point, dig a hole, dig a
3 trench, did another hole, and splice a piece of cable into
4 it.

5 MS. NELSON: Was it a possibility you didn't have to
6 relocate that cable?

7 A. I don't believe so. I believe the cable was a line
8 across the location where the apartment building was
9 planned to be. So regardless of whether it had been cut
10 or not, we would have needed to move the cable. The fact
11 is we weren't notified in advance. The only way we found
12 out about it was it was cut.

13 MS. NELSON: So can I assume since the bill to Mr. Byre is
14 600 and some dollars now because you're not charging the
15 winter excavation fee, that if someone else severed the
16 cable, the bill would be \$800?

17 A. Yes.

18 MS. NELSON: Okay. I think that's it.

19 MS. SCHOENFELDER: I need to go back. You said if someone
20 else had severed the cable. I thought you weren't
21 charging for the severance of the cable but for the
22 relocation?

23 A. We're charging for the relocation.

24 MS. SCHOENFELDER: Severing the cable has nothing to do
25 with the charge?

1 A. That's true. Severing of the cable precipitated the
2 need for the relocation or made us aware of the need that
3 the cable needed to be relocated.

4 MR. BURG: You could have avoided the relocation if you
5 wanted to move the building; is that correct?

6 A. Yes.

7 MR. BURG: But he chose not to move the building?

8 A. Yes.

9 MR. BURG: So it indicated a necessity to move it because
10 of the building location?

11 A. Yes.

12 MR. BURG: Who paid for the installation at the time

13 Mr. Bennett requested it when it's on site like that? Is
14 that part of NSP's cost? Or when it's on a private site,
15 do they pay for the facilities?

16 A. There are -- depending on the length of the run, there
17 can be excess footage charges involved. I'm not aware of
18 the specifics in Mr. Bennett's case. Typically this --
19 that kind of installation would have been an NSP cost.

20 MR. BURG: What you're basically saying is if you're going
21 to gain enough new customers based on footage and
22 population, that you provide the services because you're
23 gaining the customers?

24 A. Yes.

25 MR. BURG: In this case there is a charge to Mr. Bennett

1 because services were already there and needed to be moved
2 to facilitate his building?

3 A. Or Mr. Byre.

4 MR. BURG: Mr. Byre, excuse me.

5 A. Exactly.

6 MR. BURG: Could we go to Exhibit NSP-3, which is the wire
7 diagram, I'll call it, the last page of that exhibit. Can
8 you indicate for me on there where the cable was cut at?

9 A. That line.

10 MR. BURG: She needs to get it on the record. Tell me
11 between what locations.

12 A. They are in the electrical diagram tricky.

13 Transformer K is located near 605. This is apartment
14 building 605, and Transformer V is located near apartment
15 building 609. So the cable cut is in this area here.

16 MR. BURG: It occurred near the one in the diamond shape
17 square; is that correct?

18 A. That's correct.

19 MR. BURG: And then I guess I would ask on Mr. Byre's
20 property now, if that cable had not been moved -- he said
21 he was satisfied that they were getting service already.
22 That was accomplished through the closing of the bus; is
23 that right?

24 A. Yes.

25 MR. BURG: And it was indicated by the previous witness.

- 1 How would -- if you opened that bus again and had not
2 either closed or moved that cable, would 609 have been
3 able to be serviced?
- 4 A. We were able to reestablish service to everyone in
5 that neighborhood by -- from the transformers, I guess,
6 isolating that broken cable between transformers K and V
7 and then serving everyone else.
- 8 MR. BURG: But you see the No. 609?
- 9 A. Yes.
- 10 MR. BURG: Is that an apartment building?
- 11 A. I believe so, yes.
- 12 MR. BURG: And where is that one serviced out of?
- 13 A. I believe from transformer V.
- 14 MR. BURG: And would transformer V have powered with the
15 severed cable if the bus were open?
- 16 A. We would have been able to first open the switch to
17 the severed cable section and then close -- it is normally
18 open to reenergize that transformer V.
- 19 MR. BURG: I understand. My question was, you said that
20 buses were open on the property line where it shows the
21 opening there, correct?
- 22 A. Yes.
- 23 MR. BURG: Your normal configuration?
- 24 A. Within the transformer box.
- 25 MR. BURG: After the cable was severed, you had to close

1 that in order to get service to the customers what I will
2 call on this diagram above the severed position; would
3 that be correct?

4 A. Well, and below at 609.

5 MR. BURG: Okay. I don't know it's above or below. But
6 if you opened that bus back up, which is your normal
7 configuration, without either relocating or fixing the
8 cable, would 609 have been able to be serviced?

9 A. I'm sorry. I need to try to understand that
10 question.

11 MR. BURG: 609, right above 609 where that big black thing
12 is?

13 A. Transformer V.

14 MR. BURG: It says n-o. Your normal configuration is to
15 have that line between there open?

16 A. Normally open, yes.

17 MR. BURG: You had to close that to service apartment 609;
18 is that correct?

19 A. Yes, that's correct.

20 MR. BURG: If you would have opened it back up without
21 splicing or relocating 609, you would have had no power;
22 is that correct?

23 A. That's correct.

24 MR. BURG: Because Mr. Byre said he was just satisfied
25 with it being that way. So he needed to relocate the

1 cable or fix the splice, if I understand what he said
2 right. And that's not permissible in your power
3 configuration; would that be correct?

4 A. We had a looped system that allowed us to restore
5 service as in this case for this kind of circumstance.

6 MR. BURG: But without relocating the cable, you could no
7 longer have a loop system?

8 A. That's correct.

9 MR. BURG: Can you show me -- can you again describe on
10 here where the loop went, the new relocation?

11 A. The relocated cable closely parallels on this drawing
12 because of the scale, and this is an electrical drawing as
13 opposed to a facilities drawing. It shows the approximate
14 location of the facilities, but its primary purpose is to
15 show the electrical connection between transformers. So
16 for all practical purposes, really the cable was moved
17 over a few feet and on a scale of this map didn't really
18 probably necessitate any redrawing.

19 MR. BURG: So it moved over a few feet to necessitate the
20 adequate set back from the building?

21 A. That's correct.

22 MR. BURG: Under the one call law, would you have had the
23 right to add a penalty or some kind of charge for the
24 severing of the cable if one call had not been contacted?

25 A. Had we not had the need to relocate the cable and

1 rather we would have then needed to repair the cable, we
2 would have had the right, I believe by statute, to pursue
3 damages for that.

4 MR. BURG: Do you have any idea what those damages are?
5 Did anybody ever estimate those?

6 A. No.

7 MR. BURG: Is there anything beyond damages for the fact
8 of cutting the -- the damages could include loss of
9 service, and some other things. Didn't pursue any of
10 those?

11 A. No, we did not.

12 MR. BURG: Okay. That's all I have.

13 EXAMINATION

14 BY MS. WIEST:

15 Q. Just for clarification, I am confused on one point. I
16 thought Mr. Kullander testified that it only serviced his
17 property. Why did others lose power?

18 A. There was confusion. I was confused by his answer as
19 well. This is a cable that runs through this neighborhood
20 and is serving customers probably on both ends of this
21 property, serving transformers on both ends. So I believe
22 it, in fact, does serve customers other than Mr. Byre,
23 yes.

24 Q. If a cable needs to be relocated and it's on private
25 property, is the property owner always responsible for the

1 relocation?

2 A. My understanding of administrative rules would lead me
3 to believe that if a customer needs us to relocate a
4 cable, that we then have the right and authority to seek
5 payment from that customer for that relocation.

