

negotiations with Northern States Power Company. We feel that if the Commission rules that Northern States Power Company is going to have some rights to serve customers and give us something on this basis of those people that wanted off and wanted on so we have an idea, I am confident that we can sit down with Northern States Power Company and work out an agreement as to that territory just as we have done with all of the other territories. And so, you know, you may know that in the event your hearing, whatever the results of that hearing and your decision in Brandon, we feel that we will be able to work out an agreement with Northern States Power in that area.

And then finally on the Country Gable Estates, I have nothing in addition to add other than the fact that I thought the Commission made a good decision at that time and we are hoping that you will follow through on it.

CHAIRMAN WEILAND: Mr. Piersol, I am sure you would have something now.

MR. PIERSOL: I just happen to want to address myself, Mr. Chairman, to those same three issues and I will start out with Country Gable Estates since Mr. Glover didn't talk about that very much. If I compare Country Gable to the posture that

1 Sioux Valley is now in with regard to Wade Peterson,
2 they are going back to the same point that we have
3 raised in the Hildring Country Gable proposition.
4 That is that prior to March 21, 1975 Northern States
5 Power Company had a contract with Bob Hildring and
6 Mr. Johnson, a contract in order to provide service
7 to that location. It's true that as of March 21,
8 1975 there was not any juice or electric power
9 actually flowing into that development, but the
10 contractual obligation existed before the 21st of
11 March, 1975. So we say that for that reason we are
12 entitled to serve Country Gables. And now for the
13 first time I might add, at least the first time to
14 our knowledge, Sioux Valley in the Peterson ---
15 Wade Peterson development has now adopted that same
16 position. I would point out from evidentiary point
17 of view, however, their position is not as strong
18 as ours although they made reference to the testimony
19 today to an agreement that was signed prior to
20 March, 1975. I didn't ever see the agreement and
21 when the Commission looks at the exhibits that we
22 have and in docket F-3066, you will see our signed
23 agreement in there. So evidently they are not in
24 as strong a position in the Wade Peterson transaction
25 as we are in the Country Gable transaction. But

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aside from that I think that the primary point to look at now when you talk about the Wade Peterson situation is that the law very explicitly directed itself to the kind of situation we are looking at. Section 42 of the act as passed, SDCL 49-34-32 set up March 21, 1975, and that is a statement of legislative intention and there was reason for that. That was prior to the bill being signed into law by the governor, and the reason that that date was picked was that --- so that you wouldn't have this sort of thing that you have. This is really anomaly where somebody is taking a little bit of line and they went out and put up the service before July 1 and they are taking chances and they knew it. The Commission I don't think has had much of these come before this because the reason that the legislature put that date in Section 42 was to prevent building contests from going on, so that there wouldn't be wasteful building or duplication or building going on, for ultimately once the Commission made its jurisdictional decision the utility that had put up their line after the bill was passed would have to either sell the line or not have the line go into service. So the situation we have here today is exactly the reason that date is in the

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START

OF

RETAKE

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statute, and somebody shouldn't be rewarded in my opinion for clearly ignoring the legislative intent that I think is clear in Section 42. And just because they have brass enough to do it doesn't mean that they should be rewarded for doing it would be my position.

And then we move on from the Peterson situation, I will go then to the second one and that is the Brandon situation. And the Commission has indicated it has a desire to hold further hearings on the Brandon controversy and the only thing I would say at this time would be that whatever that has been done by Northern States Power to this date, we are confident has been done within the meaning and spirit of the law and that might be gone into further at the subsequent hearing. But with regard to the two that this is the last hearing on, Peterson and Country Cable, we are entitled to serve Country Cable because we had a contractual obligation to serve and that entire controversy began before --- by putting that docket number in evidence here today, and with regard to the Peterson, the first argument is they had a contract. We haven't seen very good evidence of that. Then you go to the second argument, that being they had service by July 1.

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END

OF

RETAKE

That doesn't make any difference, and even if it did, they were not using service in the sense of having electric power going through because their witness who appeared to be candid, Mr. Bowar, said that it had the lines going but we didn't have the fixtures in, we couldn't deliver electric service, electric power on the 1st of July and they didn't. So even if you grant that they have got the lines running out there, that didn't get the electric service there, that didn't get the meters there, that didn't get the outlets there and they don't have the proof. So even if their July 1 argument was any good, which it isn't, they have got to have the evidence to support it. So they are not entitled to serve Peterson.

MR. GLOVER: I would just like to comment. I would like to draw a distinction that I think is a most decisive distinction. I see no similarity between the Wade Peterson situation and Country Gable. And the code word, gentlemen and ladies, is performance, performance in Wade Peterson. They never had a line built in there --- excuse me, in the Country Gable Estates. They never had their line built in. Prior to July 1 they did not, you know, they agreed to provide service. They had not

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1 done so. There was no construction there. There was
 2 absolutely nothing there prior to July 1 when the law
 3 went into effect. In the Wade Peterson situation we
 4 had performed, we had performed substantially all of
 5 our contract and that is we did not only have it in
 6 writing yet, but it was there, available, being
 7 hooked up on his place at that time. That is
 8 performance of a contract. It was built in and
 9 available. Whether he plugged it in or not is one
 10 thing, but it was there. Now, I don't know but I
 11 think that that section 42 in the statute that we
 12 are talking about, it seems to me Mr. Piersol is
 13 having --- I don't see how he draws in that March
 14 21 on that, and the only way you can do it is to
 15 ignore this discussion or the law where it talks
 16 about service to a customer. And we have had a hard
 17 time arguing about that throughout this thing and
 18 apparently we are never going to see eye to eye on
 19 what service to a customer is, but it is our position
 20 as it has always been in the Country Gables Estates
 21 case that he, his client Mr. Hildring, they were not
 22 customers on March 21, 1975 being they were not
 23 providing service on that day. There had been no
 24 ~~service provided to them at that location on that~~
 25 date, and it takes a technical reading of the law

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to the Commission at that point, too

1 and I think the intention of the legislature, if you
2 want to talk about that, was absolutely intended to
3 freeze customers as of March 21 because they didn't
4 want to freeze them at some future time and have a
5 big rush of construction up to that point. But all
6 existing customers as of March 21 were frozen, that
7 is true, but they didn't freeze themselves to new
8 customers coming on in areas between that time. So
9 that is all we are saying.

10 MR. PIERSON: I don't want to rehash
11 this, but I think that is a very interesting point
12 just made by Mr. Glover because if you take March
13 21, 1975 and you take his contention with regard
14 to Peterson and you take our contention with regard
15 to Hildring and put them both in exactly the same
16 position, we had a contractual obligation to serve as
17 of March 21, 1975 and neither one of us had service
18 actually running into the locations as of that time.
19 And taking his own position, if you want to take
20 that, that would mean that we are entitled to
21 Hildring. Thank you.

22 MR. GLOVER: Is the Commission going
23 to desire any --- you are going to come out --- be
24 coming out with a tentative decision or are you going
25 to require like findings of fact or anything like

1 that of that nature on this thing, or permit briefs
 2 at any point in time? as I guess under the procedural
 3 aspect, the way the law is set up when you make your
 4 decisions I think we have an opportunity to come back
 5 to the Commission at that point, too.

6
 7 CHAIRMAN WEILAND: We will go off the
 8 record a minute. are no further statements or
 9 (Off the record discussion) the Commission the
 10 proceeding -- CHAIRMAN WEILAND: Do we have anything
 11 else in this proceeding to come before the Commission
 12 at this time? (Yes, sir.)

13 MR. PETERSON: Could I just make one
 14 final statement.

15 CHAIRMAN WEILAND: You surely may.

16 MR. PETERSON: I am Wade Peterson,
 17 Renner, and REA was serving me before and this was
 18 just on --- this is phase two, but my five phase
 19 plant with their electricity and I plan on putting
 20 in irrigation as well and I do want REA to serve
 21 me if that will help you, and the exact dates now
 22 I can't remember, but I had signed a long time before
 23 this matter came up in the legislature of fighting
 24 among the utility companies and I would like it
 25 left REA, the way I am and I think on the map even
 after this, I think there is one of my adjoining

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8 (Off the record discussion)

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21 I can't remember, but I had signed a long time before
22 this matter came up in the legislature of fighting
23 among the utility companies and I would like it
24 left REA, the way I am and I think on the map even
25 after this, I think there is one of my adjoining

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1 pieces of ground that is actually connected together
2 I think it is shown as Northern States. And I would
3 like that left REA. All my land joins together.
4 It's homestead land and I would like it left that
5 way.
6

7 CHAIRMAN WEILAND: Thank you very
8 much. If there are no further statements or
9 questions to come before the Commission this
10 proceeding --- I declare the hearing in this matter
11 closed.

12 (End of proceedings)
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NEXT

DOCUMENT (S)

BEST IMAGE

POSSIBLE

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1 STATE OF SOUTH DAKOTA)
2 COUNTY OF MINNEHAHA) SS

CERTIFICATE

3
4 This is to certify that I, Kerry Lange, Court
5 Reporter in the above-named County and State, took the
6 proceedings of the foregoing case, and the foregoing pages
7 1 - 119, inclusive, are a true and correct transcript of my
8 stenotype notes.

9
10 Dated at Sioux Falls, South Dakota, this 28th
11 day of June, 1976.

12
13
14 Kerry Lange
15 Kerry Lange

Shown below is description of electric service area boundaries agreed upon by Lincoln-Union Electric Company and Northern States Power Company and as shown on the attached General Highway Map of Lincoln County, South Dakota:

PERRY AREA - PERRY AND GRANT TOWNSHIP

1. Beginning at the west center of section 19, R51W, T99N.
2. Then east to center point of section 19, R51W, T99N.
3. Then north along half mile line one quarter mile.
4. Then east two miles along the north quarter mile line to the half mile line of section 21, R51W, T99N.
5. Then south one and one-half miles along half mile line to the south quarter mile line of section 28, R51W, T99N.
6. Then east along quarter mile line one-half mile to section line.
7. Then south along the section line three quarter miles to the east center of section 33, R51W, T99N.
8. Then west one half mile to the center point of section 33, R51W, T99N.
9. Then south along half mile line one and one quarter miles to south quarter mile line in section 4, R51W, T98N.
10. Then west one mile along quarter mile line to the half mile line of section 5, R51W, T98N.
11. Then north on half mile line to the center point of section 5, R51W, T98N.
12. Then west along the half mile line one and one-half miles to the west center of section 6, R51W, T98N to county line.
13. Then north along county line for one quarter mile.

CANTON AREA - CANTON TOWNSHIP

1. Beginning at the state line on the south quarter mile line of section 25, R49W, T98N.
2. Then west along quarter mile line to the half mile line of section 26, R49W, T98N.
3. Then south to center point of section 35, R49W, T98N.
4. Then west along half mile line one mile to the center point of section 34, R49W, T98N.
5. Then north two miles to the center point of section 22, R49W, T98N.
6. Then west one-half mile to the west center of section line.
7. Then north one-half mile along section line to northwest corner of section 22, R49W, T98N.
8. Then east along section line one quarter mile.
9. Then north one and one quarter miles along west quarter mile line to the south quarter mile line of section 10, R49W, T98N.
10. Then east along quarter mile line to east section line of section 10, R49W, T98N.
11. Then north along section line to the half mile line.
12. Then east one and one quarter miles to the west quarter mile line of section 12, R49W, T98N.
13. Then south along the quarter mile line to the north quarter mile line in section 11, R49W, T98N.
14. Then east along quarter mile line to the half mile line of section 17, R48W, T98N.
15. Then south to the center point of section 17, R48W, T98N.
16. Then east along the half mile line to state line.

EXHIBIT

Shown below is description of electric service area boundaries agreed upon by Lincoln-Union Electric Company and Northern States Power Company and as shown on the attached General Highway Map of Lincoln County, South Dakota:

1. Beginning at the north center line of section 7, R50W, T100N.
2. Then south to the center point of section 7, R50W, T100N.
3. Then east along the half mile line to the center of I29 in section 7, R50W, T100N.
4. Then south along center of I29 to Junction of Highway 229 in section 18, R50W, T100N.
5. Then northeast along Highway 229 to the section line between sections 8 and 9, R50W, T100N.
6. Then south along the section line to the north quarter mile line between sections 16 and 17, R50W, T100N.
7. Then east along quarter mile line to the west quarter mile line of section 16, R50W, T100N.
8. Then south along the west quarter mile line one-half mile to the south quarter mile line of section 16, R50W, T100N.
9. Then west along the south quarter mile line to the half mile line of section 17, R50W, T100N.
10. Then north along the half mile line to the north section line of section 17, R50W, T100N.
11. Then west along section line to the east quarter mile line of section 18, R50W, T100N.
12. Then south along the east quarter mile line to south section line of section 18, R50W, T100N.
13. Then west along the section line to the center of I29.
14. Then south on I29 to the south quarter mile line in section 19, R50W, T100N.
15. Then east along the south quarter mile line to the east quarter mile line of section 19, R50W, T100N.
16. Then south along the quarter mile line to the north quarter mile line of section 30, R50W, T100N.
17. Then west along the north quarter mile line to the center of I29 in section 30, R50W, T100N.
18. Then south along the center of I29 to the south quarter mile line of section 30, R50W, T100N.
19. Then west along the south quarter mile line to the west quarter mile line of section 25, R51W, T100N.
20. Then south along the west quarter mile line to the south section line of section 25, R51W, T100N.
21. Then west to the northwest corner of section 25, R51W, T100N.
22. Then north along the section line one-half mile to the east center of section 26, R51W, T100N.
23. Then west along the half mile line to the west quarter mile line of section 26, R51W, T100N.
24. Then north along the west quarter mile line to the north quarter mile line in section 26, R51W, T100N.
25. Then west along the north quarter mile line to the half mile line of section 27, R51W, T100N.
26. Then south along the half mile line to the center point of section 34, R51W, T100N.
27. Then east one-half mile to the east section line of section 34, R51W, T100N.
28. Then north along the section line to the northeast corner of section 34, R51W, T100N.
29. Then east along the section line one-eighth mile.

Descriptions continued

30. Then south along the west one-eighth mile line to the half mile line of section 35, R51W, T100N.
31. Then east along the half mile line to the east quarter mile line of section 35, R51W, T100N.
32. Then north along the east quarter mile line to the north quarter mile line of section 35, R51W, T100N.
33. Then east along the north quarter mile line to the west quarter mile line of section 36, R51W, T100N.
34. Then south along the west quarter mile line to the half mile line of section 36, R51W, T100N.
35. Then east along the half mile line to the east section line of section 36, R51W, T100N.
36. Then north along the section line to the northeast corner of section 36, R51W, T100N.
37. Then east along the section to the west quarter mile line of section 31, R50W, T99N.
38. Then south along the west quarter mile line to the north quarter mile line of section 31, R50W, T99N.
39. Then east along the north quarter mile line to the half mile line of section 32, R50W, T99N.
40. Then south along the half mile line to the center point of section 5, R50W, T99N.
41. Then east along the half mile line to the center point of section 4, R50W, T99N.
42. Then north along the half mile line to the center point of section 33, R50W, T99N.
43. Then east along the half mile line to the center point of section 34, R50W, T99N.
44. Then north along the half mile line to the north quarter mile line in section 34, R50W, T99N.
45. Then east along the north quarter mile line to the half mile line of section 35, R50W, T99N.
46. Then south along the half mile line to the center point of section 2, R50W, T99N.
47. Then east along the half mile line to the east section line of section 2, R50W, T99N.
48. Then south along the section line to the half mile line of section 11, R50W, T99N.
49. Then west along the half mile line to the center point of section 11, R50W, T99N.
50. Then north one quarter mile to the north quarter mile line of section 11, R50W, T99N.
51. Then west along the north quarter mile line to the half mile line of section 10, R50W, T99N.
52. Then south one quarter mile to the center point of section 10, R50W, T99N.
53. Then west along the half mile line to the center point of section 9, R50W, T99N.
54. Then south along the half mile line to the south section line of section 16, R50W, T99N.
55. Then east one quarter mile along the section line.
56. Then south along the east quarter mile line to the north quarter mile line of section 28, R50W, T99N.
57. Then west to the half mile line of section 28, R50W, T99N.
58. Then south one quarter mile to the center point of section 28, R50W, T99N.
59. Then east one half mile to the east section line of section 28, R50W, T99N.
60. Then south along the section line to the southeast corner of section 28, R50W, T99N.
61. Then west one quarter mile along section line.
62. Then south along the east quarter mile line to the north quarter mile line in section 33, R50W, T99N.

Descriptions continued

Description of electric service area boundaries agreed upon by Lincoln-Union Electric Company and Northern States Power Company continued.