6 Q. I believe the rule states if the customer requests
7 this. But it's your position the customer did request
8 this relocation?

9 A. By the fact that the cable was cut and that Mr. Byre
10 intended to continue construction, it left us with really
11 no choice other than to relocate the cable rather than
12 repair it.

13 Q. Do you know of any tariff provision that would apply
14 in these instances?

15 MR. GERDES: I didn't hear your question.

16 Q. Do you know of any tariff provision that would apply
17 in this instance?

18 A. Not at the moment I don't. I'm not aware of any, no.

19 MS. WIEST: That's all I have.

20 MS. NELSON: I have a couple. It seems to me that -- at
21 least I'm interpreting you telling me that you had to
22 relocate this cable because you have this loop system and
23 the thing had been severed.

24 Now, I've leaped to the conclusion that the loop
25 system is kind of taking care of redundancy. You're

1 protecting these so people won't be without power for long
2 periods of time. I have a question about whether or not
3 that system really only served Mr. Byre or if it served
4 other people, if other people are benefiting from it.

5 I thought I heard Mr. Byre saying that he believes
6 he could have gone without this loop system, and he still
7 would have had service, which wouldn't have necessitated
8 relocating it. Is that accurate, or did I reach an
9 erroneous conclusion? It's totally possible.

10 A. I'm not sure I can speak to why this particular system
11 is looped because not everyone is on a looped system.
12 It's just a circumstance that we were able to connect that
13 particular line at two different locations to provide a
14 looped kind of service.

15 But once that loop has been established, I believe
16 we at least try to maintain it as such and not just
17 abandon a section of cable.

18 MS. NELSON: But then I think -- for myself anyway, it
19 seems to me that that benefits you and a lot of other
20 people and not just Mr. Byre, right? I mean, is it true
21 that everybody would have been served, and he would have
22 been served without this relocation and without this loop
23 system? So this is a nice thing to do instead of a
24 necessitated thing?

25 A. Well, certainly we could have continued to serve all

1 of the customers, and we did serve all of the customers
2 without this cable in place. I'm not certain about the
3 particular loading on the cable because of its size, and
4 with the addition of Mr. Byre's building, that may have
5 necessitated their restoration of this loop.

6 They maybe couldn't carry the entire loop during
7 summer loading conditions without that loop. I guess I
8 don't know that. That may be the reason for having a loop
9 is we split it somewhere in the middle and try to balance
10 the loading on that cable.

11 MS. NELSON: You said there were as many as like 7,000 and
12 some people that are served. Mr. Kullander -- and in your
13 brief you talked about 1,200 people losing power. Can I
14 assume that there were 7,000 and some people served, but
15 only 1,200 or something of them lost power?

16 A. I think maybe 7,000 is a voltage number. 7,900
17 volts.

18 MS. NELSON: But 1,200 people lost power of 7,000 volts?

19 A. Yes.

20 MR. BURG: What happens to the system when a cable like
21 that is cut? Why did the 1,200 lose power?

22 A. When a cable is cut, that causes the electricity to
23 flow to the ground, and because electricity follows the
24 path of least resistance, it all of a sudden appears to
25 the electrical power system as a very small resistance

1 because the ground is right there. So a large current
2 begins to flow. This is in a matter of milliseconds.

3 Back at the substation we have protection equipment
4 called relays and breakers. The relay senses this high
5 current flow, and it acts to open the breaker to protect
6 the wire, the cable, from overheating and melting. And so
7 within 12/60ths of a second, that breaker opens, and the
8 current stops flowing on that wire.

9 MR. BURG: But because of the configuration of the safety,
10 the signals that open that up, that's why 1,200 lost power
11 rather than just the people in the location?

12 A. That's right. The breaker is located back at the
13 substation.

14 MR. BURG: In other words, you can't have breakers often
15 enough to do it to isolate everything, but that number of
16 people were affected when it got that signal to open the
17 breaker; is that right?

18 A. That's right.

19 MR. BURG: That's why there were 1,200. It was easier to
20 fix it once you isolated that spot?

21 A. That's right.

22 MR. BURG: How would you have served this new apartment
23 building? I'm assuming since the cable went through it,
24 it went where the building was going to go or close to it,
25 how would you have served that building if that had not

1 been restored?

2 A. I believe we are serving it from transformer K, and
3 the thing I'm not certain on is the relative loading from
4 each end of these lines for summer loading conditions and
5 whether or not we have enough capacity to serve all of the
6 transformers in this area without having some of them
7 serve from either end. That's a question I'm not certain
8 about.

9 MR. BURG: I guess from the questions, a point I want
10 to make is for reliability and safety reasons, we've
11 encouraged looping. I think generally the business has,
12 and I think we accept that.

13 I would be reluctant to think we have abandoned it
14 because of one severed position, that we would abandon a
15 loop investment because of one severed position, because I
16 think looping is advantageous both for safety and for
17 reliability. Okay. That's all I have.

18 MS. WIEST: Any redirect?

19 EXAMINATION

20 BY MR. GERDES:

21 Q. Mr. Wilcox, did you perform an internal investigation
22 and interview a couple of employees that had firsthand
23 knowledge of this incident prior to preparing your answer
24 in this matter?

25 A. Yes, I did.

1 Q. And did you talk firsthand to people that had actually
2 observed this cable cut?

3 A. Yes, I did.

4 Q. And who was that?

5 A. Lori Tendler.

6 Q. And did you also talk firsthand to the people that
7 were on the site and repaired the -- or I should say
8 reinstated service?

9 A. Yes, I did.

10 Q. And were there others that observed the cable cut as
11 well other than Lori Tendler?

12 A. Yes, there were.

13 Q. Did you talk to any of those people?

14 A. Yes, I did.

15 Q. And were you satisfied in your mind that, in fact, the
16 cable was cut by this excavation that was made to start
17 the construction of this apartment building that we've
18 been talking about?

19 A. Yes, I was.

20 Q. Would you be willing to obtain affidavits from those
21 individuals that did, in fact, see this cable cut and
22 provide them as exhibits later after this proceeding?

23 A. Yes, I will.

24 Q. And, again, the billing that has been submitted to
25 Mr. Byre is for moving the cable, not for damages

1 occasioned to find the cable cut; is that right?

2 A. That's right.

3 Q. The reason the cable needed to be moved is because
4 had it stayed where it was, it would have been under his
5 apartment building; is that correct?

6 A. That's correct.

7 Q. And he proceeded to build that apartment building; is
8 that correct?

9 A. That's my understanding, yes.

10 MR. GERDES: That's all I have. Thank you.

11 MS. WIEST: Any further questions of this witness?

12 MR. BYRE: Well, no. That's fine.

13 MR. HOSECK: None.

14 MS. WIEST: Thank you, Mr. Wilcox. Do you have any
15 further witnesses?

16 MR. GERDES: No further witnesses.

17 MS. WIEST: Mr. Byre, do you have any rebuttal testimony
18 you would like to give at this time?

19 MR. BYRE: Well, I really don't. I think everything has
20 been exposed that needs to be talked about. I just feel
21 like, you know, the cable relocation was fine with me, but
22 it just shouldn't have been an expense to me. It should
23 have been an expense to NSP.