61. Then west along north quarter mile line to the half mile line of section 33, R50W, T99N.
62. Then south one quarter mile to the center point of section 33, R50W, T99N.
63. Then west one mile to the center point of section 32, R50W, T99N.
64. Then south along the half mile line to the north quarter mile line in section 8, R50W, T98N.
65. Then east along the north quarter mile to the west quarter mile line in section 10, R50W, T98N.
66. Then north along the west quarter mile line to the half mile line of section 3, R50W, T98N.
67. Then east along the half mile line to the east quarter mile line in section 3, R50W, T98N.
68. Then north along the east quarter mile line to the half mile line of section 34, R50W, T99N.
69. Then west along the half mile line to the west quarter mile line of section 34, R50W, T99N.
70. Then north along the west quarter mile line to the half mile line in section 27, R50W, T99N.
71. Then east along the half mile line to the center point of section 27, R50W, T99N.
72. Then north along the half mile line to the center point of section 22, R50W, T99N.
73. Then west along the half mile line to the west quarter mile line of section 22, R50W, T99N.
74. Then north along the west quarter mile line to the south quarter mile line of section 15, R50W, T99N.
75. Then east along the south quarter mile line to the east section line of section 15, R50W, T99N.
76. Then south to the southwest corner of section 14, R50W, T99N.
77. Then east one half mile along section line.
78. Then north one half mile to the center point of section 14, R50W, T99N.
79. Then east along the half mile line to the center point of section 13, R50W, T99N.
80. Then north along the half mile line to the north quarter mile line of section 12, R50W, T99N.
81. Then east one half mile to the east section line of section 13, R50W, T99N.
82. Then north along the section line to the half mile line of section 12, R50W, T99N.
83. Then west along the half mile line to the center point of section 12, R50W, T99N.
84. Then north one mile along the half mile line to the center point of section 1, R50W, T99N.
85. Then east along the half mile line to the west quarter mile line of section 6, R49W, T99N.
86. Then north along the west quarter mile line to the south quarter mile line in section 31, R49W, T100N.
87. Then east along the south quarter mile line to the half mile line of section 31, R49W, T100N.
88. Then north along half mile line to the center point of section 30, R49W, T100N.
89. Then west along the half mile line to the west section line of section 30, R49W, T100N.
90. Then north along the section line to the north quarter mile line of section 25, R50W, T100N.
91. Then west along the north quarter mile line to the east quarter mile line of section 25, R50W, T100N.
92. Then north along the east quarter mile line to the south quarter mile line of section 24, R50W, T100N.

Descriptions continued

Description of electric service area boundaries agreed upon by Lincoln-Union Electric Company and Northern States Power Company continued.

99. Then east along the south quarter mile line to the half mile line in section 12, R49W, T100N.
100. Then north along the half mile line to the north quarter mile line in section 12, R49W, T100N.
101. Then east along the north quarter mile line to the east quarter mile line in section 20, R49W, T100N.
102. Then north along the east quarter mile line to the half mile line of section 17, R49W, T100N.
103. Then west along the half mile line to the center point of section 13, R50W, T100N.
104. Then north along the half mile to the north quarter mile line of section 13, R50W, T100N.
105. Then west along the north quarter mile line to the west section line of section 12, R50W, T100N.
106. Then north along the section line to the south quarter mile line of section 12, R50W, T100N.
107. Then east along the south quarter mile line to the half mile line of section 12, R50W, T100N.
108. Then north one quarter mile to the center point of section 12, R50W, T100N.
109. Then east along the half mile line to the center point of section 7, R49W, T100N.
110. Then north along half mile line to the north quarter mile line of section 7, R49W, T100N.
111. Then east along the north quarter mile line to the west quarter mile line of section 8, R49W, T100N.
112. Then north along the west quarter mile line to the county line of section 8, R49W, T100N.

CHRISTENSON LAW OFFICE, P.C.

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David M. Buechler (1952-200)

October 11, 2000

Ms. Karen Cremer
South Dakota Public Utilities Commission
State Capitol
Pierre, SD 57501-5070

Re: Xcel/Southeastern Territorial Dispute

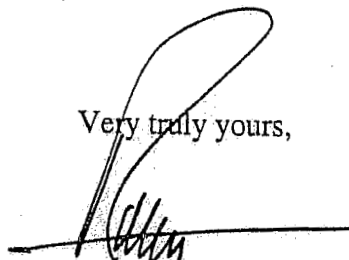
Dear Ms. Cremer:

Southeast does not object to Mr. Gerdes' motion for the Commission to take judicial notice of the 6/7/76 transcript to the extent that it is relevant to the issues in this docket.

If you have any questions, please contact me.

Best personal regards.

Very truly yours,



Robert A. Christenson

RAC/rc
cc: David A. Gerdes

RECEIVED

OCT 13 2000

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

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October 12, 2000

Mr. William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
State Capitol
Pierre, SD 57501-5070

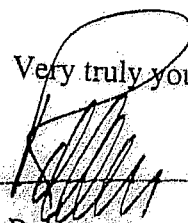
Re: Xcel/Southeastern Territorial Dispute

Dear Mr. Bullard:

Enclosed are the original and seven copies of the Brief of Southeastern Electric Cooperative, Inc.
If you have any questions, please contact me.

Best personal regards.

Very truly yours,


Robert A. Christenson

RAC/re

cc: Mr. David A. Gerdes
Mr. Brad Shardin

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OCT 16 2000

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

RECEIVED

OCT 16 2000

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUI
UTILITIES COMMISS

IN THE MATTER OF THE REQUEST BY XCEL	*	BRIEF OF SOUTHEASTERN
	*	
ENERGY FOR A DETERMINATION OF ITS	*	ELECTRIC COOPERATIVE, INC.
	*	
TERRITORY BOUNDARIES	*	EL00-026
	*	

I. Procedural History

Xcel Energy, Inc., previously known as Northern States Power Company (hereinafter referred to as Xcel or NSP) filed a complaint against Southeastern Electric Cooperative, Inc., previously known in part as Lincoln-Union Electric Company (hereinafter referred to as Southeastern or Lincoln-Union). A true and correct copy of the letter complaint is attached hereto as Exhibit 1.

On January 28, 1976, NSP and Lincoln-Union entered into a Contract in the Matter of the Establishment of an Assigned Service Area (Agreement). A true and correct copy of said Agreement is attached as Exhibit 2.

The Agreement provided for a map that "clearly and accurately" depicted the designated service area and written legal descriptions, legally describing the service area. The contract also stated that if a conflict should arise between the map and the written legal description, "the map shall in all respects be conclusive proof of the assigned service area of each utility."

Xcel claims there is a conflict between the contract's map and written legal description and therefore the map is conclusive proof of the service area established between NSP and

Lincoln-Union as set forth in the January 28, 1976 Agreement. Southeastern denies there is a conflict between the map and written legal description.

A hearing was held on Xcel's complaint before the South Dakota Public Utilities Commission (PUC) on October 6, 2000.

II. Legislative History

In 1975, the legislature enacted the "South Dakota Territorial Integrity Act" (Act), now codified at Chapter 49-34A of South Dakota Codified Laws. The policy underlying the Act was "elimination of duplication and wasteful spending in all segments of the electric utility industry." *Matter of Certain Territorial Elec. Boundaries (Mitchell Area)*, 281 N.W.2d 65, 70 (S.D.1979). To accomplish that end, exclusive territories designated "assigned service areas," were established for each utility. See *Matter of Clay-Union Elec. Corp.*, 300 N.W. 2d 58, 60 (S.D.1980). To ensure the integrity of a territory, the legislature granted each utility the exclusive right to "provide electric service at retail...to each and every present and future customer in its assigned service area." SDCL 49-34A-42.

III. PUC Hearing Testimony/June 7, 1976 (Sioux Falls)

On June 7, 1976, the PUC held a meeting at the Minnehaha County Courthouse, Sioux Falls, South Dakota, approximately four (4) months after NSP and Lincoln-Union entered into the service area Agreement. Subsequently, the PUC entered a Decision and Order ordering that the territorial boundaries and service areas were established. A true and correct copy of said Decision and Order is attached as Exhibit 3.

A transcript of the June 7, 1976 hearing establishing the service area boundaries is attached hereto as Exhibit 4. From the transcript, one can conclude that the NSP and Lincoln-

Union Agreement, map and written legal descriptions were offered into the record by Mark Meierhenry, attorney for the PUC. (Transcript, p. 15).

The transcript also shows that Mr. Larry Gunderson prepared the maps of the proposed service areas. One can safely assume that Mr. Gunderson, a PUC staff member, prepared the NSP-Lincoln-Union map as well. (Transcript pp. 5-9). Mr. Gunderson was an engineer for the PUC. (Transcript, p. 8). Mr. Gunderson testified that he relied upon the *written agreements* between the separate utility companies to prepare the maps. (emphasis added). (Transcript, p. 9).

After Mr. Gunderson's testimony, Mr. Meierhenry offered all exhibits previously discussed, including the NSP-Lincoln-Union map, and stated, "I would like the Commission to accept them, the maps subject as follows: *That the written agreements will at all times control any discrepancy between the written agreements and the maps as drawn, the written agreements will control in the future.*" (emphasis added) (Transcript, p. 32-33). Mr. Al Glover, attorney for Sioux Valley Electric of Colman, also reiterated Mr. Meierhenry's understanding that the written agreements will be the "*guiding factor*" and will "*override written maps.*" (emphasis added). (Transcript, pp. 35-36, 43-44). Again, Mr. Meierhenry states: "I would just like to point out for the Commission, perhaps the Commission is aware, that Mr. Gunderson has had to prepare maps for the entire state in a short period of time, and with all the corrections that have been made between these companies throughout this state, these maps are done as best we can at this time, and *it is the intent to make them conform to any written agreements.*" (emphasis added) (Transcript, p. 36).

IV. PUC Hearing Testimony/October 6, 2000 (Pierre)

Southeastern holds the position that there is no conflict between the map and the legal description as set forth in the January 28, 1976 agreement between NSP and Lincoln-Union. Mr. Tim Chance, an employee of Southeastern for twenty-seven (27) years

testified that he relied on the map in issue many times and had never had a conflict in reading the map. (Hearing transcript, pp. 78, 80).

At the hearing, Mr. Chance, Mr. Warren Fisk and two (2) witnesses for Xcel testified that they certainly could follow the written legal description and when they did so, each ended up at 61st Street on the map offered as an exhibit by Xcel. A true and correct copy of the hearing transcript is attached as Exhibit 5. (Chance, Hearing transcript pp., 80-81; Fisk, Hearing transcript 107; Berkman, Hearing transcript 45, 48; Bettman, Hearing transcript 63).

At the hearing, Mr. David Gerdes, attorney for Xcel proposed on several occasions that the map was controlling in the event that a conflict arose between the written description and the map. (Hearing transcript pp. 10, 38, 42, 49, 89). Xcel's position is partially correct, the January 28, 1976 Agreement does state that if there is a conflict between the map and a written legal description, the map shall prevail. This, however, is in direct conflict with the clear intent of the PUC as set forth in the transcript of the June 7, 1976 PUC hearing in Sioux Falls, South Dakota. The January 28, 1976 Agreement also states on page two (2) that "This contract is made subject to all applicable rules, regulations, and orders, *now or hereafter in force*, of said South Dakota Public Utilities Commission." (emphasis added). It is Southeastern's position that the testimony taken at the June 7, 1976 PUC hearing in Sioux Falls and subsequently memorialized in the Decision and Order clearly modify the contract language of the January 26, 1976 Agreement between NSP and Lincoln-Union in the manner put forth by Mr. Meierhenry. *(That the written agreements will at all times control any discrepancy between the written agreements and the maps as drawn, the written agreements will control in the future.)* (emphasis added) (Transcript, p. 32-33).

Mr. Warren Fisk testified that the proper way to survey a section and fractional section is set forth in the *Manual of Instructions for the Survey of the Public Lands of the United States 1971*, as followed by the State of South Dakota (See SDCL 43-18-6 and SDCL 43-18-7). (Hearing transcript, pp. 102, 104, 107). Mr. Fisk also testifies that he had no trouble with the

ultimate clarity of the legal description. (Hearing transcript p. 104). Mr. Fisk's testimony is consistent with the legal authorities offered by Xcel in their Hearing Brief. Poleske vs Jones, 185 NW 917 (Iowa 1921), Lunz vs. Sandmeier's Estate, 215 NW 426, 426 (Minn. 1927), Raeble vs. Welby, 126 NW 139, 140 (Neb. 1910), Iverson vs. Johnson, 239 NW 757, 758 (S.D. 1911), all refer to the surveying of a full section. No cases cited by Xcel referred to the surveying of a fractional section.

V. Argument

Clearly, Xcel did not meet its burden of proof to prevail on its complaint. Xcel did not prove by a preponderance of the evidence that there was a conflict in the interpretation of the written legal description. Both Xcel's witnesses (Berkland and Bettman) testified that if they followed the legal description on the map, they would arrive at 61st Street- exactly where Southeastern says the boundary line is and always has been. As Mr. Chance testified, there is no conflict with the legal description.

In compliance with the intent of the PUC in 1976, the boundary line should be acknowledged to be at 61st Street – exactly where the written description places the boundary.

The PUC intended the written description to prevail. It is the only common sense resolution to this situation. Mr. Gunderson, an engineer with the PUC endeavored to conform the maps to the written legal descriptions – not the other way around. Even Mr. Bettman, an employee of the PUC, testified that the NSP-Lincoln-Union map really was not that useful to him. (Hearing transcript 56-57).

The common sense solution to this matter is to follow the time-tested surveying standards, rules and regulations, as testified to by Mr. Warren Fisk. The common sense resolution acknowledges the boundary is at 61st Street. The technical resolution to this matter, as well, puts the boundary at 61st Street.

If the present PUC does not follow the clear mandate of the 1976 PUC then the present PUC is presented with the very real possibility of setting a precedent that is clearly contrary to the wishes of prior commissioners (following the visual conclusions of a map) that will only cause more confusion rather than resolving this issues once and for all.

VI. Conclusion

Xcel's complaint should be denied and the boundary line should be acknowledged to be at 61st Street as set forth in the current written legal description.

Dated this 12th day of October, 2000

Southeastern Electric Cooperative, Inc.

By: 
Robert A. Christenson
Its: Attorney

EXHIBIT 1

LETTER COMPLAINT



Jim Wilcox, Manager,
Government & Regulatory Services
500 West Russell Street
P.O. Box 988
Sioux Falls, SD 57101-0988
Telephone (605) 339-8350 fax 612/573-9083
internet - james.c.wilcox@xcelenergy.com

September 15, 2000

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

RECEIVED

SEP 15 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Dear Mr. Bullard:

It has come to my attention that Xcel Energy and Southeastern Coop do not agree on a service territory boundary in southwest Sioux Falls.

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

Xcel and Southeast Coop have a territorial agreement on file in the Commission office dated January 28, 1976. That agreement also includes two exhibits. Exhibit "A" consists of a map depicting the territorial boundaries between Xcel and Southeast. Exhibit "B" is a description of those boundaries. The last sentence of the top paragraph on page three of the contract specifies that "the map shall in all respects be conclusive proof of the assigned service area of each utility." It is Xcel's opinion that the map clearly depicts the territorial boundary to be a line equidistant from the northern and southern boundaries of section 7 which we believe to be very near the planned Bakker Park Drive.

I know that the developer is anxious for someone to serve electricity to this new neighborhood sometime within the next few weeks. Xcel requests the Commission review this matter as quickly as practicable. Please consider this to be a complaint under SDCL 49-34A-59 that the service area provisions are about to be violated. Xcel requests that the commission hold a hearing within 15 days and issue its decision as provided by law.

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

Sincerely,

Jim Wilcox

c. Mike Swenson
Tim Chance, Southeast Coop

EXHIBIT 2

**CONTRACT IN THE MATTER OF THE ESTABLISHMENT
OF AN ASSIGNED SERVICE AREA**

CONTRACT IN THE MATTER
OF THE ESTABLISHMENT OF AN
ASSIGNED SERVICE AREA

THIS CONTRACT, made this 28 day of January, 1976, by
and between NORTHERN STATES POWER COMPANY and LINCOLN-UNION
ELECTRIC COMPANY, pursuant to SDCL 49-34A.

Recitals

The parties to this contract are each an "electric
utility" as that term is defined in SDCL 49-34A-1(7).

Northern States Power Company and Lincoln-Union Electric
Company acknowledge that both electric utilities operate electric
systems, portions of which lie in the same general geographical
area and pursuant to SDCL 49-34A agree that it is in the public
interest that such electric utilities shall negotiate designated
service areas and customers to be served and have prepared a map
attached hereto as Exhibit "A" to accurately and clearly show
the boundaries of such areas of each electric utility.

The parties hereto further agree that it is in the public
interest to eliminate or avoid unnecessary duplication of elec-
tric utility facilities, to promote the efficient and economical
use and development of the electric systems of the parties to
this contract and to provide adequate electric service to all
areas and customers affected.

The parties hereto further agree that when applicable,
due consideration has been given to the conditions as set out
in SDCL 49-34A-43 and SDCL 49-34A-44. ✓

Each party to this contract specifically indicates its
willingness and good faith intent to provide adequate and de-
pendable electric service in the area to be assigned.

It is the purpose of this writing to set forth certain

Post-It Fax Note	7871	Date	2/12/2000	Page	4
To	Jim Wilcox	From	Martin Battman		
Company	NSP	Co.	SDPUC		
Phone	339-8350	Phone	723-3201		
Fax	339-8204	Fax	723-3809		

3011

basic policies which will serve to guide the parties hereto in their relationship to the designated service area as depicted by the prepared map attached hereto as Exhibit "A" and incorporated into this contract as a part hereof.

NOW, THEREFORE, the parties agree as follows:

That this contract provides for a mutually agreeable delineation of designated service area, for the area shown on Exhibit "A", involving distribution lines and does not involve transmission lines.

Exhibit "A", a map, clearly and accurately depicts the designated service area of each electric utility for the area shown in Exhibit "A".

It is understood and agreed by and between the parties hereto that irrespective of and notwithstanding the territories agreed upon by the parties hereto, each of the parties hereto shall have the exclusive right to continue providing electric service at retail to each and every location where it was serving a customer as of March 21, 1975.

This contract is made subject to all applicable rules, regulations, and orders, now or hereafter in force, of said South Dakota Public Utilities Commission.

Each person signing this contract warrants that he has the proper authority to bind his respective corporation.