24 MS. WIEST: Do any of the commissioners --

25 MR. BURG: Did staff have a witness?

1 MR. HOSECK: No.

2 MS. WIEST: Did anybody wish to make a closing statement?

3 MR. HOSECK: Yes, I would.

4 MS. WIEST: Mr. Byre, do you have a closing statement?

5 MR. BYRE: No.

6 MS. WIEST: NSP?

7 MR. GERDES: Very briefly. It's late, and the room is
8 warm. I think there are several settling things that have
9 to be mentioned here. First of all, we can't lose sight
10 of the one call system and its purpose. The statute which
11 we quoted in our brief is clear and unequivocal. It says
12 no excavator may begin an excavation without first
13 notifying the One Call Notification Center. There is no
14 latitude. There is no reference to maps. There is no
15 exception. That notification must be made.

16 Had that notification been made, this cable would
17 have been located, and Mr. Byre and his excavators would
18 have known it was there. And then appropriate steps could
19 have been taken. Mr. Byre could have either decided to
20 move his building, or he could have asked that the service
21 be moved.

22 But clearly the bottom line is there was no request
23 for a location of this cable. This was, in fact, a cable
24 that was a service line in that apartment complex, and the
25 record is clear that it was placed there with the

1 permission of the owner of that facility at the time.

2 Now, it's unfortunate that Mr. Byre did not have
3 the knowledge that could have been obtained from the prior
4 owner of the premises. Obviously that would have avoided
5 this situation. But nonetheless, Mr. Bennett had sold the
6 property and Mr. Byre became the owner of the property,
7 and he had an obligation to locate that cable.

8 Clearly the cable had to be moved. Clearly the
9 cable had to be moved because Mr. Byre wanted to build a
10 building. And we would take the position that as a matter
11 of law he had to request to move the cable or move the
12 building, and he didn't move the building.

13 Therefore, it's NSP's position that this is clearly
14 a reasonable request. NSP hasn't asked for damages for
15 the cable being cut or anything like that. They've asked
16 for the cost of moving the cable. We would submit that
17 that's a reasonable request under the circumstances.
18 Thank you.

19 MS. WIEST: Staff?

20 MR. HOSECK: Mr. Chairman, members of the commission, I
21 just have some random comments. And as I go along, I'm
22 sure the randomness of them will become apparent.

23 I do not necessarily agree with NSP's position in
24 this matter that the failure by Mr. Byre to call the one
25 call board imposes strict liability upon him. The brief

1 from NSP and Mr. Gerdes' arguments accurately point out
2 that one may not dig without calling the notification
3 board.

4 I'm not sure that the consequences of one's failure
5 to not call are necessarily played out in the law.
6 Because the other statute that is not cited in the brief
7 is 49-7 A-10, which establishes strict liability only if
8 information is requested and is provided in a timely and
9 accurate manner. So in other words, what I'm saying is
10 only if the one call thing is kicked into gear and then
11 something happens is there a matter of strict liability.

12 Now, this may set a standard of care. It may
13 set a standard of whether or not Mr. Byre was prudent, a
14 reasonably prudent person under a negligence theory, but I
15 do not believe it absolutely imposes liability on him
16 automatically and at the drop of a handkerchief, so to
17 speak.

18 There is a curious position that NSP has taken in
19 this matter, and that is that reasonableness under their
20 agreement with the predecessor titled to Mr. Byre is that
21 they can put the cable anywhere on the lot that they
22 want. And they have taken a position, at least through
23 the witness Mr. Kullander, that this does not substitute
24 an easement. In other words, it is not a property right
25 that they have on Mr. Byre's property.

1 I submit that there is one gaping hole in what has
2 occurred here, and that is that I'm not sure Mr. Byre is
3 the proper party to have been billed by NSP. The record,
4 as I recall it, indicates that the foundation work was
5 done by a company called First Rate Excavating. By the
6 mere title of that company, it would indicate to me that
7 they know what their business is; and furthermore, under
8 the statute for definitions under the one call board, an
9 excavator is any person who performs excavations.

10 I'm not so sure that Mr. Byre is even responsible
11 here, that rather the responsibility belongs to First Rate
12 Excavating as an excavator who is digging the hole, so to
13 speak.

14 The other thing that I think is curious is that
15 this thing has seemed to gravitate toward a change in
16 location or relocation of this cable rather than a damage
17 claim. And in that regard, I would respectfully direct
18 the commission's attention to Administrative Rule
19 20-10-18-02 which talks about this business of who gets
20 stuck with the relocation of service.

21 And it seems to indicate that in order for the
22 customer to pay that bill, the customer has to have
23 requested that service. I think that the record is shaky,
24 so to speak, in regards as to Mr. Byre having actually
25 requested this relocation.

1 You've got some equities to deal with here and some
2 facts to deal with, but I don't believe that it's a cut
3 and dry matter for the commission. And I would hope that
4 the staff has brought out some of these points for you to
5 think about. Thank you.

6 MR. BURG: Can I ask one question mostly for clarification
7 because a lot of comments were made about the -- what I
8 call the drawing, this particular drawing. I think it was
9 clarified that you made these comments on the drawings; is
10 that correct.

11 MR. BYRE: Yes.

12 MR. BURG: Did you have this drawing available before you
13 started construction?

14 MR. BYRE: Yes.

15 MR. BURG: You obtained this drawing, and did you use it
16 as a determination of whether to --

17 MR. BYRE: The bottom corner drawing I had. That came off
18 of that site plan.

19 MR. BURG: And you used that as a determination of where
20 to dig and not to dig based on the power?

21 MR. BYRE: Yes.

22 MR. BURG: Thank you.

23 MR. GERDES: May I have two points of rebuttal or maybe
24 three points of rebuttal to Mr. Hoseck's comments?

25 MS. WIEST: Okay.

1 MR. GERDES: First of all, I agree with Mr. Hoseck that
2 49-7 A-10 does not place strict liability on the
3 excavator. It simply says that the excavator can be
4 liable for damages if, in fact, they have been negligent.
5 I agree with that. But I would submit that clearly the
6 standard has been proven here through the only evidence
7 uncorroborated, through the only unchallenged evidence in
8 the record, and that is the industry standard is, in fact,
9 to obtain locations. So we submit that that clear case of
10 negligence has been shown.

11 Secondly, as far as Mr. Hoseck's point that First
12 Rate, no pun intended, Excavating should be the one that
13 is billed here, it's not a proper point because Mr. Byre
14 has said under sworn testimony he believes he's
15 responsible for First Rate and that he did not want to
16 shift that responsibility. At least that's what I heard
17 Mr. Byre say.

18 So it is our position again on the -- thirdly and
19 lastly, it's our position that on the issue of whether or
20 not there was a request to change service, we would
21 submit -- and Mr. Hoseck rightly indicates that -- there
22 are equities to go both ways. But we would submit that
23 when a customer leaves the company no choice but to move
24 the service, that the customer has, in fact, requested
25 that that service be moved. Thank you for your time.

1 MS. WIEST: The commission will await the late filed
2 exhibits and make a decision following that. No briefs
3 are required. Thank you.

4 MR. GERDES: Thank you.

5 (The hearing was concluded at 5:30 p.m.,
6 September 29, 1997.)
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1 STATE OF SOUTH DAKOTA)

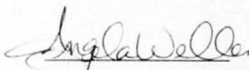
2 :SS

CERTIFICATE

3 COUNTY OF MINNEHAHA)

4
5
6 I, Angela Weller, Court Reporter in
7 the above-named County and State, certify that the
8 above-entitled proceedings were reported by me, and the
9 foregoing pages 1 - 82, inclusive, are a true and correct
10 transcript of my stenotype notes.