It is mutually agreed and understood between the parties that this contract is not binding upon either of the parties to the contract until the contract has been approved in its present form by the South Dakota Public Utilities Commission.

It is mutually understood and agreed by and between the parties submitting this map, Exhibit "A", pursuant to SDCL 43-14A-44 that the descriptions, Exhibit "B", which are attached

to the map are not controlling if there is any conflict between the written description of areas and the map submitted. In each instance where there is a conflict between the map, Exhibit "A", and the written description, the map shall in all respects be conclusive proof of the assigned service area of each utility.

It is further understood and agreed by and between the parties hereto that nothing in this contract shall be construed to abrogate or set aside existing franchises of either of the parties to this contract, and it is further understood that notwithstanding any terms or provisions of this contract, either of the parties to this contract may extend electric lines for electric service to its own utility property and facilities as is allowed by SDCL 49-34A-57.

It is further understood and agreed by and between the parties to this contract that neither of the parties to this contract waives any right it may have to new customers as a result of the provisions of SDCL 49-34A-56.

It is further understood and agreed by and between the parties to this contract that this contract shall not in any way alter or diminish the right that each of the parties to this contract has under SDCL 49-34A-42 to, as an electric utility, extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area.

This contract will be submitted to the Public Utilities Commission for approval and that the territories agreed upon by the parties hereto will become the exclusive and sole territories of the respective parties following approval by the Public Utilities Commission pursuant to SDCL 49-34A-43.

Dated at Sioux Falls, South Dakota, this 29
day of January, 1976.

LINCOLN UNION ELECTRIC COMPANY

By Almer A. Wahl
Almer A. Wahl
Its Manager

ATTEST:

C. V. Graham
Secretary
Witness

NORTHERN STATES POWER COMPANY

By Darrell D. Butterwick
Darrell D. Butterwick
General Manager
Sioux Falls Division

ATTEST:

John D. Johnson
Witness

#6

Shown below is description of electric service area boundaries agreed upon by Lincoln-Union Electric Company and Northern States Power Company and as shown on the attached General Highway Map of Lincoln County, South Dakota:

CANTON AREA - PERRY AND GRANT TOWNSHIP

1. Beginning at the west center of section 19, R51W, T99N.
2. Then east to center point of section 19, R51W, T99N.
3. Then north along half mile line one quarter mile.
4. Then east two miles along the north quarter mile line to the half mile line of section 21, R51W, T99N.
5. Then south one and one-half miles along half mile line to the south quarter mile line of section 28, R51W, T99N.
6. Then east along quarter mile line one-half mile to section line.
7. Then south along the section line three quarter miles to the east center of section 33, R51W, T99N.
8. Then west one half mile to the center point of section 33, R51W, T99N.
9. Then south along half mile line one and one quarter miles to south quarter mile line in section 4, R51W, T98N.
10. Then west one mile along quarter mile line to the half mile line of section 5, R51W, T98N.
11. Then north on half mile line to the center point of section 5, R51W, T98N.
12. Then west along the half mile line one and one-half miles to the west center of section 6, R51W, T98N to county line.
13. Then north along county line for one quarter mile.

CANTON AREA - CANTON TOWNSHIP

1. Beginning at the state line on the south quarter mile line of section 25, R49W, T98N.
2. Then west along quarter mile line to the half mile line of section 26, R49W, T98N.
3. Then south to center point of section 35, R49W, T98N.
4. Then west along half mile line one mile to the center point of section 34, R49W, T98N.
5. Then north two miles to the center point of section 22, R49W, T98N.
6. Then west one-half mile to the west center of section line.
7. Then north one-half mile along section line to northwest corner of section 22, R49W, T98N.
8. Then east along section line one quarter mile.
9. Then north one and one quarter miles along west quarter mile line to the south quarter mile line of section 10, R49W, T98N.
10. Then east along quarter mile line to east section line of section 10, R49W, T98N.
11. Then north along section line to the half mile line.
12. Then east one and one quarter miles to the west quarter mile line of section 12, R49W, T98N.
13. Then south along the quarter mile line to the north quarter mile line in section 13, R49W, T98N.
14. Then east along quarter mile line to the half mile line of section 17, R48W, T98N.
15. Then south to the center point of section 17, R48W, T98N.
16. Then east along the half mile line to state line.

Shown below is description of electric service area boundaries agreed upon by Lincoln-Union Electric Company and Northern States Power Company and as shown on the attached General Highway Map of Lincoln County, South Dakota:

1. Beginning at the north center line of section 7, R50W, T100N.
2. Then south to the center point of section 7, R50W, T100N.
3. Then east along the half mile line to the center of I29 in section 7, R50W, T100N.
4. Then south along center of I29 to Junction of Highway 229 in section 18, R50W, T100N.
5. Then northeast along Highway 229 to the section line between sections 8 and 9, R50W, T100N.
6. Then south along the section line to the north quarter mile line between sections 16 and 17, R50W, T100N.
7. Then east along quarter mile line to the west quarter mile line of section 16, R50W, T100N.
8. Then south along the west quarter mile line one-half mile to the south quarter mile line of section 16, R50W, T100N.
9. Then west along the south quarter mile line to the half mile line of section 17, R50W, T100N.
10. Then north along the half mile line to the north section line of section 17, R50W, T100N.
11. Then west along section line to the east quarter mile line of section 18, R50W, T100N.
12. Then south along the east quarter mile line to south section line of section 18, R50W, T100N.
13. Then west along the section line to the center of I29.
14. Then south on I29 to the south quarter mile line in section 19, R50W, T100N.
15. Then east along the south quarter mile line to the east quarter mile line of section 19, R50W, T100N.
16. Then south along the quarter mile line to the north quarter mile line of section 30, R50W, T100N.
17. Then west along the north quarter mile line to the center of I29 in section 30, R50W, T100N.
18. Then south along the center of I29 to the south quarter mile line of section 30, R50W, T100N.
19. Then west along the south quarter mile line to the west quarter mile line of section 25, R51W, T100N.
20. Then south along the west quarter mile line to the south section line of section 25, R51W, T100N.
21. Then west to the northwest corner of section 25, R51W, T100N.
22. Then north along the section line one-half mile to the east center of section 26, R51W, T100N.
23. Then west along the half mile line to the west quarter mile line of section 26, R51W, T100N.
24. Then north along the west quarter mile line to the north quarter mile line in section 26, R51W, T100N.
25. Then west along the north quarter mile line to the half mile line of section 27, R51W, T100N.
26. Then south along the half mile line to the center point of section 34, R51W, T100N.
27. Then east one-half mile to the east section line of section 34, R51W, T100N.
28. Then north along the section line to the northeast corner of section 34, R51W, T100N.
29. Then east along the section line one-eighth mile.

Descriptions continued

Description of electric service area boundaries agreed upon by Lincoln-Union Electric Company and Northern States Power Company continued.

10. Then south along the west one-eighth mile line to the half mile line of section 35, R51W, T100N.
11. Then east along the half mile line to the east quarter mile line of section 35, R51W, T100N.
12. Then north along the east quarter mile line to the north quarter mile line of section 35, R51W, T100N.
13. Then east along the north quarter mile line to the west quarter mile line of section 36, R51W, T100N.
14. Then south along the west quarter mile line to the half mile line of section 36, R51W, T100N.
15. Then east along the half mile line to the east section line of section 36, R51W, T100N.
16. Then north along the section line to the northeast corner of section 36, R51W, T100N.
17. Then east along the section to the west quarter mile line of section 31, R50W, T100N.
18. Then south along the west quarter mile line to the north quarter mile line of section 31, R50W, T100N.
19. Then east along the north quarter mile line to the half mile line of section 32, R50W, T100N.
20. Then south along the half mile line to the center point of section 5, R50W, T99N.
21. Then east along the half mile line to the center point of section 4, R50W, T99N.
22. Then north along the half mile line to the center point of section 33, R50W, T100N.
23. Then east along the half mile line to the center point of section 34, R50W, T100N.
24. Then north along the half mile line to the north quarter mile line in section 3, R50W, T100N.
25. Then east along the north quarter mile line to the half mile line of section 35, R50W, T100N.
26. Then south along the half mile line to the center point of section 2, R50W, T99N.
27. Then east along the half mile line to the east section line of section 2, R50W, T99N.
28. Then south along the section line to the half mile line of section 11, R50W, T99N.
29. Then west along the half mile line to the center point of section 11, R50W, T99N.
30. Then north one quarter mile to the north quarter mile line of section 11, R50W, T99N.
31. Then west along the north quarter mile line to the half mile line of section 10, R50W, T99N.
32. Then south one quarter mile to the center point of section 10, R50W, T99N.
33. Then west along the half mile line to the center point of section 9, R50W, T99N.
34. Then south along the half mile line to the south section line of section 16, R50W, T99N.
35. Then east one quarter mile along the section line.
36. Then south along the east quarter mile line to the north quarter mile line of section 28, R50W, T99N.
37. Then west to the half mile line of section 28, R50W, T99N.
38. Then south one quarter mile to the center point of section 28, R50W, T99N.
39. Then east one half mile to the east section line of section 28, R50W, T99N.
40. Then south along the section line to the southeast corner of section 28, R50W, T99N.
41. Then west one quarter mile along section line.
42. Then south along the east quarter mile line to the north quarter mile line in section 33, R50W, T99N.

Descriptions continued

Page 2
Description of electric service area boundaries agreed upon by Lincoln-Union Electric Company and Northern States Power Company continued.

39. Then west along north quarter mile line to the half mile line of section 33, R50W, T99N.
40. Then south one quarter mile to the center point of section 33, R50W, T99N.
41. Then west one mile to the center point of section 32, R50W, T99N.
42. Then south along the half mile line to the north quarter mile line in section 8, R50W, T98N.
43. Then east along the north quarter mile to the west quarter mile line in section 10, R50W, T98N.
44. Then north along the west quarter mile line to the half mile line of section 3, R50W, T98N.
45. Then east along the half mile line to the east quarter mile line in section 3, R50W, T98N.
46. Then north along the east quarter mile line to the half mile line of section 34, R50W, T99N.
47. Then west along the half mile line to the west quarter mile line of section 34, R50W, T99N.
48. Then north along the west quarter mile line to the half mile line in section 27, R50W, T99N.
49. Then east along the half mile line to the center point of section 27, R50W, T99N.
50. Then north along the half mile line to the center point of section 22, R50W, T99N.
51. Then west along the half mile line to the west quarter mile line of section 22, R50W, T99N.
52. Then north along the west quarter mile line to the south quarter mile line of section 15, R50W, T99N.
53. Then east along the south quarter mile line to the east section line of section 15, R50W, T99N.
54. Then south to the southwest corner of section 14, R50W, T99N.
55. Then east one half mile along section line.
56. Then north one half mile to the center point of section 14, R50W, T99N.
57. Then east along the half mile line to the center point of section 13, R50W, T99N.
58. Then north along the half mile line to the north quarter mile line of section 13, R50W, T99N.
59. Then east one half mile to the east section line of section 13, R50W, T99N.
60. Then north along the section line to the half mile line of section 12, R50W, T99N.
61. Then west along the half mile line to the center point of section 12, R50W, T99N.
62. Then north one mile along the half mile line to the center point of section 1, R50W, T99N.
63. Then east along the half mile line to the west quarter mile line of section 6, R49W, T99N.
64. Then north along the west quarter mile line to the south quarter mile line in section 31, R49W, T100N.
65. Then east along the south quarter mile line to the half mile line of section 31, R49W, T100N.
66. Then north along half mile line to the center point of section 30, R49W, T100N.
67. Then west along the half mile line to the west section line of section 30, R49W, T100N.
68. Then north along the section line to the north quarter mile line of section 25, R50W, T100N.
69. Then west along the north quarter mile line to the east quarter mile line of section 25, R50W, T100N.
70. Then north along the east quarter mile line to the south quarter mile line of section 24, R50W, T100N.

Descriptions continued

Exhibit B page 7

Description of electric service area boundaries agreed upon by Lincoln-Union Electric Company and Northern States Power Company continued.

11. Then east along the south quarter mile line to the half mile line in section 20, R49W, T100N.
12. Then north along the half mile line to the north quarter mile line in section 20, R49W, T100N.
13. Then east along the north quarter mile line to the east quarter mile line in section 20, R49W, T100N.
14. Then north along the east quarter mile line to the half mile line of section 20, R49W, T100N.
15. Then west along the half mile line to the center point of section 13, R50W, T100N.
16. Then north along the half mile to the north quarter mile line of section 13, R50W, T100N.
17. Then west along the north quarter mile line to the west section line of section 13, R50W, T100N.
18. Then north along the section line to the south quarter mile line of section 12, R50W, T100N.
19. Then east along the south quarter mile line to the half mile line of section 12, R50W, T100N.
20. Then north one quarter mile to the center point of section 12, R50W, T100N.
21. Then east along the half mile line to the center point of section 7, R49W, T100N.
22. Then north along half mile line to the north quarter mile line of section 7, R49W, T100N.
23. Then east along the north quarter mile line to the west quarter mile line of section 8, R49W, T100N.
24. Then north along the west quarter mile line to the county line of section 8, R49W, T100N.

EXHIBIT 3

DECISION AND ORDER

NEXT

DOCUMENT (S)

BEST IMAGE

POSSIBLE

AT A REGULAR SESSION of the Public Utilities Commission of the State of South Dakota, held in its offices, in the City of Pierre, the Capital, this 1st day of July, 1976.

PRESENT: Commissioners Weiland, Ecker and Klinkel

IN THE MATTER OF ESTABLISHING
CERTAIN TERRITORIAL ELECTRIC
BOUNDARIES WITHIN THE STATE
OF SOUTH DAKOTA (SIOUX FALLS
AREA).

DECISION AND ORDER

(F-3106)

This matter having come on for hearing after due notice on the 7th day of June, 1976, at the hour of 1 o'clock p.m. in the Meeting Room of the County Courthouse in Sioux Falls, Minnehaha County, South Dakota, and the Commission having heard all the testimony and examined all records and documents, and being fully advised in the premises, and for good cause shown, the following Findings of Fact, Conclusions of Law and Order are hereby entered for all territorial boundaries in the Sioux Falls Area, except for territorial boundaries in and around the City of Brandon, said territorial boundaries in and around the City of Brandon to be established by the Commission in a separate Decision and Order:

FINDINGS OF FACT

I.

That proposed electrical territorial maps on record covering the areas at issue herein were served on all parties hereto.

II.

That agreements and stipulations have been entered into by all parties hereto regarding territorial boundaries, the same being on file and hereby incorporated as if set forth in full herein.

III.

That uncontroverted testimony at the hearing establishes that witnesses of all parties hereto are best served and most benefited by the territorial boundaries agreed and stipulated to by the parties, said agreements and stipulations being on file and previously incorporated herein.

IV.

That the Official Electrical Territorial Maps attached hereto and being hereby incorporated as if set forth in full herein constitutes the aforementioned territorial boundary agreements and stipulations by the parties.

CONCLUSIONS OF LAW

I.

That the territorial boundaries enumerated in the attached Official

Electrical Territorial Maps are just, reasonable and fair to all parties hereto and their customers.

II.

That the Commission hereby establishes said territorial boundaries set forth in said map as the assigned service area or areas for each electric utility being a party hereto pursuant to SDCL 49-34A-44.

III.

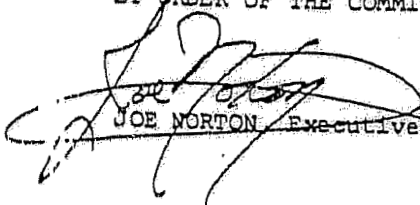
That the attached Official Electrical Territorial Maps have been prepared to accurately and clearly show the boundaries of the assigned service area of each electric utility being a party hereto.

ORDER

It is hereby:

ORDERED, that the territorial boundaries enumerated in the attached Official Electrical Territorial Maps be, and the same hereby are, established as the assigned service area or areas of each electric utility being a party hereto.

BY ORDER OF THE COMMISSION:


JOE NORTON, Executive Secretary

(OFFICIAL SEAL)

Continuation

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of pages

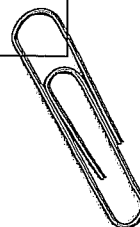


EXHIBIT 4

TRANSCRIPT/JUNE 7, 1976 PUC HEARING

BEFORE THE
PUBLIC UTILITIES COMMISSION

STATE OF SOUTH DAKOTA

In the matter of:

Establishing Certain Territorial
Electric Boundaries Within the
State of South Dakota (Sioux Falls area.)

Minnehaha County Courthouse
Meeting Room
Sioux Falls, South Dakota
June 7, 1976
1 o'clock P.M.

BEFORE:

Mr. Jack Weiland, Chairman, Public Utilities Commission,
Pierre, South Dakota

Ms. Norma Klinkel, Commissioner, Public Utilities
Commission, Pierre, South Dakota

Mr. Peder K. Ecker, Commissioner, Public Utilities
Commission, Pierre, South Dakota

APPEARANCES:

Mr. Mark Meierhenry, Attorney for the Public Utilities
Commission, Vermillion, South Dakota

Mr. Larry Gunderson, Public Utility Commission Staff
Engineer, Pierre, South Dakota

Mr. Lee Larscheid, Director of Fixed Utilities,
Pierre, South Dakota

1 CHAIRMAN WEILAND: We will go on
2 the record now in the matter of establishing
3 territories, certain territorial boundaries within
4 the State of South Dakota, electric boundaries,
5 Sioux Falls area. Now, this afternoon this hearing
6 deals with all of the area included in this order
7 except the City of Sioux Falls. Now, that particular
8 hearing will commence at 7:30 this evening. So if
9 there are some people here interested only in the
10 Sioux Falls City area, that part of it will be
11 taken up tonight at 7:30. I will have to read this
12 order into the record now after which time I will
13 turn that particular part of the proceeding over to
14 our attorney who is Mark Meierhenry. He is the
15 Commission's attorney and he means to be helpful
16 to all groups here. If there are some folks here
17 who wish his assistance in some way, why that is
18 what he is here for. He is not representing anybody.
19 He is simply here availing himself to people and to
20 the Commission.

21 On July 1, 1975, the South Dakota Public
22 Utilities Commission received authority to regulate
23 gas utilities operating within the State of South
24 Dakota. Included with the new responsibility of
25 this regulation was the language in SDCL 49-34A-44

1 which states: on or about July 1, 1976, the Commission
2 shall, after notice and hearing, establish the
3 assigned service area or areas of each electric
4 utility and shall prepare or cause to be prepared
5 a map or maps to accurately and clearly show the
6 boundaries of the assigned service area of each
7 utility.

8 Pursuant to this statutory mandate, the Commission
9 determined that boundaries of the electric utilities
10 should be established on available county highway
11 maps of sufficient size to accurately reflect the
12 territory delineation of each utility operating
13 within the county and that hearings should be held
14 state wide for the purpose of determining said
15 territorial boundaries.

16 Therefore the Commission has determined that
17 for the purpose of establishing territorial boundaries
18 for the following counties and electric utilities
19 serving within counties, a hearing shall be held
20 at Sioux Falls, South Dakota. Such hearing will
21 include the following counties and electric
22 utilities.

23 I will read the counties first. Clay, Union,
24 Lincoln, Moody, Lake, Brookings, Minnehaha except
25 Sioux Falls. And the affected utilities involved are

Clay-Union Electric Corporation, Union County
Electric Coop, Lincoln-Union Electric Coop, Sioux
Valley Empire Electric Association, McCook Electric
Coop, Kingsbury Electric Coop, Hamlin-Deuel Electric
Coop, Intercounty Electric Association, Turner-
Hutchinson Electric Coop, Northern States Power,
Otter Tail Power, Iowa Public Service, Madison
Municipal Electric, Valley Springs Municipal Electric,
Vermillion Municipal Electric, Volga Municipal
Electric, Brookings Municipal Electric, Elk Point
Municipal Electric, Beresford Municipal Electric,
Aurora Municipal Electric, Arlington Municipal
Electric, Colman Municipal Electric, Flandreau
Municipal Electric.

It is therefore ordered that on Monday, June
7, 1976, at the hour of 1:00 o'clock P.M. in the
meeting room of the county courthouse in Sioux Falls,
Minnehaha County, South Dakota, be the time and place
for the hearing to determine --- in determining the
electric territorial boundaries for the counties and
electric utilities listed above herein.

We have had other meetings of this nature and
we have worked out a procedure, a hearing procedure
that works very well. I will now turn this particular
part of the hearing over to our counsel, Mark Meierhenry

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who will explain how we have worked in other jurisdictions and what we will be doing here today.

MR. MEIERHENRY: Ladies and gentlemen, the procedure we will follow or we propose to follow unless there is a serious objection from anyone is that first the staff will enter the maps that are shown here, or attempt to enter them and their proposals. I will conduct an examination of Mr. Larry Gunderson who prepared these maps and when I am done anyone will be able to cross-examine him as to how he arrived at the maps or anything of that nature. Once he is done you may offer any witnesses that you have, any testimony that you have or any exhibits and the Commission will gladly receive those for the purpose of this hearing is to gather as much information as possible, and we would hope to conduct a hearing with that in mind. I might state that at this time we would like the record to show appearances and if you make any statements or have any objections, we would ask that you state your name prior to speaking so the court reporter can get your name down in the record. And I would like to start in the front row and at this time we will just note appearances. I might note for the record Lee

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Larscheid, Larry Gunderson and Mark Meierhenry are here with the Commission Staff. If you are representing anyone or intend to speak at a later date, please stand and identify yourself and any affiliation you might have or whom you might be representing.

MR. BILL: I am Manford Bill, resident of Brandon.

CAROLYN BILL: Carolyn Bill, resident of Brandon.

CAROLYN SEWELL: I am Carolyn Sewell and I am representing the concerned citizens of Brandon, South Dakota, that are on NSP now.

TOM NEVILLE: I am Tom Neville, employee of Sioux Valley Electric, Colman.

DAN CARLSON: Dan Carlson, Sioux Valley Electric, Colman.

AL GLOVER: I am Al Glover. I am attorney for Sioux Valley Electric of Colman.

JOHN FRITZ: John Fritz, Sioux Valley Electric at Colman.

VIRGIL HERRIOTT: Virgil Herriott.

WAYNE PETERSON: Wayne Peterson, Leanner Rural farmer.

SELMER JOHNSRUD: Selmer Johnsrud, Northern States Power Company.

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VICK GRAHAM: Vick Graham, Northern States Power Company.

DEMING SMITH: Deming Smith, one of the attorneys for Northern States Power Company.

LARRY PIERSOL: Larry Piersol, one of the attorneys for Northern States Power Company.

DALE BUTLER: Dale Butler, general manager, NSP.

P.J. BREWER: P.J. Brewer, Otter Tail Power Company.

TED RODENBERG (sp): Ted Rodenberg, Otter Tail Power.

RON KUNKEL: Ron Kunkel, Clay-Union Electric, Vermillion.

EARL MCCART: Earl McCart, taxpayers of Sioux Falls.

MARGARET SULLIVAN: Margaret Sullivan.

BILL KENYON: I am Bill Kenyon, attorney for Robert Hillgren.

LEE NELSON: Lee Nelson, Turner Hutchinson Electric at Marion.

ROLAND ANDERSON: Roland Anderson, Kingsbury Electric, DeSmet.

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GREG SHERMAN: Greg Sherman,
City of Brookings.

WES HAYS: Wes Hays, Brookings.

ELMER WAHL (sp): Manager Lincoln-
Union Electric.

BOB FRIEBERG: Bob Frieberg, City
attorney of Beresford.

GORDON CRAWFORD: Gordon Crawford,
Lincoln-Union Electric, Alcester.

CAROL HANSON: Carol Hanson, City
auditor, City of Beresford.

GENE JOHNSON: Gene Johnson, Mayor
of Brandon.

MR. MEIERHENRY: Any other appearances?
At this time I propose to call Mr. Gunderson. Is
there any objection at this time to the proposed
procedure? I will call Larry Gunderson.

LARRY GUNDERSON,
called as a witness, being first duly sworn, testified as
follows:

EXAMINATION BY MR. MEIERHENRY:

Q State your name, address and position.

A My name is Larry Gunderson. I reside at 104 North
Case Drive, Pierre, South Dakota. I am an engineer
for the Public Utilities Commission.

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And pursuant to the territorial mandate of the legislature have you been involved in the preparation of maps concerning territories for electric companies?

Yes, I have.

And what information have you used in preparing these maps?

I have used the agreements that were sent by the separate utility companies, and in cases where there were disagreements I used previous dockets that were --- that complaints were sent in on and the electric lines that were submitted, maps of electric lines that were submitted by the affected utilities that weren't in agreement.

And prior to this hearing have you marked certain exhibits?

Yes, I have.

And what exhibits --- what are the exhibit numbers of those exhibits?

There is SF 1 through SF 7.

And what are these exhibits?

These are county maps, the seven county maps that are for examination today.

And in the preparation of these, how did you do that?

Okay. As I said I used the agreements that were sent in by the utilities and in Minnehaha County where there

are --- we are mainly dealing with three disagree-
ments, I used the electric lines and former dockets
that were before the Public Utilities Commission.
Now, prior to this time have you mailed copies of
these proposed geographic areas to the various
utilities involved?

Yes, I have.

And when did you do that?

On last Tuesday.

And how are they sent?

By mail.

And to whom?

To the managers or the presidents of the utility
companies.

And I will show you what has been marked as Exhibit
SF-1 and if you could step over here, please.
(Witness complies)

What utilities are affected by SF-1?

Okay. Brookings County, H-D Electric, Kingsbury
Electric, Sioux Valley Electric, Otter Tail, City
of Arlington, the City of Volga, the City of Brookings
and the City of Aurora.

Is this one of the counties where all the utilities
in that county have reached agreement?

The Commission Staff has not received a signed

agreement from Sioux Valley Electric and Otter Tail, but it is the understanding of the Staff that they were in agreement, and maps were submitted that reflected that agreement.

And SF-1, what county is involved there?
Brookings County.

The color codes, would you explain the color codes for the record?

Otter Tail is light blue. That is completely shaded in, and vertical or diagonal green lines represent the various municipal electrics that are involved.

Do you have any attachments to SF-1 that would assist the Commission?

Yes, I do.

What are they?

I have for Exhibit 1-A, I have the territorial agreement between Sioux Valley Electric Association and the Town of Aurora. Exhibit SF-1-B, Sioux Valley Empire Electric Association and the City of Brookings. Also it might be noted in here that the City intends to purchase Sioux Valley Empire Electric facilities within the city limits of Brookings. SF-1-C which is Sioux Valley Empire Electric Association and the City of Volga. SF-1-D which is Sioux Valley Empire Electric Association and Kingsbury Electric. SF-1-E which is

1 Sioux Valley Empire Electric Association and the City
2 of Arlington.

3 Q Any other materials that you have used in preparing
4 Exhibit SF-1?

5 A Only the maps that were submitted and are the stuff
6 intended to reproduce exactly what was submitted
7 to us.

8 Q What is Exhibit SF-2?

9 A It is a map of Clay County.

10 Q What utilities were affected?

11 A Clay-Union Electric, Lincoln-Union Electric, Turner-
12 Hutchinson Electric and the City of Vermillion.

13 Q Are there any other materials which you wish to bring
14 to the counsel's attention which explains the map?

15 A Exhibit 2-A which is Exhibit A on the map is a map
16 of the City of Vermillion. On the expansion we lost
17 part of the very northern border. Let's see, the
18 northern most lines on the portion that did run off
19 the map would be approximately 4,400 feet north of
20 section --- the section line. Also this is a 50
21 percent reduction of what was set in, so one inch
22 equals 800 feet instead of one inch equals 4.

23 Q And all the green shaded area is municipal power
24 for Vermillion, is that correct?

25 A Yes.

NEXT

DOCUMENT (S)

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1 Q Any other exhibits or attachments to Exhibit 2?
2 A Exhibit 2-B which I don't have right now. Evident
3 I have left it. Over there is an agreement between
4 Turner-Hutchinson and Clay-Union, and Exhibit 2-C
5 which is an agreement between Lincoln-Union and
6 Clay-Union.
7 Q These are agreements?
8 A Yes.
9 Q And on Exhibit 2 the shaded area, the green shaded
10 area is in reference to the City of Vermillion?
11 A That is correct.
12 Q What about Exhibit 3, what is that?
13 A Exhibit 3 is Lake County.
14 Q What utilities are involved?
15 A Northern States Power, Otter Tail, the City of
16 Madison, Sioux Valley Electric --- Empire Electric
17 Association, McCook Electric and Intercounty Electric.
18 Q And what exhibits are attached to the map which is
19 marked 3?
20 A There is an expansion of the Junius area which is
21 marked as SF-3-A. It shows the territory served
22 in the city between NSP and Sioux Valley Empire
23 Electric. And 3-B is a map of Madison, the boundary
24 lines between Sioux Valley Empire Electric and
25 Madison. Three-C is the territorial contract between

1 Sioux Valley Empire Association and the City of
2 Madison. Three-D, this is a letter from the City of
3 Madison, also explains the border of Madison. Three
4 also lists 19 people that are affected outside.
5 They are in a foreign territory. They are being
6 served by other utilities. In other words, someone
7 that is in Sioux Valley Empire's territory but are
8 served by the City of Madison. And 3-E is an agree-
9 ment between Sioux Valley Empire Electric Association
10 and McCook Electric. And 3-F is an agreement between
11 Sioux Valley Empire Electric and Northern States
12 Power which also has --- besides Lake County has
13 their agreement for Minnehaha County and Moody County
14 and also delineates the three areas that are not
15 in agreement on page 6.

16 Q And the areas that are not in agreement are basically
17 where?

18 A That is not in Lake County, in Minnehaha County.

19 Q What about Exhibit 4?

20 A Exhibit 4 is Lincoln County.

21 Q What utilities are affected in Lincoln County?

22 A Iowa Public Service, Northern States Power, the City
23 of Beresford, Lincoln-Union, Turner-Hutchinson and
24 Clay-Union.

25 Q Are there any attachments to that exhibit which you

1 Q What have you used to prepare that map? Since the
2 time that you have mailed out Exhibits 1 through 6,
3 before we get to Minnehaha County, are there any
4 corrections on any of these maps that were made
5 after the time that you sent them to the utilities?
6 A Yes. Well, they haven't been made at this time,
7 but they have been brought to my attention. In Lake
8 County there is a section of NSP that is reflected
9 in section 25 of range 24 west, 107 north and that
10 should be section 24 of the same range. In other
11 words, it should be one mile north of where it is
12 at. Also in Lincoln County there is a small area
13 between the --- it's Highway 29 and 230 which belongs
14 and the map reflect it as belonging to Northern
15 States Power. They are the only two so far that have
16 been brought to my attention.
17 Q And the map as presently marked will be corrected
18 before they are submitted to the Commission by the
19 Staff?
20 A Yes.
21 Q Now, back to Minnehaha County.
22 A I have prepared the map. I have prepared the map
23 first from the agreement that was sent in, and
24 submitted by the various utilities, and as I stated
25 earlier as reflected in Exhibit 37-3-8 there are

1 three areas that are in disagreement in this context
2 that we are dealing with at this hearing.

3 Q Are those areas reflected in that exhibit and if so
4 on what page?

5 A They are on page 6, and they read as part of the
6 south half of the northwest quarter of section 3,
7 Township 102 north, range 49 west of the principal
8 meridian, east of US Highway 77 known as the
9 Peterson First Edition, all the area situated
10 there. That was number one. Number two is all
11 area situated within the corporate limits of the
12 City of Brandon as they existed on the date of 1916
13 agreement. And number three is the south half of
14 section 32 and the south half of section 33, Township
15 102 north and section 4 and 5, Township 10 -- 101
16 north, all in the range of 49 west of the first
17 principle meridian.

18 CHAIRMAN NEILAND: The last disputed

19 A The last disputed area would have come to the
20 Commission's attention as Country Club Estates,
21 and that was under docket 3066.

22 Q Now, what was the date of that agreement. Just to
23 clear up the city limit part of it? Is there a
24 date on that agreement, the city -- the second
25 part that you referred to, the city limit as of the

1 day of this agreement, what is the date of this
2 agreement?

3 A The date of the agreement is 19th day of January,
4 1976, but this is an area that is not in agreement.

5 Q I understand that. And those three areas that you
6 have mentioned, is the Staff making a recommendation
7 to the Commission at this time as to what utilities
8 should get those areas?

9 A Yes, we are.

10 Q And what is that recommendation?

11 A For the first part which is known as the Northern
12 First Edition, this was brought first to the
13 Commission's attention by a complaint received by
14 Northern States Power against Sioux Valley Electric.
15 They are under docket P-3701. In the docket proceedings
16 first of all, presently Sioux Valley Electric Company
17 is serving that area and have been informed that
18 there are three trailer houses being served even in
19 From the docket there was -- the letters and
20 information submitted showed that Sioux Valley Electric
21 Electric brought service to this area in question
22 after the first of July, 1975. Now, on the map it
23 was submitted that their electrical lines as of
24 March 21, 1975 which I have marked as having
25 they shall/no electrical lines serving this area.

1 After taking and studying this map and using the
2 equal distance principle, it was -- the Commission
3 Staff decided that this area in actuality was closer
4 to Northern States Power than it was to Sioux Valley
5 Empire Electric, and therefore recommended that
6 Northern States Power, that this become Northern
7 States Power territory.

8 Q What about the second area of disagreement? Would
9 you correct me if I am wrong, is everything within
10 the city limits of Brandon, is that right?

11 A That is correct.

12 Q What is the Staff's recommendation and the reasons
13 there for it?

14 A In Exhibit SF-5-D, again a map submitted by Sioux
15 Valley Empire Electric Association which shows the
16 area around the City of Brandon and both -- shows
17 both the lines of Sioux Valley and Northern States
18 Power.

19 Q Mr. Gunderson, are there any other utilities besides
20 the two that you have just mentioned that are
21 affected in this dispute?

22 A No.

23 Q All right. Go ahead.

24 A There was an agreement between Sioux Valley Empire
25 Electric and Northern States that the south half of

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the northwest quarter of section 27 and the south
half of the northeast quarter of section 28 and the
southeast quarter of section 28, and the northwest
quarter of section 32 --- excuse me, that was not
involved here. The northwest quarter of section 32,
also part of the west half of section 27 lying south
of the center line of the US Interstate Highway
90 and northwest of the center line of the Great
Northern Railroad right of way, and one other area
which comes into effect here is part of the south
half of section 35 lying south of the center line
of US Highway 8 --- Highway 14, excuse me, now.
Commission Staff noted that at a certain point
on Interstate 90 highway section, that some-
distantly that Sioux Valley Empire Electric ran
down the eastern part of that section and Northern
States served the west part of that section. Dissem-
tion down the west side. It is also noted that the
area in section 27, that Gene Iverson owned the
entire half section south of Interstate 90, the
west half and in section 14 that Albert Nelson and
Elin Graff owned the northwest quarter of that section
with the exception of a small plot that is allocated
for a church and that is in the center of the section.
Since in both instances the Iversons, the Nelsons

1 and the Graffs were served by NSP and included all
2 of this territory also, the Staff felt that NSP
3 should serve that territory even though there is
4 a railroad line running through the Iverson
5 property and could possibly be a little more diffi-
6 cult for NSP to bring the line in to part of that
7 area than it would be for Sioux Valley Empire
8 Electric.