11 Dated at Sioux Falls, South Dakota, this 22nd
12 day of October, 1997.

13
14
15 
16

17 Angela Weller
18
19
20
21
22
23
24
25

PLEASE TYPE OR PRINT CLEARLY

EL97-008
RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION APR 17 1997
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

COMPLAINT

Complainant(s): (The party filing the complaint)		Respondent(s): (The person or Company complained against)	
Name	JOHN BYRE	Contact Person	
Address	1916 ASHLEY CIRCLE	Company	NORTHERN STATES POWER
City, State, Zip	SIOUX FALLS SD 57104	Address	500 W. RUSSELL
Work Phone	605 335 3740	City, State, Zip	SIOUX FALLS SD 57104
Home Phone	336 7991	Work Phone	339-8300
Cellular Phone	336 7991	Cellular Phone	
Fax	335 3740	Fax	

If the Complainant is represented by an attorney, please list the attorney's name, address, telephone number and fax number below.
If Complainant is not represented by an attorney, please leave blank:

The facts giving rise to my complaint:

I believe that I am being unfairly charged for moving a cable that was installed incorrectly by Northern States Power Company.

The drawings & work order are very specific about where the cable was to run. NSP claims that they can change the route because of a dirt pile. This excuse is invalid because the original contract clearly states that prior to NSP starting work the owner must make sure the route of NSP's underground installation is accessible to NSP's equipment and all obstructions must be removed. (See Point #2 in the original contract). Enclosed, please find several drawings that show specific about where NSP was to install their cables and where the line was actually installed.

Also enclosed, is the NSP drawing submitted to the PUC (Exhibit E). While it is not to scale, it is also not even close to how the building actually sets as depicted in earlier exhibits B and C.

Thank you for your consideration.

Exhibit E is a large drawing - kept in the packet.



NOTE: Please attach additional pages, if necessary, to explain your situation. Also enclose copies of any bills or other documents which may pertain to your complaint.

RESOLUTION REQUEST

I ask that the Public Utilities Commission grant the following relief. (What do you think the Commission should do to solve this problem?)

I believe the PUC should cancel the bill that NSP has assessed me and hold NSP responsible for their own mistakes.

NOTE: Please attach any additional pages, if necessary.

VERIFICATION

Signature must be witnessed by a notary public.

John Byre
Complainant's Signature

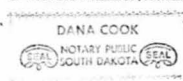
4-15-97
Date

State of South Dakota

County of Minnehaha :SS

On this 15th day of April, 1997, before me personally came and appeared John Byre known to me to be the individual described herein and who executed the foregoing instrument, and who duly acknowledged to me that he/she executed same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Dana Cook
Signature of Notary Public

(SEAL)

My commission expires: 08-02-03

NEXT

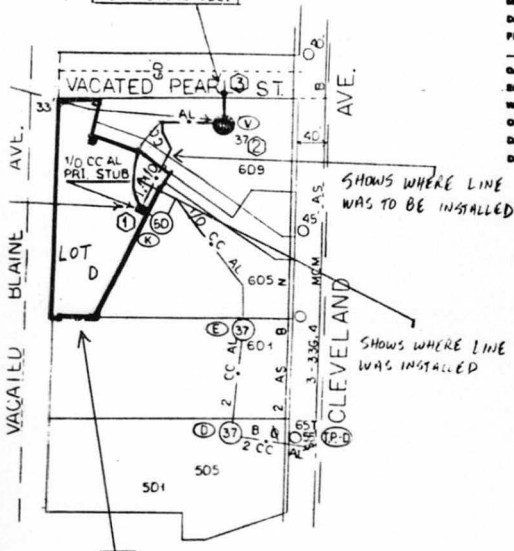
DOCUMENT (S)

BEST IMAGE

POSSIBLE

Exhibit A

PRIMARY STUB-UP
FOR FUTURE USE.



Loc. SIDUX FALLS, SO. DA
Proj. No. SFCC RBA AAR
Map PLATE 25
Dist. 609 NO CLEVELAN
PDR LAW - 21 - RD
UG UTILITY CHECK
Gas YES Tel. YES
Elec. YES CATV YES
Water YES Sewer NO
Other NONE
Date SEPT. 14, 1984
Designer WM. KULLANDER

SHOWS HOW LOT D
IS SHAPED BY DARKENED
LINE

**CABLE TO BE INSTALLED 42" DEEP.
FOREMAN: Please Note - DEPTH AND
LOCATION OF EXCEPTIONS.**

Signed

Exhibit B

- ① INSTALL : PRIMARY SPLICE PIT!
SKHAF1
- ② INSTALL : 37.5 KVA 7820 X 120/240 V.
1Ø PAD MOUNT TRANSFORMER
- ③ INSTALL : PRIMARY STUB-UP FOR
FUTURE USE.

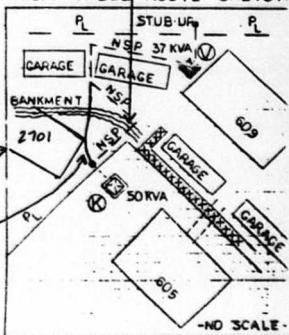
TRANSFORMER TO FACE/C
NORTHWEST.

PRI. SPLICE



SHOWS WHERE
NSP LINE IS
SUPPOSE TO BE

N.S.P. CABLE ROUTE SKETCH



SHOWS APPROXIMATE
LOCATION OF BUILDINGS

SHOWS WHERE NSP
LINE WAS INSTALLED

Exhibit C

Shows the exact location of the building on Lot D + how far off of the property line 24'9"
The NE corner of the building is

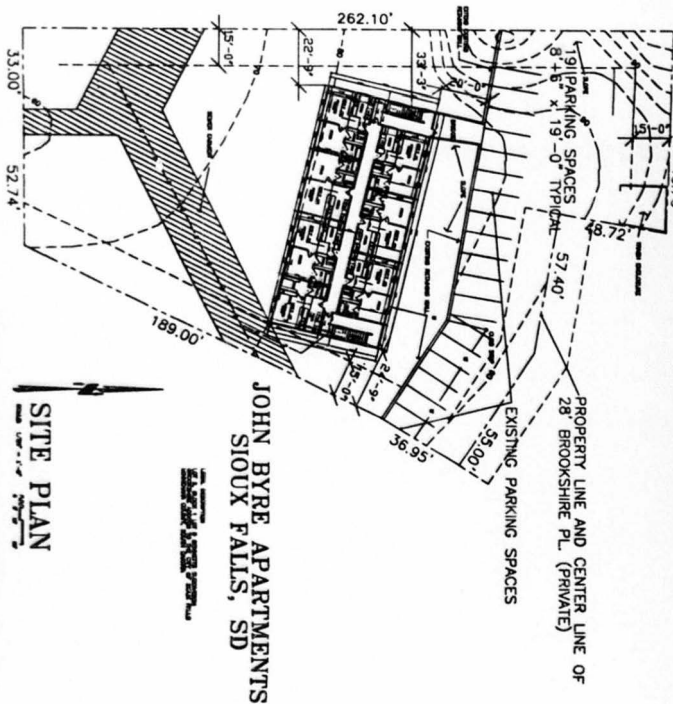


Exhibit D UNDERGROUND SERVICE FORM

NSP Form 7001 (1-6-81)

In consideration of NORTHERN STATES POWER COMPANY, hereinafter called "NSP," extending its facilities to make 120/240 volt, 1 phase, 3 wire underground service available to

(customer) Raymond J. Bennett

at (service address) 609 N. Cleveland Ave. (city) Sioux Falls

the sum of N/C Dollars (\$ N/C)

will be paid to NSP by Ray Bennett Construction Co., Inc.