9 COMMISSIONER ECKER: Mr. Gunderson,
10 you mentioned North Western --- excuse me, Northern
11 States. I apologize. I refer to Northern States
12 Power.

13 Q Now, is one of the basis of your opinion the
14 proximity then of the distribution of the lines of
15 Northern States Power?

16 A Yes.

17 Q Is there any problem in that area with entanglement
18 or any other reason not to use the equidistant
19 principle?

20 A On the southern parts going straight across which
21 would reflect on SF --- Exhibit SF-5-E there is a
22 line operated by Sioux Valley Empire Electric that
23 runs across the center, just north of the center
24 line of section which would be just north
25 of Holly Avenue and if one were to use the equal

1 distance principle there would possibly be a
2 diagonal or some other measurement that would make
3 it difficult to stake out.

4 Q What about the third area?

5 A Okay. We are just getting inside the town of
6 Brandon now.

7 Q Let me hold this up so that everyone can see. Is
8 this the one you wanted?

9 A First is the exhibit I referred to before, SF-5-E
10 and here is SF-5-F which both were submitted. Anyway,
11 this one --- this one was submitted by Northern
12 States Power showing their distribution in the City
13 of Brandon as of March 21, 1975, and this shows the
14 Sioux Valley lines within the City of Brandon.

15 Q When you say this, would you refer to the number.

16 A Excuse me, SF-5-E which shows the city or the Sioux
17 Valley Empire Electric distribution lines within
18 the City of Brandon. Now, in taking this I didn't
19 have time to transfer all of the lines from one map
20 to another map, and the lines were pretty clear
21 out. They weren't entangled. There happens to be
22 a school yard in here which Sioux Valley --- I mean
23 Northern States Power serves and all of this area
24 in here which would be this area right here is
25 served by Northern States Power. Then we go up here

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which is known as the terrace area, the northern part of that. That is all served by Sioux Valley Empire. There are three houses on the south here, four houses in this area here that are served by NSP. Okay. This is the schoolhouse which was served previously by Sioux Valley Empire Electric, and this is the Fleetwood Edition which is also served by Sioux Valley Empire Electric, and this area right here which is blank is entirely served by Northern States Power. Also there is a mistake on this map. NSP serves seven houses on the west side of Fourth --- is it Fourth Avenue? Yeah, Fourth Avenue and two houses --- or excuse me, nine houses altogether in this area which I original had given to Sioux Valley Electric and that actual should be Northern States territory, Northern State Power territory there. That was a mistake. That was an error in the drafting. Also over here Sioux Valley Empire comes in and serves two or three houses along the highway. This line is complete to the property line behind the houses that are served by NSP. NSP does serve four houses on the north side of Dogwood Street, and they also serve on the south side of Dogwood Street. Up here on the north side of Holly Boulevard and where Church Hill Drive

1 at, that is where the church is at and the Staff
2 found out there was no Church Hill Drive there at
3 that time, and would recommend that that plat be
4 given to Sioux Valley Electric which does serve
5 that. Then going up the property boundary line
6 between the two families I described before which
7 were between Nelson and Fred Strub.

8 Q Is there any other exhibit which you have used in-
9 side the City of Brandon?

10 A There is one more when we get to the eastern edge
11 of Brandon. There is Exhibit 5-G and Exhibit 5-F
12 which shows Northern States Power's line coming into
13 the City of Brandon. Unfortunately the maps that
14 were sent did not reflect quite accurately how this
15 line actually entered the land. It entered 100 feet
16 north of Cedar, the line here and goes right next
17 to these lines on the southern border and then goes
18 down the section line like these down past Highway
19 16. And this the Commission, after going out and
20 looking at Brandon, it wasn't feasible to see how
21 a corridor could have been put in here that would
22 be easily delineated, so Staff recommends instead a
23 line just going straight over to this line and then
24 straight north along the line there, and then coming
25 up against the Brandon park edition. This is the

scale plan. Also the southern border here, there is a new road that has been put in that isn't reflected and the Staff would recommend that the road be the boundary, the center line of the road be the boundary. Sioux Valley does have a line that runs along Highway 16 and this is approximately --- would be the center.

Q Anything else as to the City of Brandon?

A In deciding this there were places where transmission or distribution lines did run through other people's territory and they were --- they do not serve anybody in that area, so the Commission Staff did not use those or did not use them in determination of territories, and this point here where the school is completely on this property and the school is completely up here, we have Sioux Valley up here above. Also we have NSP running straight through this area here. Those are 12.5 kv line and it would have been difficult to just split up the school or something of that nature, service to that school.

Q What about --- anything else in the City of Brandon?

A No.

Q What about the third area that you mentioned?

A The third area which was brought to this Commission attention and it's under docket No. F-3066 involves Country Gable Estates. Okay. This area again is

1 the south half of section 32 and the south half of
2 section 33, Township 102 and section 4 and 5,
3 Township 101 north, range --- all those are in
4 range 48. As was previously presented to the
5 Commission here, this is a map that is included with
6 this docket 3066. You can see the lines are in red
7 that are Sioux Valley's. This is the area in
8 question and the green lines running through here is
9 Northern States Power's line. The line as presented
10 in the testimony is a 69 kv line until it enters
11 the City of Brandon and to a point over here in
12 section 31. On both ends of that it is 12.5 kv
13 line. Anyway, in the Commission's decision on this
14 they made the decision that 69 kv line built for
15 that is what the line should be considered as law,
16 and therefore the Staff also took that consideration
17 and did not use that line in determination of
18 territory, and since it didn't use that line Sioux
19 Valley Empire Electric is completely --- surrounds
20 the area and there is no other Northern States
21 Power lines within that area. That area would be ---
22 the Staff would propose to give that territory to
23 Sioux Valley Empire Electric.
24 Q And are you asking the Commission to just take notice
25 of your entire docket rather than offer it as an

1 exhibit?

2 A Yes.

3 Q Okay. Are there any other exhibits which deal with
4 Minnehaha County?

5 A Yes. Now, getting back to the people that were in
6 agreement or the agreements within the county, first
7 of all the agreement which I marked SF-5-A which is
8 between --- an agreement between Sioux Valley Empire
9 Electric Association and the City of Valley Springs.
10 Also there is an agreement between Sioux Valley
11 Empire Electric Association and Lincoln-Union
12 Electric.

13 Q What number is that or ---

14 A That is Exhibit SF-5-B.

15 Q Any others in Minnehaha County, any other agreements?

16 A Not to my knowledge. Also I would like to point out
17 one thing, the City of Sioux Falls is just a block
18 with green diagonal lines that are reflected on this
19 map. That is just to show that there is a city and
20 municipality. It doesn't represent any territories
21 or any boundaries between NSP and Sioux Valley ---
22 or Sioux Falls, excuse me, municipal electric.

23 Q And that is drawn just as the city limits which that
24 map doesn't apply to at this time, for this hearing
25 not involved with it?

1 A This is just a square representing it.
2 Q All right. Anything else? What utilities are
3 affected in Minnehaha County?
4 A The affected utilities are Sioux Valley Electric
5 Association, Intercounty Electric, Lincoln-Union
6 Electric, the City of Valley Springs Electric,
7 Northern States Power, McCook Electric and the
8 Sioux Falls Municipal will be taken care of this
9 evening.
10 Q Do you have anything else on Minnehaha County?
11 A No.
12 Q What is Exhibit 6?
13 Exhibit 6 is Moody County.
14 And what utilities are affected in Moody County?
15 Otter Tail, the City of Colman, the City of
16 Flandreau, Sioux Valley Empire Electric and Northern
17 States Power.
18 Q And what is Exhibit 6?
19 A Exhibit 6 is Moody County.
20 Q And are there any attachments to that or exhibit
21 to that?
22 A Exhibit 6-A shows the City of Colman territory
23 a signed agreement between Otter Tail and the
24 Colman, but it also reflects very closely the
25 ment between Colman and Sioux Valley Empire Electric.

1 Q Do you have any signed agreement that you used in
2 making this map?

3 A Yes. There is an agreement between Sioux Valley
4 Empire Electric Association and the City of Colma
5 which gives a fair and accurate description of the
6 boundary lines.

7 Q And what have you lettered that or numbered that?

8 A That is SF-6-B. And SF-6-C is Sioux Valley Electric
9 Association and the City of Flandreau.

10 Q Do you have any other materials? Everything you
11 arrived at in Moody County was by agreement of
12 utilities and you have just drafted their agreements
13 onto the map, is that correct?

14 A That is correct. But then again here we have ---
15 we have not received the signed agreement between
16 Otter Tail and Sioux Valley, but I understand they
17 are in agreement and I would like to have that
18 entered into the record as soon as the Commission
19 Staff has it.

20 Q All right. What is SF-7?

21 A SF-7 is Union County.

22 Q What utilities are involved in Union County?

23 A Iowa Public Service, the Cities of Maywarden, Iowa
24 Elk Point and Beresford; Union Electric, Lincoln-
25 Union and Clay-Union Electric.

1 Q And have you used any additional --- have you had
2 any agreements in Union County first of all?
3 A Yes, they are --- they are all in agreement.
4 Q And do you have any exhibits or attachments which
5 reflect those agreements?
6 A Exhibit SF-7-A which is a map of Beresford, South
7 Dakota, shows the boundary lines around Beresford
8 and also electric lines down the map is the agreement
9 between Beresford Municipal and Lincoln-Union,
10 Beresford and Clay-Union, and an agreement by
11 Public Service in the town of Beresford not signed
12 by Iowa Public Service, and I believe I called
13 Beresford, talked to the city auditor and they
14 that was an oversight, that it should have been
15 signed also.
16 Q All right. Anything else you used to prepare
17 territorial maps, Exhibit SF-7?
18 A Exhibit SF-7-B is a map submitted from the City
19 Elk Point delineating their boundary around the
20 City of Elk Point, and also there is Exhibit SF-7-C
21 which shows the town of Alcester, South Dakota
22 it shows the boundary delineations between Iowa
23 Public Service and Lincoln-Union within that
24 The written agreements --- first of all, SF-7-A
25 a --- is an electric delineation board agreement

1 between Iowa Public Service and Lincoln-Union
2 and this deals specifically again with the City
3 Alcester. Seven-E is an agreement or a delineation
4 of territories, excuse me, between Union County
5 Clay-Union. And Exhibit SF-7-F is a delineation
6 the territories --- or a signed agreement, excuse
7 me, between IPS and Union Electric. And 7-G is
8 a delineation of territory within Lincoln-Union and
9 Clay-Union within Union County, Lincoln-Union and
10 Haywarden, Iowa, Lincoln-Union and Union County
11 the County of Union or Union County, Lincoln-Union
12 and the City of Beresford and Iowa Public Service
13 and Lincoln-Union Electric Cooperative.

14 Q Anything else on Union County?

15 A That is all I have at this time.

16 Q Are there any other matters that you wish to bring
17 to the Commission's attention concerning any of
18 these maps or any of these areas at this time?

19 A Well, the fact that Minnehaha County there were
20 many ways to draw the area of Brandon, and this was
21 just one proposal. It definitely isn't the only
22 one that can be drawn. I wanted to point out one
23 fact, that people who are in disagreement have until
24 the 30th of June to come to an agreement and submit
25 it to the Commission.

1 maps as drawn, the written agreements will control
2 in the future. And with that basis we would offer
3 Brookings County --- pardon me. Is there a correction
4 on this map, Mr. Gunderson?

5 A Yes, there is. In section 15 in range 47 west,
6 in Township 112 north on the north shore of Lake
7 Hendricks which is H-P Electric and Otter Tail, the
8 Staff omitted putting in a very little section of
9 Otter Tail which served some taverns up on the north
10 shore. That was submitted in both --- by both sides
11 and they both signed maps.

12 Q And will you change Exhibit 1 to reflect that?
13 (Witness complies)

14 MR. MEIERHENRY: Subject to any
15 objections or corrections from anyone present we
16 will offer Staff Exhibit SP-1-A, B, C, D and E. There
17 are no corrections.

18 A VOICE: I would like to ask --- I
19 was wondering if the City of Brookings, and that
20 little map that we have got certainly is not detailed
21 if we could submit the detailed map which I believe
22 were in your hands as a part of the agreement that
23 we have with Sioux Valley. I believe that we
24 checked and they coincide perfectly with the agree-
25 ment.

1
2 MR. GLOVER: Sioux Valley would
3 concur in that request, that the detailed map
4 supplied by the City and Sioux Valley concerning our
5 boundaries be admitted as evidence and accepted as
6 the map outlining the territories, and they are
7 in conformity with the written agreement also.
8
9 MR. WEIERHENRY: I certainly have
10 no objections.

11
12 CHAIRMAN WEILAND: Very well. That
13 will be received then.

14 MR. GUNDERSON: That was all of the
15 maps.

16 A VOICE: There are some that are
17 rather a mix-up. They are very detailed and I think
18 that their engineers and ours worked them out pretty
19 Good.

20 MR. WEIERHENRY: The additional maps
21 which have been requested to be offered are E through
22 F through J. We would offer those as well.

23 CHAIRMAN WEILAND: Hearing no
24 objection they will be received.

25 MR. WEIERHENRY: At this time we
would offer --- first of all, are there any corrections
to deal with the map which is marked SP-2 for Clay
County? Larry, you have --- Mr. Gunderson, do you

1 have any corrections?

2 Mr. Gunderson: No.

3 MR. MEIERHENRY: Subject to any
4 corrections or additions we will offer SP-2-A, B
5 and C dealing with Clay County, South Dakota.

6 CHAIRMAN WEILAND: Any objections?
7 Hearing none they will be received.

8 MR. MEIERHENRY: At this time we
9 will offer --- Mr. Gunderson, do you have any
10 corrections that have been pointed out to you during
11 the break as to Exhibit 3 which is Lake County?

12 MR. GUNDERSON: No other ones other
13 than the ones I have mentioned previously.

14 MR. MEIERHENRY: Subject to any
15 objections, additions or corrections we will offer
16 SP-3-A, B, C, D and E.

17 MR. PIENSO: With regard --- excuse
18 me, go ahead.

19 MR. CLOVER: I would just like to
20 make a comment concerning all of these offerings.
21 Sioux Valley has no objection to the offerings of
22 the maps with the understanding, as you stated, that
23 I know we have had our examiners and there are some
24 corrections that don't conform to our written agree-
25 ments with affected utilities that we have entered

1 into agreements with, and we would not object to
2 their being admitted as long as you understand that
3 the written agreements that we have written will be
4 the guiding factor and will override written maps
5 and also we will be happy to write to the Commission
6 and point out the error that we have noted in the
7 maps that we have examined and that you have submitted
8 to us. We don't want to be bound, in other words,
9 by not objecting to a map that is obviously in error,
10 and then ---

11 CHAIRMAN WEILAND: The written
12 agreements prevail.

13 MR. GLOVER: All right. That's fine.

14 MR. MEIERHENRY: I would just like to
15 point out for the Commission, perhaps the Commission
16 is aware, that Mr. Gunderson has had to prepare maps
17 for the entire state in a short period of time, and
18 with all the corrections that have been made between
19 these companies throughout this state, these maps
20 are done as best we can at this time, and it is the
21 intent to make them conform to any written agreements.

22 MR. PIERSOL: May I say one thing with
23 regard to Lake County. I am Larry Piersol. I am an
24 attorney for Northern States Power Company. In your
25 testimony, Mr. Gunderson, there was one change.

1 everybody had one quarter section, one half mile or
2 one mile toolow in Lake County.

3 MR. GUNDERSON: That is correct.

4 MR. PIERSOL: Then are you actually
5 showing that as changed now on the map as you are
6 offering it or how are you going to offer it?

7 MR. GUNDERSON: I would make the
8 correction before the Commission finalized it.

9 MR. PIERSOL: All right. But you do
10 make a comment on that as a result in your testimony?

11 MR. GUNDERSON: That is correct.
12 Would you like me to do it right now?

13 MR. PIERSOL: Well, I think it would
14 be preferable.

15 MR. GUNDERSON: Okay. Certainly I
16 will.

17 MR. MEIERHENRY: Mr. Gunderson: to
18 show the correction ---

19 MR. PIERSOL: We would have no
20 objection then to the offer of Lake County map.

21 MR. MEIERHENRY: May the record show
22 that Mr. Gunderson used some kind of a white material
23 to wipe out the area, I don't know what it is called.
24 Three --- then 3A through F we will reoffer with the
25 correction having been made.

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CHAIRMAN WEILAND: Hearing no objection they will be received.

MR. MEIERHENRY: At this time we will offer --- are there any corrections that you have become aware of on SF-4, Mr. Gunderson, during the recess which deals with Lincoln County?

MR. GUNDERSON: None other than the one that was mentioned to me previously.

MR. MEIERHENRY: All right. Has that correction been made?

MR. GUNDERSON: No, it has not at this time.

MR. MEIERHENRY: Could you make it on the map at this time?

MR. GUNDERSON: Certainly.

MR. MEIERHENRY: And you are going to make it at this time?

MR. GUNDERSON: Right.

MR. MEIERHENRY: Are there any other additions or corrections to SF-4?