Address R.R. 6 City Sioux Falls Zip 57101

in accordance with the following terms to be signed prior to construction by NSP

Credit Approval [Signature]

Receipt of the above amount hereby acknowledged on behalf of NSP by _____

1. The customer hereby grants NSP the right, privilege and easement to install, operate and maintain its underground facilities on the property as described above and at the approximate location as shown on the attached "Exhibit A".

2. The customer also agrees that, prior to NSP starting work: (a) the route of NSP's underground installation shall be accessible to NSP's equipment; (b) all obstructions shall be removed from such route at no cost or expense to NSP; (c) ground elevation along the route shall not be above or more than four (4) inches below the finished grade; and (d) the area under the transformer pad shall be compacted to at least 2000 lbs./sq. ft.

3. Bennett Construction agrees to pay all additional installation costs incurred by NSP because of (a) soil conditions that impair the installation of underground facilities, such as rock formations, etc., (b) sidewalks, curbing, blacktop, paving, sod or other landscaping and obstructions along the cable route. NSP will backfill trench with existing soil. Compaction along cable route and restoration of construction areas on customer property is the responsibility of the customer.

4. NSP is not responsible for any customer owned underground facilities not exposed at the time service is installed.

5. The underground installation may be subject to a winter construction charge if it is installed between October 1 and April 15. Bennett Construction agrees to pay this charge if NSP determines winter conditions exist when the underground facilities are installed. NSP will waive the winter construction charge if prior to October 1st the customer is ready to accept electrical service, has executed his form and has notified NSP in writing that the requirements of Paragraph 2 hereof have been fulfilled.

6. Customer will install NSP approved protective barriers where pad-mounted transformers are to be installed in parking area or area of vehicular traffic.

7. The underground facilities installed by NSP, shall be the property of NSP and any payments made by the customer, or his contractor, shall not entitle him to any ownership interest or rights therein.

8. The customer agrees to pay the cost of relocating any portion of said underground facilities made to accommodate his needs or required because of his altering the grade.

9. Customer must provide the following minimum clearance around the transformer: front, 10 feet; sides and back, 2 feet. EXCEPTION: side facing building must have 30" clearance. These clearances must be at the same grade as the transformers. If screening is to be used, the area in front of the transformer must be left open or a hinged door, easily operable by one man, must be provided. The area must be accessible 24 hours a day.

(over)

\$ _____ Excess U. G. Distribution Lateral (Primary Cable)

\$ _____ Specific Service Location or Route

\$ _____ Excess U. G. Service Lateral

\$ _____ Replace Overhead Line With Underground Line

\$ _____ U. G. Service Lateral (Secondary Service From Utility Pole)

\$ _____ Temporary Service _____ KVA

\$ _____ U. G. D. Installation Including U. G. Service Lateral

\$ _____ Other (explain) _____

**Customer agrees to pay monthly Residential Service Underground rate of the type of installation indicated by a double asterisk ☐ Applicable ☒ Not Applicable

Winter Const. Charge: \$ _____ See Paragraph 5

Dated this 29 day of Sept 1984

Dated this 29 day of Sept 1984

Customer Raymond J. Bennett

Contractor Bennett Construction Co.

By [Signature]

By [Signature]

NSP Representative Wm. Kullander Division Sioux Falls 14 NSP Proj. No. SECC BBA AAB

Const. \$ _____ Rem. \$ _____ Maint. \$ _____ Oper. \$ _____ Transf. \$ _____ Total \$ N/C

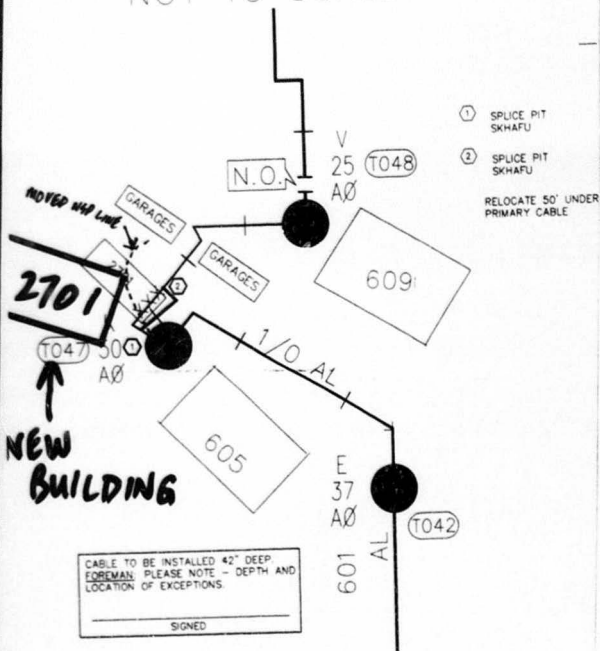
ORIGINAL - DIVISION ACCOUNTING

COPY - CUSTOMER

COPY - DIVISION DISTRIBUTION ENGINEERING

Exhibit E

NOT TO SCALE



UNO

1-229

E. 6TH (2ZRF) STR

2-SFS62

LOC 2701 E BROOKSHIRE PL
PRBL NO SFOR BYR AAB
MAP M50-B4
DESC RELOCATE PRIMARY
FOR MHA71-13.8KV
UG UTILITY CHECK
NO DAE ONE CALL X YES NO
ONE CALL ID#
SECTION 15 NE 1/4
TYP 101N RANGR 42N
+ STREET E 8TH ST
OTHER NO
DATE 2-7-96
DESIGNED LORI TENDLER



SCALE: 1" = 100'
FIELD CHECKED BY
LORI TENDLER

LAW61-
MHA71



Northern States Power Company
South Dakota

Jim Wilcox, Manager,
Community & Government Relations
500 West Russell Street
P.O. Box 988
Sioux Falls, SD 57101-0988
Telephone (605) 339-8350 fax 339-8204
email wlcj01@nspco.com

August 12, 1997

RECEIVED

AUG 15 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Mr. William Bullard, Executive Director
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Re: Docket EL97-008 in the matter of the complaint filed by John Byre, SF, SD
against NSP regarding a bill.

Dear Mr. Bullard:

Enclosed please find ten copies of NSP's response to the Commission order of July
29, 1997 requiring an answer in this matter.

If anyone has any questions, please call me at 339-8350

Sincerely,

Jim Wilcox

c. Mike Hanson

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED	)	ANSWER
BY JOHN BYRE, SIOUX FALLS, SD, AGAINST	)	TO
NORTHERN STATES POWER COMPANY	)	COMPLAINT
REGARDING A BILL	)	DOCKET EL97-008

Cable Cut Incident

On January 8, 1996, NSP first learned of the apartment building that Mr. Byre was constructing at 2701 East Brookshire Place, Sioux Falls, South Dakota when Mr. Byre's construction crews cut through NSP's 7970 volt primary distribution cable between transformers "K" and "V" causing an outage to approximately 1,200 customers in the east Sioux Falls area.

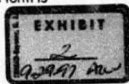
The electric power system around 2701 East Brookshire Place is a "looped" system, and NSP crews were able to re-route power around the damaged cable and restore service to the affected customers. Following investigation, NSP representatives determined that Mr. Byre needed NSP to relocate this primary cable. Normally customers contact NSP prior to construction to inform the company of their future plans. In this case, notification did not occur until after the underground electric cable had been cut. Further, the South Dakota "One Call Notification System" has no record of "locations" requested for this site before the incident on January 8th.