MR. GUNDERSON: I see none

MR. MEIERHENRY: Mr. Commissioner, I would offer SF-4 A, B, C.

CHAIRMAN WEILAND: Any objection? Hearing none they will be received.

1 MR. MEIERHENRY: Mr. Gunderson,
2 during the recess have you noted or have any correc-
3 tions that you are aware of been pointed out in the
4 Moody County map noted as SF-6?

5 MR. GUNDERSON: No.

6 MR. MEIERHENRY: At this time we will
7 offer SF-6-A, B, C subject to any additions, correc-
8 tions or comments dealing with Moody County.

9 CHAIRMAN WEILAND: Any objection?
10 Hearing none they will be received.

11 MR. MEIERHENRY: As to Union County
12 which is marked SF-7, have you noted any additions
13 during the recess, Mr. Gunderson, or corrections?

14 MR. GUNDERSON: No. Except that
15 I did change the scale in the Alcester map to reflect
16 remember, it was reduced. The original map was
17 reduced.

18 MR. MEIERHENRY: Subject to any
19 additions, corrections or objections we will offer
20 SF-7 which is Union County, South Dakota.

21 CHAIRMAN WEILAND: Any objections?

22 MR. CRAWFORD: We have no objection.
23 We have one correction that will have to be made
24 on the side boundary of the map of the City of
25 Beresford. We have agreed with Staff that we will

1 submit that in writing to the Commission prior to --

2 CHAIRMAN WEILAND: Very well. Any
3 of the agreements that are in writing, the writing
4 prevails over the map, the written agreement.

5 MS. SULLIVAN: Margaret Sullivan.
6 As to Union County we would have three corrections
7 for that particular area.

8 CHAIRMAN WEILAND: Will you bring
9 them forward, please.

10 MS. SULLIVAN: As to Exhibit SF-7-C
11 which is a map of Alcester, the map of Alcester should
12 also reflect the service boundary between Iowa
13 Public Service Company and Lincoln-Union Rural
14 Electric Company in the northeastern corner. This
15 is already mentioned in the service contract between
16 these parties under big spring and north, item 14
17 and 15, and it could be drawn in as shown on ---

18 MR. CRAWFORD: This is part of the
19 description that was submitted, the detailed de-
20 scription as she says.

21 MS. SULLIVAN: While Mr. Gunderson
22 is drawing that in, we would also like to request
23 that the feet shown on the map, underneath be
24 written in. As it is the map is already admitted
25 not to scale, and inserting the feet might further

1 clarify the map. This request would go to the serv
2 boundary on the northeast and also in the southern
3 part of Alcester.

4 MR. GUNDERSON: On the Alcester map
5 one inch equals 150 feet.

6 MR. MEIERHENRY: Are there any other
7 corrections?

8 MS. SULLIVAN: I guess there is one
9 more correction. The west side of the Hudson area
10 on the map the Commission has drawn does not depict
11 correctly the service area boundary.

12 MR. GUNDERSON: It should be
13 additional.

14 MS. SULLIVAN: This appears on the
15 fifth page of the service area agreement between
16 Lincoln-Union Rural Electric Cooperative and Iowa
17 Public Service Company, and it results in Iowa Public
18 Service Company receiving another one half mile to
19 the north in the 16th section, Township 95 and range
20 28 west. I have no further questions to make at
21 this time.

22 CHAIRMAN WEILAND: Have those corrections
23 been made, Larry?

24 MR. GUNDERSON: Yes, those corrections
25 have been made.

CHAIRMAN WEILAND: They were made?
MR. GUNDERSON: Yes, they were.
CHAIRMAN WEILAND: They are agreed to by both parties?

MR. GUNDERSON: Yes.

MS. SULLIVAN: Yes, the service area agreement was not changed. The corrections noted were only for the purpose of making correction on the map submitted by Staff.

CHAIRMAN WEILAND: Thank you very much
MR. MEIERHENRY: With those corrections and if there are no others, we offer Exhibits 7-A, B, C, D, E, F and G.

CHAIRMAN WEILAND: Any objections?
Hearing none they will be received.

MR. MEIERHENRY: At this time also for purpose of allowing any persons who are interested in Minnehaha County, we will offer SP-5-A through E.

MR. PIERSOL: We do have a couple, I believe actually five items with regard to Minnehaha County. First of all, the area between Highway 38 and 129 is actually --- I believe a portion of that should be Sioux Valley's, unless of course the Staff makes a contrary recommendation. All I am pointing out is the difference in the map. We would be happy to

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accept the map.

MR. GUNDERSON: The intent of the map was to draw the maps in accordance with the agreements.

MR. PIERSOL: There is no written agreement I believe with --- excuse me there. The written agreement then controls and that should be Sioux Valley's area. Do you wish to see the map?

CHAIRMAN WEILAND: Can you do the corrections now?

MR. GLOVER: We might run into some more. I would like to enter an objection, not an objection but I would admit to the map insofar as they are consistent with our written agreement, and I understand that the maps are being offered solely as evidence to be considered by the Commission anyway, and I believe our written agreement was one of the exhibits that was offered along with the maps, so that we consider ourselves in accordance with NSP. As far as the written agreement is concerned and as far as the maps that do not conform to the written agreements, we ask that those be amended, and it's our understanding that the engineer that was drafting these maps, I know he was under a time factor and he was attempting to draft them in conformity with the

MR. MEIERHENRY: At this time we will then reoffer these with the intent of allowing any cross-examination of Mr. Gunderson after that.

CHAIRMAN WEILAND: Objections?

MR. MEIERHENRY: Other than those made prior.

CHAIRMAN WEILAND: Now, this is on the three areas?

MR. MEIERHENRY: These are just on the exhibits. Then we will, I presume, get to that, Mr. Commissioner. This is just as to Exhibit 5A through E.

CHAIRMAN WEILAND: Okay. Any objections on Exhibit 5A through E?

MR. PIERSOL: None other than stated.

CHAIRMAN WEILAND: They will be received. Hearing no objection except those stated by Mr. Piersol, they will be received.

MR. MEIERHENRY: I have no further questions of Mr. Gunderson.

MR. GLOVER: Are those maps that were introduced today, were those the maps of the Brandon area also?

MR. GUNDERSON: Yes, Peterson Estates.

MR. GLOVER: C is Peterson Estates?

1 MR. GUNDERSON: Yes, and E is.
2 E is Sioux Valley's map of Brandon which the Sta
3 did draw the proposed territories on, and D is t
4 map submitted by Sioux Valley.

5 (Off the record discussion.)

6 MR. MEIERHENRY: Is there any cr
7 examination of Mr. Gunderson about this matter?

8 MR. PIERSOL: Yes.

9 MR. MEIERHENRY: Mr. Piersol.

10 MR. PIERSOL: Can I come up and
11 use that table as a counsel table?

12 MR. MEIERHENRY: Fine.

13 EXAMINATION BY MR. PIERSOL:

14 Q Mr. Gunderson, first of all with regard to what
15 will call the Wade Peterson area, you have it c
16 on the record, would you point out to me the ex
17 number that you relied upon in part in making y
18 decision in regard to the Wade Peterson area?

19 A I used Exhibits Sioux Falls 5 --- SF-5-C which
20 a map submitted by Sioux Valley Empire Electric
21 which showed their lines as of March 21, and al
22 had the NSP lines. NSP are square, Sioux Valle
23 round.

24 Q The area shown on Exhibit 5, SF-5-C is drawn on
25 red diagonal lines is what is commonly referred

the Wade Peterson area?

That is correct.

And would your findings that the map is submitted by Sioux Valley support your determination that on the equal distance concept the Wade Peterson area should be awarded to Northern States Power Company, is that correct, Mr. Gunderson?

That is correct.

That was likewise supported by the map which was submitted by Northern States Power Company, is that correct?

There was a map, yes, though the map supplied by the Northern States Power Company did not show the southern most service.

Very well.

That also did come into consideration.

And that was map --- what was the exhibit number for the NSP map?

The NSP map was not presented as an exhibit. If you would like that done I do have it here with me.

That is all right. Then with regard to the City of Brandon, am I correct in stating that SF-5-E, that exhibit was the Sioux Valley drawing of its line in Brandon as of March, 1975?

As far as it goes between Holly Boulevard and Aspen

Boulevard.

What is the exhibit number on which you demonstrated your Staff recommendations with regard to the City of Brandon?

That would be SF-5-E --- 5-F which would be the line submitted by NSP and the City of Brandon, and also on the eastern edge it would be G and H, G being submitted by Sioux Valley and H being submitted by Northern States Power.

Now, during your testimony you indicated I believe with regard to Exhibit SF-5-E that over what I will call Colburg's Edition there were I believe nine residences that should have been reflected as being NSP served, is that right?

That is correct. I started to make that correction. I was interrupted.

Don't let me interrupt you now. Go ahead and complete that.

(Witness complies)

You are now making that correction to Exhibit SF-5-E, is that correct?

That is correct.

MR. GLOVER: Would you mark the corrections so that it can be identified as being made upon this exhibit? Just make a notation by it

1 so we can determine that.

2 MR. GUNDERSON: A star?

3 MR. GLOVER: Yes, that's fine.

4 I will mark an asterisk at the southern point.

5 And so that it's clear on the record, is it the area
6 which is lying to the east of the land that you have
7 now drawn in Colburg's Edition on Exhibit SP-5-E that
8 is the edition?

9 That is correct. I have so marked that with NSP.

10 And that became a staff recommendation in addition to
11 that that was indicated being submitted by NSP, is
12 that correct?

13 That is correct. As I mentioned before that was a
14 mistake by the Staff.

15 All right. Thank you, Mr. Gunderson. Now, let's move
16 on to the utility line which Northern States Power
17 Company has which runs just to the north of the
18 Country Club Estates. I think that has been indicated
19 some time to be an area of dispute. What exhibit
20 among the group of exhibits numbered 5 with subnumbers
21 clearly shows that line?

22 There is no --- there has been no exhibit offered that
23 shows clearly that line though I do have one here that
24 I could offer. It doesn't show that line on --- that
25 is in question. It's not on ---

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Do you have an exhibit there that would show it?
This is inside the docket. This is one that fairly,
accurately reflects it.

MR. GLOVER: If counsel would approve
I would stipulate that the docket P-3066 may be
considered by this Commission at the hearing, all
of the docket and testimony including the map and
the exhibits included in them.

MR. PIERSOL: Very well, It's
stipulated by and between the counsel for Northern
States Power Company and counsel for Sioux Valley
Empire Electric Association I think that all testimony
offered by both parties to docket No. P-3066 as well
as all exhibits received as evidence in this case
may become a part of the full transcript in this
hearing today as fully as if such witnesses were
recalled and testified and if such exhibits were
so entered into evidence. So stipulated.

MR. GLOVER: So stipulated.

MR. PIERSOL: Is that received then?

CHAIRMAN WEILAND: That is received.

What was that docket No. again?

MR. PIERSOL: 3066.

CHAIRMAN WEILAND: Let the record

show that the testimony and docket 3066 be moved in

the docket 7-3105.

Now, Mr. Gunderson, I believe in your --- I believe in your earlier testimony when Mr. Meierhenry was questioning you you indicated that a portion of that line which runs just to the north of Country Gable Estates was not taken into account by you for materiality purposes due to the order which was entered by the Public Utilities Commission in that docket No. 3066, is that correct?

That is correct.

And you, of course, as I believe you testified earlier, you felt that you were bound by the Public Utilities Commission's decision and that docket No. 3066, is that correct?

That is correct.

And as a result of that decision then you gave no consideration to the line which is shown in green exhibits --- strike the question. Mr. Gunderson, it would be your testimony that you disregarded all of the line that is shown in red on Exhibits C-2 of docket 7-3065? You disregarded all of that line so marked in that Exhibit C-2 for purposes of materiality determination and the recommendations made by the Staff here today, is that correct?

That is correct.

1 It is your contemplation in making the recommendation
2 that you have made today, Mr. Gunderson, that the
3 various utilities involved will keep the locations
4 designated in the various exhibits including Exhibit
5 No. 5 and all of its subparts depicted, whatever
6 change in customers there may be to the locations
7 shown on those exhibits?

8 That is correct except there is one exception that
9 I am not sure of at this time. It was found this
10 morning, and I do not know what point in time that
11 was initially brought to service, and that is a
12 body shop on the west end of --- or excuse me, on
13 the east side of Brandon which is served on Exhibit
14 5-G which comes off the point of one of Sioux Valley's
15 poles in this area here and serves it over this ---
16 NSP lines run here, serves it out in this area which
17 is north of the street which the Staff recommended
18 it be.

19 So then in order to summarize your testimony for
20 the record, Larry, would it be that in Exhibit 5-F,
21 SP-5-G --- strike that. Would it be your testimony
22 then, Mr. Gunderson, referring to Exhibit SP-5-G,
23 that it comes to your attention that there is a body
24 shop within the area which the Staff has recommended
25 that NSP serve, and that that body shop is one that

1 you don't know when Sioux Valley started serving,
2 is that a fair statement?
3

4 My recommendation would be that when it changes
5 ownership that service change if it was served ---
6 if the service was initiated after March 21.

7 Are you saying and I would assume that would be
8 case the maps do not reflect it. So that I under-
9 stand your recommendation, are you saying that if
10 the shop, body shop in question in Brandon started
11 to be served by Sioux Valley Empire Electric after
12 March 21, 1975, that despite the fact that it's in
13 an area that is to be served by NSP, that Sioux
14 Valley be allowed to obtain the service until the
15 ownership changes for the body shop and then Northern
16 States Power could start to serve?

17 That would be correct.

18 That is your recommendation?

19 Yes.

20 Upon what do you base that recommendation?

21 Well, on the fact that the service is already there
22 and they are customers of it and it would seem to
23 be a way to have the service changed over without
24 any disruption to the client.

25 Going back to the question which brought this one
incident to your mind, with the exception of this one

incident with regard to the body shop in Brandon, with that exception and further with the large load exception which is in SDCL 49-43A, with those two exceptions was it your contemplation in making those recommendations that each utility would keep the locations you have indicated that they should serve despite any change in customers that might subsequently come about at these locations?

Yes.

MR. PERSOL: Thank you. I have no further questions at this time.

MR. GLOVER: I do have some questions.

EXAMINATION BY MR. GLOVER:

Q Larry, I'm going to talk to you first about this recommendation on the Wade Peterson Edition. I believe you testified that the evidence that you had was that Mr. Peterson was not being served by Sioux Valley prior to July 1, 1976, the date the law went into effect, is that correct?

A The docket shows ---

Q Or '75.

A The docket shows in the initial complaint that the service was put in approximately the 30th of June following a letter from Mr. Smith here stating that

they had found out that the service had not actually been connected and service rendered to that customer until after July 1, 1975.

Would it affect your recommendation if you were to determine if the service had in fact been installed prior to the 1st of July?

I doubt it would.

You doubt that it would?

It wouldn't.

All right. Now, it's my understanding, of course, that Mr. --- this obviously was not a line that was in existence on March 21, 1975, is that correct?

That is correct.

All right. So that wouldn't be used for drawing equidistance? ---

MR. PIERSOL: Are you referring to Sioux Valley Empire Electric plant?

Yes.

The Wade Peterson Edition.

That is correct.

And that after July 1, 1975, the date the law went into effect, is that correct?

That is correct.

So that prior to this time we may assume, may we not, it was consumer's choice in rural areas?

1 MR. PIERSOL: Objection. I think the
2 question calls for a legal conclusion on the part
3 of the witness and Mr. Gunderson is an engineer,
4 but not a lawyer and that is a legal conclusion
5 made by the Commission.

6 MR. GLOVER: The question is going
7 to the basis upon which he has based his recommenda-
8 tion, so I think it is fair to determine whether
9 or not he had knowledge of that fact when he made
10 his recommendation.

11 CHAIRMAN WEILAND: Staff.

12 MR. MEIERHENRY: I think the question
13 is proper.

14 CHAIRMAN WEILAND: You may answer if
15 you have knowledge of the point.

16 The way I myself, my conclusion was the service was
17 not in effect on the 1st of July. I was aware that
18 there was consumer choice before the 1st of July,
19 but I feel the question of legality of consumer's
20 choice versus the present law, I don't feel I am
21 qualified to answer that question.

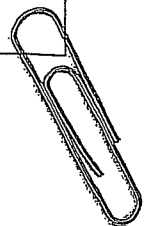
22 Let me ask you this, I asked you on cross-examination
23 if it would have been --- in other words, if it
24 were brought to your attention or was proved to your
25 satisfaction that service was existent and completely

Continuation

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LD

of pages



1 the Brandon area that were areas where the lines
2 were intertwined so as to prevent the equidistant
3 application?

4 A No, they were not intertwined.

5 Q They were not intertwined?

6 A In fact, there were probably three or four crossings
7 at the very most.

8 Q So there was no situation where there wasn't inter-
9 twining of the lines in Brandon.

10 A That is correct.

11 Q In making your consideration were you familiar with
12 the fact that petitions had been filed by a number
13 of residents of the City of Brandon with the Commission?

14 MR. PIERSOL: Objection, irrelevant,
15 immaterial to these proceedings.

16 MR. GLOVER: He can testify as to
17 whether or not he was aware of it.

18 CHAIRMAN WEILAND: You may answer it.
19 I am overruling your objection.

20 A No, it's not --- at least not at the time. If I
21 had been made aware of it I had completely forgotten
22 about it.

23 Q So you did not give any consideration to petitions?

24 A No, I did not.

25 Q Now, you talked about a service station on the Brad

1 map. I am not sure --- a body shop, excuse me. I
2 am not sure what your recommendation --- what your
3 change was on that. Was that an area that you said
4 was not reflected on the map that was submitted?

5 A The service is not reflected on the map that was
6 submitted by Sioux Valley, and it appears to be
7 served by Sioux Valley this morning when we looked
8 at Brandon.

9 Q I see. And was this on any other map that you had?

10 A No.

11 Q And if I understand you correctly, your testimony was
12 that it continue to be served by Sioux Valley until
13 it changes ownership?

14 A That was if the service was brought into being after
15 March 21.

16 Q And what are you basing this upon, any law that --

17 A No.

18 Q This is just your own feelings on that?

19 A Yes.

20 Q You agree, do you not, that if Sioux Valley was
21 serving that customer on March 21 that that would
22 be frozen to them?

23 A Excuse me, will you please repeat the question.

24 Q You agree, do you not, if Sioux Valley were serving
25 that customer on March 21 that they would be frozen

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to them?
A Yes, I would agree to that.
Q In regard to Country Gable Estates, that area, you testified that you disregarded the line in red that counsel referred to on his cross-examination?
A That is correct.
Q Is it your understanding that that was a line of 69 kv design?
A Yes.
Q You didn't consider any lines of 69 kv design in allocating territory, did you?
A To the best of my knowledge I didn't.
Q Is that --- do you know the name of that body shop?
A I am afraid I did not catch the name. I don't remember the name.
MR. BILL: Brandon Body Shop.
MR. GLOVER: I don't have any other cross-examination of this witness.
CHAIRMAN WEILAND: Mr. Piersol.
MR. PIERSOL: I have nothing further.
MRS. SEWELL: I would like to say that before this is all set and dry that Brandon did try to go to Sioux Valley and it was in court and the court decision was handed down in the fall of 1974 and I would like to give this as an exhibit. This

the court decision that was

MR. MEIERHENRY: Pardon me, ma'm. I don't mean to interrupt you. At a later moment you will have an opportunity to bring anything you want. Do you have any questions of Mr. Gunderson at this time?

MRS. SEWELL: Yes, I would like to know if he knew about this, and if we were hooked up illegally at the time we drew up the map.

MR. GUNDERSON: Through a previous conversation with yourself you had shown me that some newspaper clippings that there had been a court battle and you had relayed to me verbally that you felt you were hooked up illegally.

MRS. SEWELL: Did you think about petitions at all? There were petitions that were made saying that the people wish to go on Sioux Valley Electricity. Was that in your decision at all?

MR. GUNDERSON: No. As I testified earlier I had forgotten completely about those at the time I drew up the maps. If I had been aware of them at all previously.

MRS. SEWELL: Would it make any difference if the City of Brandon had a franchise to this territory at all?

1 MR. GUNDERSON: Excuse me, I don't
2 quite understand. You mean ---
3

4 MRS. SEWELL: Northern States did not
5 have a franchise for this territory and the people
6 did not wish Northern States to be there through
7 the petitions. I think this should all be considered,
8 and I feel like people have been taken advantage
9 of by --- first of all it went to court and the court
10 case was --- a decision was made and we went to
11 Northern States and Northern States refused to
12 disconnect us. So I feel that although we were
13 connected when the maps were made, we were connected
14 illegally and I think this should be brought into
15 the proceeding.

16 MR. SMITH: We will object to that as
17 not proper cross.

18 MR. MEIERHENRY: I believe it should
19 be sustained. It's more of a statement than a
20 question.

21 CHAIRMAN WEILAND: We will have a
22 five minute recess.

23 (Recess)

24 CHAIRMAN WEILAND: We had an objection
25 and I will sustain the objection. And, Mark, would
you be as helpful as you can. You folks do not have

an attorney here, is that right?

MRS. SEWELL:

No, we do not.

MR. BILL:

Am I wither and due to

the interest of the date, I hope the Commission will

excuse me because when we were informed of this

hearing we had no time to obtain a counsel. We

tried. The counsel was busy and didn't have time to

prepare for us, so we are trying to do the best we

can with what we have got

CHAIRMAN WEILAND: We understand that

and you are at the right place. That is why these

hearings are held prior to the issuance of any

final Commission decision.

MRS. SEWELL: Well, first of all there

was a court case and this was the fall of '74 ---

MR. MEIERHENRY: Do you have any more

cross-examination?

MRS. SEWELL: No.

MR. MEIERHENRY: We will get to you

a moment then. Is there any other cross-examination

MR. BILL: No. I may ask Mr. Gunders

a question or two. In preparation of your map

within the city of Brandon, you have several maps

instead of having the city all on one map. Is there

any reason why you split the city up?

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1 MR. GUNDERSON: I am using the maps
2 that were submitted by Northern States Power and
3 Sioux Valley Empire Electric showing their distribu-
4 tion lines. These are maps that were submitted by
5 them, not maps that were at the Commission previously.

6 MR. BILL: The reason I ask this
7 question, I believe the complete map of the city
8 which shows Sioux Valley services the largest share
9 of it within the city limits of Brandon. Now, did
10 I understand you right that we would have a chance
11 up to the 30th of June to object to your recommenda-
12 tions? Did I understand him correctly?

13 MR. GUNDERSON: I don't believe that
14 was my intention. That was the utilities had until
15 the 30th of June to enter into agreement. That is
16 between the two of them, between Sioux Valley and
17 NSEP.

18 MR. BILL: The consumer would have no
19 chance to object other than at this hearing?

20 CHAIRMAN WEILAND: The consumer may
21 have a chance if we make a determination that there
22 needs to be additional hearings. I think the state-
23 ment was basically, although correct me if I am wrong,
24 directed at the utilities and their various negotiation
25 But if we need to have further hearings relative to the

matter that you have brought up, why we certainly will and we will have them prior to June 30 or if possible, I don't know what will happen if we can't have them before then. I just haven't any idea.

MR. BILL: Also, I just came --- I believe in cross-examination here or statements made, maybe I am off base on that, you did not consider the consumer's wishes in making your recommendations?

MR. GUNDERSON: That is correct.

MR. BILL: And why not?

MR. GUNDERSON: The law specifically states that the electric lines, an equidistant between the electric lines is to be the determination, and since that becomes very cumbersome to draw it exactly that way, some went away from that philosophy in a few instances.

MR. BILL: That is all I have.

MR. MEIERHENRY: I just have a few questions on redirect.

EXAMINATION BY MR. MEIERHENRY:

Q One of these areas that you mentioned in making your determination, you talked about a piece of property that was fully owned by one person, is that correct?
A Yes, there were three people that were involved.

1 We are talking about north of Brandon now?

2 Yes. Yes, there are three people that are involved
3 there, one who is completely --- would be completely
4 surrounded by NSP, and by the equidistance
5 principle would be included in it, and the other
6 two are presently served by majority --- a good
7 portion of their territory is already presently
8 served by NSP.

9 Q And were you considering these private ownership
10 boundaries and natural boundaries or a natural
11 barrier?

12 A They follow the half section line.

13 Q And is this one of the reasons that you buried the
14 equidistance principle in those locations?

15 A That is correct.

16 MR. MEIERHENRY: I have no further
17 questions.

18 CHAIRMAN WEILAND: Next. Anybody have
19 any more questions relative to Minnehaha, and that
20 is SP-5.

21 MR. MEIERHENRY: May I ask that Mr.
22 Gunderson be excused now and any other witness who
23 wishes to offer testimony come forward.

24 CHAIRMAN WEILAND: Very well. You may
25 be excused if there are no further questions of this

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Witness

(Witness excused)

MRS. SEWELL: First of all, I would like to give this as an exhibit.

CHAIRMAN WEILAND: Would you start with your name and address.

MRS. SEWELL: Carolyn Sewell. I am representing the concerned citizens of Brandon, South Dakota.

(Carolyn Sewell sworn in.)

CHAIRMAN WEILAND: Would you please take a chair over there.

MRS. SEWELL: This case involves Northern States and Sioux Valley Electricity and it's --- well, you can read what it states. It states that they have both enjoyed the same privilege in the community and after this decision was made several of us went to Northern States and asked to be disconnected. This is really an exception to the rule since Brandon was incorporated and the Rural Electric Association no longer --- the boundary no longer applied as rural electric communities, so we went to Northern States and we asked to be disconnected and Northern States refused our request, and I went to a lawyer and the lawyer told me to quite paying my

PIERSON: Objection. I would have to object to what the lawyer might say because that would be hearsay.

MRS. SEWELL: Anyway, that Northern States refused to comply with the law. So actually they held off until this cut-off date of March 21. So actually we were illegally connected to Northern States after the time of the cut-off date. Therefore I feel like --- well, we went to petitions then and over 95 percent of the people that were on Northern States signed a petition. April 29, 1975. And I would like to post them as an exhibit.

MR. SMITH: We will object to the offer of this because this is after the cut-off date of March 21, 1975 and is incompetent, irrelevant and immaterial to any decision here.

MRS. SEWELL: Well, I think it makes

it ---

MR. SMITH: Let's have a ruling first.

If we may.

CHAIRMAN WEILAND: We won't refuse it as a part of the docket. We will receive it as correspondence, part of the docket in the hearing. And go ahead now.

MRS. SEWELL: I think it should be

of them. They have a franchise in the City of Brandon is important because they may not, if Brandon tells them to remove the poles and wires, they may not be able to serve the people in that community because if they are operating there without a franchise and they are told to remove themselves, to remove the poles and lines, and that is something that the Commission should consider.

MR. SMITH: We don't agree with that as a statement of law.

CHAIRMAN WEILAND: Is the Mayor of Brandon here today?

MRS. SEWELL: Yes, sir.

CHAIRMAN WEILAND: Why shouldn't then we offer this because he has signed it. I think that would be much more appropriate, for him to offer the letter if you don't mind.

MRS. SEWELL: I also feel that since we were hooked up to Northern States and they refused us, that during this time, since they have taken a great deal of money out of our community. Out of approximately 150 customers we pay over \$25,000 a year more than if they would be on Sioux Valley, and I think we should be refunded this money also. Of course, this is my own opinion, but that is the

way I feel about it.

MR. SMITH: That is objected to as not within the amplitude of the proceeding being held here today.

CHAIRMAN WEILAND: I am going to overrule the objection on that particular point. The Commission is interested in hearing the feelings of the people that are affected by this particular utility law.

MRS. SEWELL: Another thing I think should be the residents of Brandon and Fedora and Forestburg were given a booklet if they so requested just for these three communities. Now, I don't know why these three communities were picked out, but it seems like they have very high rates, and I mentioned before the fuel adjustment clause I think was very high and it really took out --- the people were denied due process of law since they could not regulate the rates at all through the Public Utilities Commission. They were just given high rates and I think that should be looked into. I believe that is all. Thank you.

CHAIRMAN WEILAND: Okay.

MR. GLOVER: I have a couple of questions I would like to ask her on cross-examination.

EXAMINATION BY MR. GLOVER:

Q Mrs. Sewell, you testified there was a court hearing that gave Sioux Valley the right to --- either utility the right to serve customers in Brandon, isn't that correct?

A Yes, sir.

Q And that that was in the fall of 1974?

A Yes, sir.

Q And then it was consumer choice. In other words, the consumer could choose the utility, is that correct?

A MR. PEARSON: Objection.

Q Was that your understanding?

A Yes, sir.

Q And based on that type of an understanding did you prior to March 21 request to be disconnected from Northern States Power?

A Yes, we did. There were several of us who went to the company and asked to be disconnected and they refused. They said that it would foul up their line so we went as a group and they still refused us.

Q And then do you recall what their response was to you?

A They just said they absolutely refused to. First we went to Sioux Valley to see if they would connect

1 us and they agreed with the court hearing. They
2 said that, yes, they would connect us but they
3 couldn't disconnect Northern State's lines. They
4 said that was illegal. So that was why we went to
5 Northern States and we asked them to disconnect us
6 but Northern States refused us. They held off.

7 Q Subsequent to that time the law was passed, is that
8 correct?

9 A Yes, they held off until the law went into effect.

10 Q I see. And if they would have volunteered to dis-
11 connect you prior to March 21, would you have ---
12 you say you did request it?

13 A Yes, we did.

14 Q Now, out of the petitions which you filed or mailed
15 to the Commission, you mailed a copy of those
16 petitions to the Commissioner, did you not?

17 A Yes, we have over 95 percent of the people that are
18 on Northern States.

19 Q Are there those among those that signed the petition
20 that had requested disconnection, the same as you
21 did?

22 A Yes, there were.

23 Q You don't know how many, do you?

24 A No, I don't.

25 MR. GLOVER: I have no other question.

EXAMINATION BY MR. SMITH:

Q Mrs. Sewell, who was along with you? I take it that you personally went to Northern States to ask them to disconnect?

A Yes.

Q And about what date was that?

A It was shortly after the court decision of September, 1974.

Q The fall of 1974. Who --- you went yourself. Who else went?

A Well, several of us went together.

Q Who is several of us?

A Our neighbors in our community.

Q I would like names, if you would give them, please.

A You went, you are Mrs. Carolyn Sewell.

Q Yes, Mrs. Strickers (sp) went with me.

A Mrs. Strickers, who else?

Q Just the two of us. We had --- she had some questions.

Q When you say several of you went, the two of you was the several?

A I was the responsible woman. We have people who have signed petitions that were in disagreement with them.

Q But only you and Mrs. Strickers went?

1 A That is all, you know, for a fact at that time.
2 Q Now, who is the contracted customer in the case of
3 you? Is it not your husband who is the customer
4 contracted with NSP?

5 A I don't know. I sign all the checks.

6 Q What is your husband's name?

7 A Harry, Jr.

8 Q And don't the bills come to Harry Sewell, Jr.?

9 A I sign all the bills.

10 Q Would you answer my question, please. Don't the bills

11 A They come in his name, but I sign all the checks.

12 Q All right. And isn't it a fact --- what is Mr.

13 Strickers first name?

14 A Jerry.

15 Q And isn't he the contracted customer of NSP?

16 A Yes.

17 Q And then these petitions you have referred to were
18 filed or were delivered to NSP after March 21, 1975.

19 A I think you said in April of 1975?

20 A Yes.

21 MR. SMITH: That is all.

22 MR. GLOVER: I just have one question
23 I would like to ask. Was your trip to Northern States
24 Power to disconnect, was that request made with your
25 husband's knowledge?

THE WITNESS: Yes.

MR. SMITH: That is objected to as hearsay.

CHAIRMAN WEILAND: I will overrule the objection.

MR. GLOVER: I have no other questions.

MR. MEIERHENRY: I have a few questions

EXAMINATION BY MR. MEIERHENRY:

With whom did you speak at Northern States Power?

The man in the second row, second chair.

The one with the maroon tie. And did you put your request to him that you wish to change your service?

Yes, I did.

And the answer which you have testified that you received from Northern States Power was from him?

Yes, sir.

MR. MEIERHENRY: I have no further questions.

CHAIRMAN WEILAND: You don't remember the date of that, that you went to Northern States Power, do you?

No, I don't.

CHAIRMAN WEILAND: Thank you. Anyone else have any questions of this witness? If not you may be excused.

START

OF

RETAKE

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A Yes, I did.

Q And the answer which you have testified that you received from Northern States Power was from him?

A Yes, sir.

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A No, I don't.

CHAIRMAN WEILAND: Thank you. Anyone else have any questions of this witness? If not you may be excused.

END

OF

RETAKE

NEXT

DOCUMENT (S)

BEST IMAGE

POSSIBLE

(Witness excused.)

CHAIRMAN WEILAND: Do we have someone who would like to make a statement? Mayor, did you wish to?

MR. JOHNSON: Chairman, I guess I have no statement. I just merely submitted this letter at the request of the citizen group stating the facts.

CHAIRMAN WEILAND: Would you come forward, read it into the record, please.

MR. GLOVER: Can we have him sworn as a witness?

CHAIRMAN WEILAND: Yes, we will.

(Mr. Gene Johnson sworn in.)

MR. JOHNSON: This letter was merely written at the request of the citizen group that is testifying here today. It's merely a statement that indicates what happened in the process after Brandon became an incorporated city concerning the franchise. Would you like me to read it?

CHAIRMAN WEILAND: Please.

MR. JOHNSON: It is addressed to the Public Utilities Commission, State of South Dakota, Pierre, South Dakota. "Dear sir: In June of 1974 the City of Brandon was approached by Mr. Dennis Sunderman of Northern States Power Company concerning holding

1 an election to grant a franchise to operate within
2 the City of Brandon. Northern States Power Company
3 was given verbal approval to hold the election if
4 they would first present it to the City Counsel of
5 Brandon to take the necessary action to set up the
6 election. The City of Brandon never received any
7 further contact from Northern States Power Company
8 concerning the franchise election, so I must assume
9 that they felt it was not in their best interest to
10 proceed. Northern States Power Company does not have
11 a franchise at the present time to operate in the
12 City of Brandon. Respectfully yours, Gene Johnson,
13 Mayor."

14 CHAIRMAN WEILAND: Thank you, very
15 much. Questions of this witness?

16 MR. GLOVER: I would just like to ask
17 a couple.

18 EXAMINATION BY MR. GLOVER:

19 Q Would you first start by stating your name.

20 A Gene Johnson.

21 Q And your occupation?

22 A Real estate agent.

23 Q And are you a public officer in the City of Brandon?

24 A Yes, I am the mayor.

25 Q All right. And you are the author of the letter that

was just read into the record, is that correct?

Yes.

Q To the best of your knowledge, Mr. Johnson, does Brandon have a franchise? -- does Northern States Power Company have a franchise in the City of Brandon?

A To the best of my knowledge they do not.