The actual cost to NSP of the cable cut consists primarily of the investigative labor, the lost revenue from the power outage, and any additional labor or materials. Due to NSP's ability to restore service to the neighboring customers without repairing this cable cut, combined with NSP's desire to provide "good customer service" led NSP representatives to not repair the cable immediately, not seek damages for the "cable cut" from Mr. Byre, and to begin design of the cable reroute that Mr. Byre needed.

Cable Rerouting

Although "cable cuts" are infrequent, cable reroutes occur occasionally. South Dakota Public Utility Administrative Rules address this issue specifically in Section 20:10:18.02. The second sentence in that section reads, "If a change in the location of a utility service to a customer is requested by a customer, the customer shall pay for the cost of relocating the service."

Subsequently, NSP proposed a standard "Underground Service Form" to Mr. Byre as is the normal case with any new commercial customer. That service form is



included as Exhibit NSP-1. This form lists the construction charges that resulted from the cable reroute. Exhibit NSP-2 shows a print-out from the NSP computer system that details the cost of the material and activities necessary to move this cable. The service form also shows an additional \$150 winter construction charge that is based on a rate of \$3 per foot of trench during the winter construction season. This service agreement was sent to Mr. Byre and verbally rejected. NSP is currently providing service to 2701 East Brookshire Place without an executed service agreement.

Because of the urgency of returning the NSP "looped" system to normal mode, NSP moved forward with the re-routing construction without a signed service agreement from Mr. Byre in April of 1996. NSP representatives informed Mr. Byre that the \$150 winter construction charge would be deleted, leaving Mr. Byre responsible for only actual relocation charges of \$654.

Map Purposes

Mr. Byre's complaint, includes a drawing in the lower right corner of his Exhibit B labeled "NSP Cable Route Sketch." Please note that in the lower right corner of that drawing appears the words, "No Scale." This means that the drawing is not to scale and should not be construed to show the precise location of NSP's underground facilities.

Exhibit NSP-3 is a current NSP electrical drawing depicting the electrical facilities NSP has in the area of this matter. The purpose of NSP electrical drawings is to depict the electrical continuity of the NSP system. That is, the respective electrical connections of delivering, switching, and transforming facilities. Where practical these electrical facilities are drawn approximately to scale, depicting the length of wire between known equipment points, but not necessarily showing the exact physical location of these facilities. The typical scale of NSP's electrical drawings is one inch equals one hundred feet. At that scale, the details of the physical location of the electrical equipment relative to the actual geography is difficult to convey. For safety reasons, the drawing of these electrical facilities should not be considered the actual location of the facilities. The exact location of electrical equipment must be verified and marked in the field by NSP representatives. To assume the exact locations of facilities may cause a serious safety violation.

In order to improve electrical safety, the Electrical Industry has established guidelines for locating underground facilities. In South Dakota, the "One Call" system requires contractors to seek the precise location of facilities before digging. This protects the health and safety of their construction crews as well as the health and safety of the general public, and the reliability of electrical power systems. Further, SDCL 49-7A-10 holds excavators strictly liable for any damage caused.

Conclusion

NSP believes that Mr. Byre is in violation of state statutes regarding his failure to call for "locates" on this project. NSP has been very generous in not pursuing damages resulting from this incident. NSP has in good faith provided temporary and permanent service to 2701 East Brookshire Place. Finally, NSP believes we are within the authority granted by the South Dakota Public Utilities Commission Administrative Rules in seeking payment for the relocation of facilities. For these reasons, NSP respectfully requests that the complaint be dismissed.

Dated: August 15, 1997

NORTHERN STATES POWER COMPANY



BY: _____

Jim Wilcox
Manager of Government and Community Relations

Exhibit NSP-1

UNDERGROUND SERVICE FORM

Form 12-258 (2-96)

In consideration of NORTHERN STATES POWER COMPANY, hereinafter called "NSP", extending its facilities

to make 120/240 volt, 1 phase, 3 wire underground service available

to (customer) LAND TITLE GUARANTY COMPANY

at (service address) 2701 E. BROOKSHIRE PLACE (city) SIOUX FALLS

the sum of EIGHT HUNDRED TWENTY AND 08/100 Dollars (\$ 820.08)

will be paid to NSP by (other than above)

Address (other than above)

1916 ASHLEY CIRCLE City Sioux Falls Zip 57104

in accordance with the following terms:

TO BE SIGNED PRIOR TO CONSTRUCTION - CONSIDER THIS

A. BILL

Credit Approval

Receipt of the above amount hereby acknowledged on behalf of NSP by

1. The customer hereby grants NSP the right, privilege and easement to install, operate and maintain its underground facilities on the property as described above and/or the approximate location as shown on the attached 'Exhibit A'.

2. The customer also agrees that, prior to NSP starting work: (a) the route of NSP's underground installation shall be accessible to NSP's equipment; (b) all obstructions shall be removed from such route at no cost or expense to NSP; (c) ground elevation along the route shall not be above or more than four (4) inches below the finished grade; and (d) the area under the transformer pad shall be compacted to at least 2000 lbs./sq. ft.

3. LAND TITLE GUARANTY COMPANY agrees to pay all additional installation costs incurred by NSP because of (a) soil conditions that impair the installation of underground facilities, such as rock formations, etc., and (b) sidewalks, curbing, black top, paving, sod or other landscaping and obstructions along the cable route. NSP will backfill trench with existing soil. Restoration of construction area on customer property is the responsibility of the customer.

4. NSP is not responsible for any customer-owned underground facilities not exposed at the time service is installed.

5. The underground installation may be subject to a winter construction charge if it is installed between October 1 and April 15. LAND TITLE GUARANTY COMPANY agrees to pay this charge

if NSP determines winter conditions exist when the underground facilities are installed. NSP will waive the winter construction charge if prior to October 1st the customer is ready to accept electrical service, has executed this form and has notified NSP in writing that the requirements of Paragraph 2 hereof have been fulfilled.

6. The underground facilities installed by NSP shall be the property of NSP and any payments made by the customer, or their contractor, shall not entitle the customer to any ownership interest or rights therein.

7. The customer agrees to pay the cost of relocating any portion of said underground facilities made to accommodate the customer's needs or required because of altering the grade, additions to structures, installing patios, decks or gardens or any other condition which makes maintenance of the company's facilities impractical.

8. Customer must provide the following minimum clearance around the transformer: front, 10 feet; sides and back, 2 feet. EXCEPTION: side facing building must have 30' clearance. These clearances must be at the same grade as the transformers. If screening is to be used, the area in front of the transformer must be left open or a hinged door, easily operable by one person, must be provided. The area must be accessible 24 hours a day.

\$	Excess U.G. Distribution Lateral (Primary Cable)	\$	150.00	Winter Const. Charge (See paragraph 5)
\$	Excess U.G. Service Lateral	\$		Specific Service Location or Route
\$	U.G. Service Lateral (Secondary Service From Utility Pole)	\$		Replace Overhead Line With Underground Line
\$	U.R.D. Installation Including	\$		Temporary Service KVA
\$	U.G. Service Lateral	\$	654.00	Other (explain) Relocate UG Primary
\$	U.G. Distribution Lateral (Primary Cable)	\$	16.08	2% Excise Tax
		Trench Ft.	\$ 820.08	TOTAL CHARGES

**Customer agrees to pay monthly Residential Service Underground rate of the type of installation indicated by a double asterisk. ☐ Applicable ☒ Not Applicable

Dated this _____ day of _____ 19 _____ Dated this _____ day of _____ 19 _____

Customer _____ Contractor LAND TITLE GUARANTY COMPANY

By _____ By _____ File # 519022

NSP Rep. L.A. TENDLER 2/12/96 Div. SD-14 NSP Proj/Serv. No. SFCR BYR AAB

Const. \$ 804.00 Rem. \$ _____ Maint. \$ _____ Oper. \$ _____ Transf. \$ _____ = Total \$ 804.00

NEXT

DOCUMENT (S)

DISREGARD

BACKGROUND

0141:14:110

PROGRAM P068
PF110

PROJECT MANAGEMENT SYSTEM
COMPATIBLE UNIT SUMMARY

Exhibit NSP-2

PAGE: 001
RUN DATE: 01/30/78

FOR: SIOUX FALLS

HQRT: 1449 SIOUX FALLS

FILE: 519022

PROJECT: SFCR BYR AAB PROJECT CODE: ER - ELEC RECONSTRUCTION (EF,EG,EJ,EK,EL)

SHORT DESC: SF-LAT-2701 E. BROOKSHIRE PL., SI

DESCRIPTION	ACCOUNT#	PRU	C/U	INST QTY	REHV QTY	\$ AMOUNT
CABLE,15KV 1PH.1/0AL.UKT	41.16.23	CFG	CD4310	60		162.48
DIG AUGER/SPLICE HOLE	41.16.23		PIT	2		121.63
SPLICE,15KV 1/0AL-1/0AL.	41.16.23		SKHAFU	2		260.83
TRENCH & BACKFILL PER FT	41.16.23		TRENCH	50		108.59

TOTAL CONSTRUCTION 653.53

TOTAL COST 653.53

Exhibit B

- ① INSTALL : PRIMARY SPLICE PIT!
SKHAF1
- ② INSTALL : 37.5 KVA 7820 X 120/240 V.
1Ø PAD MOUNT TRANSFORMER
- ③ INSTALL : PRIMARY STUB-UP FOR
FUTURE USE.

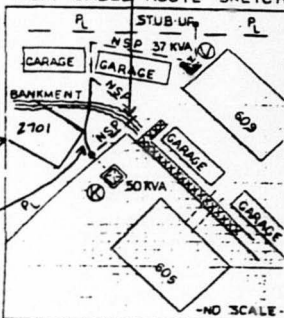
TRANSFORMER TO FACE/C
NORTHWEST.

PRI. SPLICE



SHOWS WHERE
NSP LINE IS
SUPPOSE TO BE

N.S.P. CABLE ROUTE SKETCH



SHOWS APPROXIMATE
LOCATION OF BUILDING

SHOWS WHERE NSP
LINE WAS INSTALLED

Exhibit N5P-3

N5P-50 

LOC. 2701 E. BROOKSHIRE PL.
 PROJ. NO. SFCR BYR AAB
 MAP. M50-84
 DESC. RELOCATE PRIMARY
 FOR MHA71-12.8 KV
 UG UTILITY CHECK
 DO BAR ONE CALL X YES NO
 ONE CALL ID# _____
 SECTION 15 NE 1/4
 TWP 101N RANGE 65W
 + STREET E. 6TH ST.
 OTHER NO
 DATE 2-7-96
 DESIGNED LORI TENDELER



Exhibit NSP-1

UNDERGROUND SERVICE FORM

Form NSP-1 (2-84)

In consideration of NORTHERN STATES POWER COMPANY, hereinafter called "NSP", extending its facilities to make 120/240 volt, 1 phase, 3 wire underground service availableto (customer) LAND TITLE GUARANTY COMPANY
at (service address) 2701 E. BROOKSHIRE PLACE (city) SIOUX FALLS
the sum of EIGHT HUNDRED TWENTY AND 08/100 Dollars (\$ 820.08)
will be paid to NSP by (other than above)Address (other than above) 1916 ASHLEY CIRCLE City Sioux Falls Zip 57104
in accordance with the following terms: TO BE SIGNED PRIOR TO CONSTRUCTION - CONSIDER THISA BILL Credit Approval

Receipt of the above amount hereby acknowledged on behalf of NSP by

1. The customer hereby grants NSP the right, privilege and easement to install, operate and maintain its underground facilities on the property as described above and/or the approximate location as shown on the attached "Exhibit A".

2. The customer also agrees that, prior to NSP starting work: (a) the route of NSP's underground installation shall be accessible to NSP's equipment; (b) all obstructions shall be removed from such route at no cost or expense to NSP; (c) ground elevation along the route shall not be above or more than four (4) inches below the finished grade; and (d) the area under the transformer pad shall be compacted to at least 2000 lbs./sq. ft.

3. LAND TITLE GUARANTY COMPANY agrees to pay all additional installation costs incurred by NSP because of (a) soil conditions that impair the installation of underground facilities, such as rock formations, etc., and (b) sidewalks, curbing, black top, paving, sod or other landscaping and obstructions along the cable route. NSP will backfill trench with existing soil. Restoration of construction area on customer property is the responsibility of the customer.

4. NSP is not responsible for any customer-owned underground facilities not exposed at the time service is installed.

5. The underground installation may be subject to a winter construction charge if it is installed between October 1 and April 15. LAND TITLE GUARANTY COMPANY agrees to pay this charge if NSP determines winter conditions exist when the underground facilities are installed. NSP will waive the winter construction charge if prior to October 1st the customer is ready to accept electrical service, has executed this form and has notified NSP in writing that the requirements of Paragraph 2 hereof have been fulfilled.

6. The underground facilities installed by NSP, shall be the property of NSP and any payments made by the customer, or their contractor, shall not entitle the customer to any ownership interest or rights therein.

7. The customer agrees to pay the cost of relocating any portion of said underground facilities made to accommodate the customer's needs or required because of altering the grade, additions to structures, installing patios, decks or gardens or any other condition which makes maintenance of the company's facilities impractical.

8. Customer must provide the following minimum clearance around the transformer: front, 10 feet; sides and back, 2 feet. EXCEPTION: side facing building must have 30" clearance. These clearances must be at the same grade as the transformers. If screening is to be used, the area in front of the transformer must be left open or a hinged door, easily operable by one person, must be provided. The area must be accessible 24 hours a day.

\$	Excess U.G. Distribution Lateral (Primary Cable)	\$	150.00	Winter Const. Charge (See paragraph 5)
\$	Excess U.G. Service Lateral	\$		Specific Service Location or Route
\$	U.G. Service Lateral (Secondary Service From Utility Pole)	\$		Replace Overhead Line With Underground Line
\$	U.R.D. Installation Including	\$		Temporary Service KVA
\$	U.G. Service Lateral	\$	654.00	Other (explain) Relocate UG Primary
\$	U.G. Distribution Lateral (Primary Cable)	\$	16.08	2% Excise Tax
				Trench Ft. \$ 820.08 TOTAL CHARGES

**Customer agrees to pay monthly Residential Service Underground rate of the type of installation indicated by a double asterisk. ☐ Applicable ☒ Not Applicable

Dated this _____ day of _____ 19____ Dated this _____ day of _____ 19____

Customer _____ Contractor LAND TITLE GUARANTY COMPANYBy _____ By _____ File # 519022NSP Rep L. A. TENDLER 2/12/96 Div SD-14 NSP Proj/Serv. No. SCFR BYR AABConst \$ 804.00 Rem \$ _____ Maint \$ _____ Oper \$ _____ Transf \$ _____ = Total \$ 804.00

Copy - Owner/Accounting (Original) - Copy - Division Distribution Engineering - Copy - Customer