Q Do you know whether or not Sioux Valley Empire Electric Association has a franchise with the City?

A Yes, they do.

MR. GLOVER: I have no other questions.

CHAIRMAN WEILAND: Mr. Piersol, do you have some questions?

MR. PIERSOL: None, thank you.

CHAIRMAN WEILAND: Mr. Meierhenry?

MR. MEIERHENRY: I have no questions, but I have marked the letter that was read as SF-9 and also the memoranda decision which is SF-8 which the prior witness entered into the record.

MR. GLOVER: For the purpose of keeping our records straight, I move that they be accepted as exhibits, your Honor.

CHAIRMAN WEILAND: I think that is what we better --- start over with one then?

MR. MEIERHENRY: We have got maps up to seven.

CHAIRMAN WEILAND: Mark one 8 and the other 9.

MR. SMITH: NSP objects to SF-8 which is the memoranda decision on the grounds it has no relevancy in the present hearing.

CHAIRMAN WEILAND: Does Staff wish to address it?

MR. MEIERHENRY: I would urge that the Commission accept 8 for illustrative purposes only and for the Commission's reference to explain the testimony of the witness. I recommend it be received.

CHAIRMAN WEILAND: Both 8 and 9?

MR. MEIERHENRY: Yes.

CHAIRMAN WEILAND: I will note your objection and they will be received. Next. Do we have someone else who would like to make a statement? Yes, sir.

MR. KENYON: Yes, I would like to make a statement. My name is Bill Kenyon, the attorney for Bob Hildring and Bob Hildring is the original landowner of Country Gable Estates and he is also the developer of the Estates. Now, I don't know as if it's going to be necessary that I be sworn in. I am not testifying as a witness, you understand, because I am --- Mr. Hildring prior to the enactment of

1 this law, he was anxious to get electric power up
2 to his development and he sought out Northern States
3 Power because he felt that he could get better
4 service from Northern States Power than from Sioux
5 Valley, and it's my understanding that he entered
6 into contracts and easements with NSP and they were ---
7 NSP was all set to go up there and then there was
8 an objection to this by Sioux Valley Electric. And
9 as it stands now they have got about four, five homes
10 up in this development. Northern States Power can't
11 go up there and continue this and no one else is
12 going up there right now and these home owners are
13 in some dire need right now for electrical service,
14 and I would certainly hope that this thing could be
15 resolved pretty darn fast for the benefit of all of
16 the people that are now up in Country Estates.

17 MR. GLOVER: I might just make an
18 inquiry regarding that statement. Are you familiar
19 with why no one else was in there is because your
20 client isn't granting an easement to Sioux Valley?

21 MR. KENYON: I am not --- he is in
22 sort of a difficult situation. He had already
23 granted an easement there for Northern States Power,
24 so ---

25 MR. GLOVER: But you were familiar ---

1 are you familiar with the prior proceedings before
2 this Commission?

3 MR. KENYON: I am not. I just heard
4 that there were some.

5 CHAIRMAN WEILAND: That prior proceeding
6 has been made a part of the record, this record.

7 MR. PIERSON: I have a question of Mr.
8 Kenyon. Do you have any instructions from your
9 client, Mr. Hildring, to state whether or not he still
10 desires that NSP provide, if the Commission will allow,
11 the service to Country Gable Estates, his development?

12 MR. KENYON: Yes, he would still prefer
13 that NSP served this.

14 MR. PIERSON: What is the reason Mr.
15 Hildring isn't here today?

16 MR. KENYON: He is ill. He called me
17 this morning.

18 MR. GLOVER: This isn't a part of the
19 sworn testimony of the record. He is just making a
20 statement to the Commission.

21 CHAIRMAN WEILAND: Right, yes. Thank
22 you very much.

23 MR. MEIERHENRY: Do we have another --
24 someone else who wishes to make a statement at this
25 time?

1 MR. GLOVER: I have a couple of witnesses
2 I would like to call.

3 CHAIRMAN WILLARD: Go ahead.

4 MR. GLOVER: I call Wade Peterson.

5 WADE PETERSON:
6 called as a witness, being first duly sworn, testified as
7 follows:

8 EXAMINATION BY MR. GLOVER:

9 Q Please state your name, address and your occupation?

10 A My name is Wade Peterson, Remner, South Dakota and
11 I am a farmer.

12 Q Are you presently a customer of Sioux Valley Empire
13 Electric Association?

14 A Yes, I am.

15 Q When did you first go on their lines?

16 A I don't know. It's some time in '73, '72, something
17 like that.

18 Q And you are also in the area known as the Wade Peterson
19 Edition or the Peterson ---

20 A Yes, I am. That is the Peterson homestead land. We
21 have owned it for 108 years now.

22 Q You have a development corporation there, is that
23 correct?

24 A Yes.

25 Q What is that development, what are you putting on

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there?

A

It's lots set up for trailer houses, but the lots are two to three acres big and it's something a little bit different. I hate to call it a trailer court.

Q

But it's built for trailer hook-up, is that correct?

A

Yes.

Q

And is that a flat subdivision?

A

Yes.

Q

And how many lots does it provide for?

A

Seventeen.

Q

And are you presently being served by Sioux Valley Empire Electric Association at that location?

A

Yes.

Q

All right. And when did you request service at that location?

A

In the fall of '74.

Q

In the fall of '74?

A

Seventy-three, right in there.

Q

And did Sioux Valley agree to provide you service at that location?

A

Yes, I signed statements then.

MR. PIERSOL: Objection, hearsay.

CHAIRMAN WEILAND: I didn't --- excuse

me.

MR. PIERSON: The objection was a hearsay objection and I ask that the answer be stricken for the purpose of the commission's ruling upon the objection.

CHAIRMAN NEILAND: And you object on what?

MR. PIERSON: On the grounds that the testimony he was just about to give was hearsay.

CHAIRMAN NEILAND: Okay. I will sustain the objection and strike the answer. You requested --- you say you'd request service in

the fall of 1974?

MR. PIERSON: That is a misstatement of the record. He said the fall of '73 or '74.

CHAIRMAN NEILAND: Would you rephrase the question?

MR. GLOVER: Well, I think he is entitled to --- I asked him whether that is what he said or not. He can say no, it isn't an accurate statement.

CHAIRMAN NEILAND: You may answer.

Okay. The question is did I request for hook-up in the fall of '74?

Yes.

MR. PIERSON: I object to that as a

misstatement of the record.

Q. Now answer, is yes.

A. Yes, Mr. Glover.
the question.

Well, I will just rephrase

Q. Would you please state again for my recollection when

A. You requested the service from Sioux Valley.
in that fall of '74.

Q. Thank you. And when did Sioux Valley come in and
hook you up?

A. Spring of '75.

Q. All right. And do you know whether or not you had
service at that location prior to July 1 of 1975?

A. Yes, I did.

Q. You did have service at that location prior to July
1, 1975, is that correct?

A. Yes. We are talking now --- I own 920 acres there.
Are we just talking about the edition now?
Yes, we are talking about the edition, right.
The answer is yes.

MR. GLOVER: I have no other questions.
Excuse me, if I may, counsel, ask one more.
Is it your desire that Sioux Valley continues serving
you at that location?
Definitely.

MR. GLOVER: Thank you. That is all.

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400

MR. PIERSON: May I ask that this be marked as SF-10?

(Exhibit SF-10 marked for identification)

EXAMINATION BY MR. PIERSON:

Q Mr. Peterson, I will show you what has been marked for identification as SF-10 and ask you to look at that for a moment.

(Witness complies)

A This is north, isn't it?

Q Yes.

A Okay. I recognize this.

Q Okay. This is the drawing of the Wade Peterson development as well as some of the lines running north from that development, isn't it?

A Yes, that is a picture of my development, yes.

Q All right. And does Exhibit SF-10 thoroughly and accurately represent to the best of your knowledge the electric lines as they were located as of March 21, 1975 as shown here in Exhibit SF-10?

A I would think so.

MR. PIERSON: All right. We would offer then Exhibit SF-10 into evidence.

MR. GLOVER: I would like to see it, if I could.

MR. PIERSON: Sure.

1 MR. GLOVER: I have no objection to
2 this exhibit.

3 CHAIRMAN WEILAND: Very well.

4 MR. PIERSON: And Exhibit SF-10 is
5 received, is that right?

6 CHAIRMAN WEILAND: That's right.
7 (Exhibit SF-10 received into evidence)

8 MR. PIERSON: Just wanted to make
9 sure.

10 Q Now, Mr. Peterson, do you live at this location on
11 Exhibit SF-10?

12 A Yes.

13 Q All right. Would you mark that with an X with the
14 pencil here so we know where your place is?

15 (Witness complies)

16 Q You marked an X where your place is on Exhibit 10,
17 is that right?

18 A Yes.

19 Q Now, directing your attention to the bottom of
20 Exhibit SF-10, do you have only this one development
21 which is shown on the bottom of SF-10 or do you have
22 other developments which are known as the Peterson
23 development?

24 A I don't know if it would be classed that way or
25 not. As if I had sold property off or if I went in

1 for the purpose of developing?

2 Q Let's do it this way, do you have any other area that
3 you have platted other than what is shown as the
4 Wade Peterson at the bottom of SF-10?

5 A Repeat that again.

6 Q Have you platted any other areas of any land that you
7 own all or some interest in other than that land
8 which is shown at the bottom of Exhibit SF-10 as
9 the Wade Peterson development?

10 A Okay. Just off this map I have platted --- sold 30
11 acres. Up here I have sold 25 acres.

12 Q You sold 25 acres north of your farm place, is that
13 right?

14 A An old sheep pasture that wasn't any good for
15 farming.

16 Q And when you were saying that you had electrical
17 service to the Wade Peterson development before July
18 1, 1975, you didn't mean to say, of course, that
19 there was actually current that was being delivered
20 to any user in the Wade Peterson development as
21 shown on Exhibit SF-10 as of July 1, 1975?

22 A Actually used it?

23 Q That's right.

24 A It's straight ---

25 Q You didn't actually use any is the question, by July,

1 1975, did you?

2 A No.

3 Q All right. Now, the line that was run to the Wade
4 Peterson development as shown on Exhibit SF-10 was
5 a Sioux Valley line that was run from up in front
6 of your place all the way down to your development,
7 wasn't it?

8 A Ahuh.

9
10 MR. GLOVER: Just a minute. Answer
11 yes. She can't get a nod.

12 A I got new braces. It's hard to say yes. The
13 question again?

14 Q The line that was run to the Wade Peterson develop-
15 ment as shown on Exhibit SF-10 was line --- a Sioux
16 Valley line running from in front of your home
17 place as shown by the X on that exhibit down to the
18 development, wasn't it?

19 A To the development plus the rest of the land in
20 here, another 200 acres right here that was in
21 irrigation here.

22 Q All right. Now, you are a farmer, aren't you? You
23 farm quite a few acres, don't you?

24 A Quite a few.

25 Q How many?

A Around 2,000.

1 Q All right. And you weren't helping actually lay
2 the electric lines from the front of your place down
3 to the Wade Peterson development, were you?

4 A No.

5 Q So you don't know at what time it was that they
6 actually got the line completely laid and the fixtures
7 in so that service could actually be delivered to
8 the Wade Peterson development, do you? You don't
9 know the exact date?

10 A No.

11 Q Actually on the 20th of June, 1975, Sioux Valley
12 Empire Electric was still out there digging to get
13 lines laid to the Wade Peterson development, weren't
14 they?

15 MR. GLOVER: Object to as being
16 argumentative. He has already answered the question
17 that they had laid the service.

18 MR. WEILAND: I will sustain the
19 objection.

20 Q Did you see the --- I am not asking for the
21 date, but I am just going to ask you if you saw
22 when Sioux Valley Empire Electric was out there
23 actually laying their line.. Did you observe those
24 acts?

25 A Did I see them laying the line or whatever they were

1 doing?

2 Q Yes.

3 A Yes.

4 Q When was the first time that you personally on the
5 Wade Peterson development plugged into whatever
6 fixtures had been placed on that development by
7 Sioux Valley Empire Electric and for the first time
8 used electric current on that development from Sioux
9 Valley Empire Electric, if you know?

10 A Oh, immediately.

11 Q Be just shortly after the first of July, is that
12 right?

13 A Ahuh.

14 Q We have got to get the yes.

15 A Yes.

16 MR. PIERSOL: All right, thank you.
17 I have no other questions.

18 MR. GLOVER: I have no redirect.

19 CHAIRMAN WEILAND: Mr. Meierhenry.

20 MR. MEIERHENRY: I have no questions.

21 MR. GLOVER: Okay, thank you.

22 CHAIRMAN WEILAND: You may be excused

23 (Witness excused)

24 MR. GLOVER: I have one other witness
25 I would like to call and that is Jim Bowar.

JIM BOWAR,

called as a witness, being first duly sworn, testified as follows:

EXAMINATION BY MR. GLOVER:

Q State your name and address.

A Jim Bowar, Madison, South Dakota.

Q What is your occupation?

A I am director of the operation at Sioux Valley Electric in Colman.

Q How long have you held that position?

A Probably four years.

Q All right. You know Wade Peterson, do you not?

A Yes, sir.

Q And do you recall whether or not Mr. Peterson has ever applied for service with Sioux Valley Electric?

A Yes.

Q And when was that that you recall he applied for service?

A Some time the latter part of 1974.

Q And at that time was any mention made concerning service to the subdivision?

A Yes.

Q Do you recall whether or not he requested service at that point?

A He did sign an application for service at that time.

Q And did Sioux Valley --- did you as a representative of Sioux Valley agree to serve him at that place? Yes.

Q And was the line first installed at the Wade Peterson subdivision prior to July 1 of 1975?

MR. PIERSOL: Object, leading and suggestive, improper inform.

MR. GLOVER: All right. I will lay the foundation. I withdraw the question and will lay the foundation.

CHAIRMAN WEILAND: All right.

Q Did you have any direct supervisory responsibility over the construction of the line to the Wade Peterson subdivision?

A Yes.

Q Were you physically there and observed the construction of the line?

A Yes.

Q All right. And do you know whether or not the line was installed prior to July 1, 1976?

A Yes, it was.

Q All right. And --- excuse me, it was 1975, July 1, 1975.

A Yes, sir.

Q And was service available at that point at the Wade

1 Peterson subdivision prior to July 1, 1975?

2 MR. PIERSON: Same objection, leading
3 and suggestive. This is his own witness.

4 CHAIRMAN WEILAND: I will sustain your
5 objection.

6 Q All right. Can you state whether or not you know
7 whether or not service was available?

8 A It was available.

9 Q All right. And that is prior to July 1, 1975?

10 A Yes.

11 Q Now, I am going to another area. Are you also familiar
12 with the customers Sioux Valley serves in Brandon
13 described as the Brandon Body Shop?

14 A Yes.

15 Q And do you recall when they were originally connected?

16 A No, sir.

17 Q All right. Do you have any idea of how long you have
18 been serving them there?

19 A Several years.

20 Q You have been serving that location for several
21 years?

22 A Yes.

23 Q Do you know whether or not you were serving them on
24 March 21 of 1975?

25 A Yes, we were.

1 Now, regarding the service that was afforded to the
2 that was built into the Wade Peterson subdivision,
3 what type of service did you build in there?

4 A We put a distribution, underground distribution
5 system in.

6 Q All right. And how many outlets?

7 A I only can swear to one.

8 Q I mean did you build in for the entire subdivision?

9 A Yes, sir.

10 Q So that --- and there are 17 lots, is that correct?

11 A Yes.

12 Q Now, it is my understanding you did run the wires up
13 so that you can connect on to those 17 lots?

14 A All lots were covered.

15 Q In other words, you run your line --- was this under-
16 ground?

17 A Yes, sir.

18 Q So that you build your service in so it can serve
19 all 17 lots?

20 A Yes, sir.

21 Q And was that all completed prior to July 1?

22 A Yes, it was.

23 Q How many service --- how many outlets are needed where
24 you are serving at this location at this time?

25 A I can't say.

1 Q Is it more than one?

2 A Yes.

3 MR. GLOVER: I have no other questions.

4 MR. PIERSOL: May I have just a minute?

5 CHAIRMAN WEILAND: Yes.

6 MR. GLOVER: Mr. Piersol, before you
7 go about your cross-examination, can I ask him a
8 couple more questions on direct on a different
9 subject?

10 MR. PIERSOL: On a different subject,
11 yes.

12 Q On your operation are you also familiar with the
13 lines that are running to the area that is called
14 Country Gable Estates?

15 A Yes.

16 Q And are you presently serving all customers in that
17 area?

18 A All but one.

19 Q And has that person applied for service?

20 A One construction site does not have service as of
21 today.

22 Q Does not have permanent service or ---

23 A Temporary service.

24 Q It doesn't have temporary service?

25 A Any service.

Q And have you agreed to serve that person?

A I am not sure that we have agreed to serve him.

Q Have they requested service?

A Yes, to the best of my knowledge.

Q Is there any reason why you wouldn't serve them?

A We can not get an easement to build the line in.

Q From the owner?

A From the owner.

Q But in all instances where you have been capable of serving a customer you are willing to serve them if you can get easement, is that correct?

A Yes.

Q Do you have the capacity built in to serve all of the potential customers in? Country Gable Estates?

A Yes.

MR. GLOVER: All right. No other questions.

EXAMINATION BY MR. PIERSON:

Q Mr. Nowar, when the crew was working for Sioux Valley Electric on putting the service to the Wade Peterson development, were you physically present with the crew at all times while it was working?

A I was there til midafternoon.

Q Midafternoon of what day?

A June 30.