Exhibit NSR-2

PROGRAM: P068
PF110PROJECT MANAGEMENT SYSTEM
COMPATIBLE UNIT SUMMARYPAGE: 001
RUN DATE: 01/30/76

FOR: SIOUX FALLS

HQDT: 1449 SIOUX FALLS

FILE: 519002

PROJECT: SFDR BYR AAB PROJECT CODE: ER - ELEC RECONSTRUCTION (EF,EG,EJ,EK,EL)

SHORT DESC: SF-LAT-2701 E. BROOKSHIRE PL., SI

DESCRIPTION	ACCOUNT#	PRU	C/U	INST QTY	REHV QTY	\$ AMOUNT
CABLE,15KV 1PH,1/0AL,JKT	41.16.23	CFG	CD4310	60		162.48
DIG AUGER/SPLICE HOLE	41.16.23		PIT	2		121.63
SPLICE,15KV 1/0AL-1/0AL	41.16.23		SKHAFU	2		260.83
TRENCH & BACKFILL PER FT	41.16.23		TRENCH	50		198.59

TOTAL CONSTRUCTION

653.53

TOTAL COST

653.53

Exhibit B

- ① INSTALL : PRIMARY SPLICE PIT!
SKHAF1
- ② INSTALL : 37.5 KVA 7620 X 120/240 V.
1Ø PAD MOUNT TRANSFORMER
- ③ INSTALL : PRIMARY STUB-UP FOR
FUTURE USE.

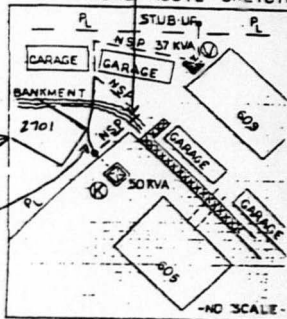
TRANSFORMER TO FACE/C
NORTHWEST.

PRI. SPLICE



SHOWS WHERE
NSP LINE IS
SUPPOSE TO BE

N.S.P. CABLE ROUTE SKETCH

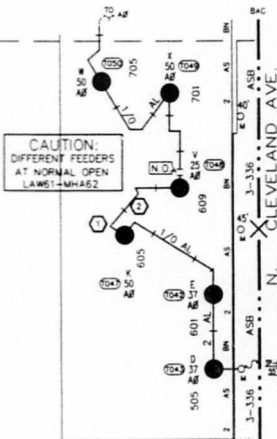


SHOWS APPROXIMATE
LOCATION OF BUILDING

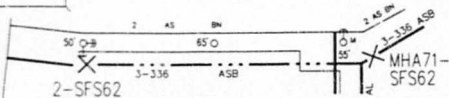
SHOWS WHERE NSP
LINE WAS INSTALLED

0141.1416

1-229



E 6TH (22RF) STR.

PROJ. NO. SFCR BYR AABMAP M5C-84DESC. RELOCATE PRIMARY

FDR MHA71-158 KV

UG UTILITY CHECK

30 DAE ONE CALL X YES NO

ONE CALL ID# _____

SECTION 15 NE 1/4TWP 101N RANGE 6W

STREET E. 8TH ST.

OTHER NO
3-3-64

DATE 6-27-95
DRAWN BY LORI TENDLER



SCALE: 1" = 100'
FIELD CHECKED BY
LORI TENDLER

LAW61-
MHA71

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

IN THE MATTER OF THE COMPLAINT FILED)	FINAL ORDER AND
BY JOHN BYRE, SIOUX FALLS, SD, AGAINST)	DECISION; NOTICE OF
NORTHERN STATES POWER COMPANY)	ENTRY OF ORDER
REGARDING A BILL)	EL97-008

On April 17, 1997, the South Dakota Public Utilities Commission (Commission) received a complaint from John Byre, Sioux Falls, SD, against Northern States Power Company (NSP) regarding a bill. Mr. Byre stated that he feels he is being unfairly charged for moving a cable that was installed incorrectly by NSP. Mr. Byre further stated that the drawings and work order are specific about where the cable was to be placed, and that NSP changed the route because of a dirt pile. Because the original contract states that the owner must clear the route before NSP begins underground installation, Mr. Byre alleged that NSP's reason for changing the route is invalid. Mr. Byre has requested the Commission to cancel the bill and hold NSP responsible for their actions.

At its regularly scheduled July 15, 1997, meeting, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and served the complaint on NSP. NSP filed its response on August 15, 1997.

Pursuant to its Order for and Notice of Hearing dated September 18, 1997, a hearing was held on September 29, 1997, at the Days Inn Empire, 3401 Gateway Boulevard, Sioux Falls, South Dakota. At the end of the hearing, the Commission took the matter under advisement.

At its November 18, 1997, meeting, the Commission considered the matter. The Commission voted to find that Mr. Byre is responsible for the costs of moving the cable in the amount of \$653.53 because the construction of his building necessitated the moving of the cable.

Based on the evidence and testimony of record, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I

On April 17, 1997, the Commission received a complaint from John Byre, Sioux Falls, SD, against NSP regarding a bill. Exhibit 1.

II

Mr. Byre constructed an apartment house at 2701 Brookshire Place, Sioux Falls, South Dakota. Tr. at 5. Mr. Byre did not call the One-Call Notification System before beginning construction. Tr. at 6. During the construction, a NSP cable was exposed. Id. Mr. Byre objected to paying for the relocation of the cable because the original site plan purporting to show where the cable was located was incorrect. Id.; Exhibit 1.

III

The cable was located on the corner of the footings of the apartment building. Tr. at 10. Although a representative of NSP, Jim Wilcox, testified that the cable was cut, no evidence was presented to show that a cable cut in fact occurred. Tr. at 48.

IV

After the cable was exposed on January 8, 1996, the cable was de-energized. Affidavit of Chuck Wiese. NSP and Mr. Byre then discussed moving the cable. Tr. at 50. They were unable to come to an agreement. Id. In April, NSP fixed and relocated the cable. Id. The cost of relocating the cable was \$653.53. Affidavit of Jim Wilcox.

V

The cable in question involved a looped lateral. Affidavit of Chuck Meyer. The looping of underground circuits improves reliability because damage to the underground facility can be isolated and the power re-routed to quickly restore service. Id.

VI

Mr. Bill Kullander, a NSP employee, testified that the original site plan that Mr. Byre had relied on was incorrect. Tr. at 27-28. When the original cable was placed, the location of the cable had to be changed from the original site plan due to an obstruction. Tr. at 26-27. Raymond Bennett, the owner of the property at the time, authorized the change in location. Tr. at 27-28.

VII

The Commission finds that the cable had to be moved due to the construction of Mr. Byre's apartment house. Although the original site plan was incorrect, that plan was changed with the authorization of the original owner. Further, Mr. Byre should have called the One Call Notification System before beginning construction instead of attempting to rely on a site plan. Since the cable was moved due to Mr. Byre's construction, Mr. Byre is responsible for paying the relocation costs.

CONCLUSIONS OF LAW

I

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-34A, and ARSD 20 10 01 15 and 20 10 18 02.

II

The Commission finds that Mr. Byre is responsible for paying for the relocation of the cable. The construction of his apartment building necessitated the cable's relocation and thus he is responsible for paying the costs of that relocation in the amount of \$653.53. See ARSD 20 10 18 02. Although Mr. Byre did not specifically request the relocation of the cable, a customer whose actions necessitate the relocation of a cable is responsible for paying for that relocation.

It is therefore

ORDERED that Mr. Byre is responsible for paying the costs of the cable relocation in the amount of \$653.53.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 2nd day of December, 1997. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 2nd day of December, 1997.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By

Date

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner