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PUBLIC HEARING - 25-261
BISMARCK - SEPTEMBER 10, 2026 - 9:00 A.M.
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

Chair Randy Christmann
Commissioner Sheri Haugen-Hoffart
Commissioner Jill Kringstad

**In the Matter of the Montana-Dakota Utilities Co., Wind
Farm Station Service - Wishek, ND, Public Convenience &
Necessity**

PSC DOCKET NO: PU-25-261
OAH DOCKET NO: 20260038

VOLUME 2 of 2

Commission Hearing Room
12th Floor, State Capital
Bismark, North Dakota
&
Remotely via Livestream & Telephone

September 10, 2026

BEFORE: Judge Hope L. Hogan

RECORDING TRANSCRIBED BY: Christine Simons, RMR, RPR

1 APPEARANCES:

2 ZEVIEL SIMPSON, Attorney at Law, Dorsey &
3 Whitney, LLP, and ALLISON WALDON, Attorney at Law,
4 MDU Resources Group, Inc., appeared on behalf of
5 Montana-Dakota Utilities Co.

6 SHAWN GRINOLDS, Attorney at Law, Bakke,
7 Grinolds & Wiederholt, appeared on behalf of KEM
8 Electric Cooperative, Inc.

9 CHRISTOPHER MARTENS, Special Assistant
10 Attorney General & General Counsel, appeared on
11 behalf of the North Dakota Public Service
12 Commission.

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14 PSC STAFF:

15 Robert Frank

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1 JUDGE HOGAN: All right. Good morning.
2 It is 9:00 a.m., and we are reconvening in PSC Case
3 Number PU-25-261.

4 Before we jump back into testimony, I'll
5 just ask if there's any other matters we need to
6 address this morning.

7 Mr. Simpson, did you have anything?

8 MR. SIMPSON: Yes, thank you, Judge
9 Hogan. Just a housekeeping item from yesterday.
10 The request for a late-filed exhibit with respect to
11 a map and all the different services, I've spoken
12 with counsel here, and we've essentially agreed to
13 provide a map with a two-mile radius, all of the
14 services from each of KEM and MDU on that map,
15 excluding the city of Wishek.

16 So the idea here is that the -- the
17 factor is two miles, but because that includes the
18 city of Wishek where we have a franchise, we'd
19 exclude -- exclude that.

20 JUDGE HOGAN: All right. Thank you.

21 MR. SIMPSON: And we'll turn that in as
22 soon as we can get that put together.

23 JUDGE HOGAN: Perfect.

24 Mr. Grinolds, did you have anything to
25 address this morning?

1 MR. GRINOLDS: No, Your Honor.

2 JUDGE HOGAN: Mr. Martens?

3 MR. MARTENS: No, Your Honor.

4 JUDGE HOGAN: All right. Then,
5 Mr. Grinolds, you can call your next witness.

6 MR. GRINOLDS: I call Dale Nagel.

7 JUDGE HOGAN: Good morning. I'll have
8 you start by stating your full name for the record
9 and spelling your last name.

10 MR. NAGEL: Good morning. Dale Nagel,
11 N-A-G-E-L.

12 JUDGE HOGAN: And, Mr. Nagel, before you
13 testify today, I'm required by law to advise you on
14 the penalties for perjury in the state of North
15 Dakota. Perjury is a Class C felony punishable by a
16 maximum fine of \$10,000, a maximum five years
17 imprisonment, or both.

18 Do you understand what perjury is?

19 MR. NAGEL: Yes.

20 JUDGE HOGAN: And being advised of the
21 potential penalties for perjury, do you promise to
22 tell the truth in this case today?

23 MR. NAGEL: Yes.

24 DALE NAGEL,
25 after having been first duly sworn, was

1 examined and testified on his oath as follows:

2 JUDGE HOGAN: All right. Thank you.

3 Go ahead, Mr. Grinolds.

4 DIRECT EXAMINATION

5 BY MR. GRINOLDS:

6 Q Mr. Nagel, who are you employed by?

7 A KEM Electric.

8 Q And how long have you been employed by KEM?

9 A I've been there for 15 years.

10 Q What is your position at KEM?

11 A Line Supe/Chief of Staff.

12 Q What positions have you held at KEM?

13 A Apprentice lineman, journeyman lineman, lead
14 lineman, line superintendent, and chief of staff.

15 Q Are you still currently a line superintendent for
16 KEM?

17 A Yes.

18 Q Okay. What are your responsibilities as KEM's chief
19 of staff?

20 A Overseeing day-to-day operations in the office, on
21 the line, approving invoices, a work plan, working
22 with the IEA engineers and the other employees of
23 Innovative Energy Alliance.

24 Q Okay. And what responsibilities did you have as
25 KEM's line superintendent?

1 A A lot of the similar things except for not really
2 much to do with the office. It's more just
3 operational side of things.

4 Q Okay. Through your work with KEM, have you become
5 familiar with KEM's electric distribution system and
6 the areas in which KEM provides electric service?

7 A Yes.

8 Q What counties are included within the areas with
9 which you are familiar?

10 A Emmons, McIntosh, Logan, and Kidder.

11 Q Are you familiar with KEM's facilities and customers
12 in the Wishek area of McIntosh County?

13 A Yes.

14 Q Approximately how long have you been familiar with
15 KEM's operations in that area?

16 A You know, right away when I started as a lineman in
17 2011, I was, you know, working that area. So I
18 guess just every year that goes by, getting a little
19 bit more knowledge in that area.

20 Q Are you familiar with the Badger Wind Project that
21 is the subject of this proceeding?

22 A Yes.

23 Q Are you familiar with the particular electric
24 service that Montana-Dakota Utilities is requesting
25 authority to provide to Badger Wind?

1 A Yes.

2 Q And what is that service?

3 A It would be the backfeed when the -- they need
4 power.

5 Q Where's the location at which that service will be
6 provided?

7 A MDU Wishek substation.

8 Q Is that location within KEM's traditional service
9 area?

10 A Yes.

11 Q Were you present yesterday during the testimony of
12 Darcy Neigum?

13 A Yes.

14 Q Do you recall him testifying about the issue of
15 whether the meter associated with the Wishek
16 substation is part of the MISO tariff system?

17 A Yes.

18 Q Mr. Neigum expressed his opinion that MDU is not
19 required to give KEM access to the meter because the
20 meter is not part of the MISO tariff system. Do you
21 recall Mr. Neigum's testimony along those lines?

22 MR. SIMPSON: Objection. I believe it
23 mischaracterize -- mischaracterizes Mr. Neigum's
24 testimony. Mr. Neigum only said that it is not part
25 of the MISO -- not subject to the functional control

1 of MISO. He did not say it was available or not
2 available.

3 MR. GRINOLDS: I'll rephrase the
4 question.

5 JUDGE HOGAN: Rephrase.

6 BY MR. GRINOLDS:

7 Q Do you recall Mr. Neigum's testimony to the effect
8 that the meter associated with the Wishek substation
9 is not subject to the functional control of MISO?

10 A I believe that is correct.

11 Q Do you agree with Mr. Neigum's opinion in that
12 regard?

13 A I do not.

14 Q When KEM requests a new delivery --

15 MR. SIMPSON: Just -- just to lodge the
16 objection. Objection, calls for a legal conclusion.

17 JUDGE HOGAN: The objection is noted.

18 BY MR. GRINOLDS:

19 Q When KEM requests a new delivery point through
20 Basin, is it your understanding that FERC requires
21 MDU as the MISO transmission provider to provide
22 equal access to the facilities necessary to
23 effectuate delivery of the electric service?

24 A That's my understanding.

25 Q If MDU intends to use the meter if it provides the

1 retail service, is it your understanding MDU must
2 allow others to also use the meter to provide the
3 retail service?

4 A Yes.

5 Q Under those circumstances, is KEM capable of
6 providing the station service requested by Badger
7 Wind?

8 A Yes.

9 Q Is KEM willing to provide it?

10 A Yes.

11 Q Is there any engineering reason known to you that
12 prevents KEM from providing it?

13 A Not that I know of.

14 Q Is there any reliability reason why KEM could not
15 provide the requested service?

16 A Not that I know of.

17 Q Is there any need for KEM to construct duplicative
18 transmission facilities?

19 A Not that I know of.

20 Q Does either MDU's or KEM's provision of the
21 requested electric service at the delivery point
22 strictly involve the use of pre-existing electric
23 infrastructure?

24 A Yes.

25 Q Does the pre-existing infrastructure include a meter

1 located within or next to the Wishek substation?

2 A To my knowledge, yes.

3 Q Would providing this service unreasonably interfere
4 with MDU's system?

5 A I don't believe so.

6 Q Is the electric service requested by Badger Wind
7 properly described as retail load?

8 A Yes.

9 Q And explain what retail load means.

10 A Retail load is the delivery -- delivery of power to
11 the end user.

12 Q Is the retail load requested located within KEM
13 service area?

14 A Yes.

15 Q Does KEM already provide electric service to Badger
16 Wind at other locations associated with the same
17 project?

18 A Yes.

19 Q Does KEM already serve numerous other customers
20 surrounding this delivery point?

21 A Yes.

22 Q Is KEM opposing MDU's application for permanent
23 authority at issue?

24 A Yes.

25 Q Does KEM wish to provide the electric services

1 requested by Badger Wind?

2 A Yes.

3 Q Are all of KEM's electric customers members in KEM?

4 A Yes.

5 Q If KEM's revenue exceeds expenses, what happens to
6 the excess net revenue?

7 A It is returned back to them.

8 Q Okay. Are KEM's annual capital -- so how are the
9 revenues returned back to the members?

10 A It's returned back to them two or three ways. So
11 either capital credits, a bill credit, or a
12 combination of both.

13 Q Okay. Are KEM's annual capital credit allocations
14 mandatory at the end of each year?

15 A Yes.

16 Q Does KEM's board also have the discretion to give
17 its members bill credits based upon net revenues?

18 A Yes.

19 Q Has that ever occurred?

20 A Yes.

21 Q How recently has a discretionary bill credit been
22 provided to KEM's members?

23 A In 2025, I believe there was a \$1 million bill
24 credit.

25 Q Okay. I'm going to now ask you some questions about

1 factor one that is before the Commission. That
2 factor is, From whom does the customer prefer
3 electric service?

4 Did Badger Wind initially approach Basin
5 Electric in relation to the provision of retail
6 electric service for portions of the Badger Wind
7 Project?

8 A Yes.

9 Q In front of you, you'll see a black binder that has
10 the KEM exhibits in it. I'll refer you to Exhibit
11 KEM 5. Do you recognize this document?

12 A Yes.

13 Q And what is this?

14 A This was correspondence between Blattner Energy and
15 Basin Electric.

16 Q Okay. And what's the nature of this correspondence?

17 A It is to ask for service for their laydown yard,
18 their substation -- collector substation, and their
19 O&M building.

20 Q And this is correspondence dated November 19th of
21 2024; is that correct?

22 A Yes.

23 Q Okay. And is -- on the last page of that exhibit,
24 KEM 60, is there a map at the bottom of that page?

25 A Yes.

1 Q And does that -- and I believe the Commission has a
2 black and white copy. I think on file in the docket
3 is a color copy of that exhibit. Actually, I think
4 with -- actually, do you have a color copy?

5 A Yes.

6 Q Okay. Does that photograph show a red rectangle to
7 the west of Wishek?

8 A Yes.

9 Q And is it your understanding that what's being
10 discussed here is showing the location of where that
11 Blattner laydown yard, the O&M building, and the
12 other substation was going to be located?

13 A Yes.

14 Q Okay. Okay. I'm going to now refer you to Exhibit
15 KEM 7. Do you recognize this document?

16 A I do.

17 Q And what is it?

18 A This was correspondence between Ørsted, employees of
19 KEM Electric, as well as Lee with the Innovative
20 Energy Alliance.

21 Q And is it an email chain that has a date range from
22 November 7th of 2024 through July 23rd of 2025?

23 A Yes.

24 Q Okay. Now, this is kind of a long email chain, so
25 I'm going to focus you in on just some specific

1 communications in that email chain for the
2 Commission's benefit.

3 And is this email chain in reverse
4 chronological order?

5 A Yes.

6 Q Okay. Have you reviewed this email chain?

7 A Yes.

8 Q Are you familiar with its contents?

9 A Yes.

10 Q Okay. I'm going to refer you to the earliest email
11 in that chain located on page KEM 141. Is that an
12 email from Ayesha Vohra at Ørsted to yourself dated
13 November 7th, 2024?

14 A Yes.

15 Q And in that email, does Ayesha identify herself as a
16 project engineer at Ørsted?

17 A Yes.

18 Q And does she state, quote, I'm currently working on
19 securing distribution power for the substation
20 control house and O&M building for the Badger Wind
21 Project?

22 A Yes.

23 Q And when she's referring to the substation control
24 house in this particular communication, is she
25 referring to the substation over by the O&M

1 building?

2 A Correct.

3 Q Not the backfeed building; is that correct?

4 A Correct.

5 Q Okay. And does Ayesha essentially inquire about
6 what is necessary to get the process of securing
7 distribution power for the Badger Wind Project
8 moving forward?

9 A Yes, eventually they gave us the information that we
10 need.

11 Q Okay. And this particular communication was
12 November 7th, 2024; is that right?

13 A This particular one for the control house and O&M
14 building, yes.

15 Q Okay. Now following that initial November 7th,
16 2024, email from Ørsted, was information exchanged
17 between Ørsted and KEM in this email chain in
18 relation to securing distribution power for the
19 Badger Wind Project?

20 A Yes.

21 Q And I'll refer you to, in the same exhibit, page KEM
22 038. And is this -- at the top of that page, is
23 there an email from Andrew Gallagher at Ørsted to
24 yourself dated May 20th, 2025?

25 A Yes.

1 Q And I'll just -- it provides, quote, Hi Dale.
2 Bringing this topic back up for our Badger Wind
3 Project. I believe Blattner has been working with
4 your team to coordinate the installation of the
5 backup power to our O&M building. Since we will be
6 the long-term operators, we want to ensure we have
7 the actual distribution agreement in place. Do you
8 have an application or process available we can
9 follow? Happy to set up a time to meet if that
10 helps, unquote.

11 Did I read that correctly?

12 A Yes.

13 Q As of May 20th, 2025, the date of this email, had a
14 company called Blattner been working with KEM to
15 coordinate the installation of the backup power to
16 the O&M building?

17 A Yes.

18 Q In -- in another email appearing on that same page
19 of Exhibit KEM 7, from Ayesha Vohra to yourself of
20 November 19th, 2024, had Ørsted identified Blattner
21 as Ørsted's EPC on the Badger Wind Project?

22 A Yes.

23 Q Okay. And what does EPC stand for?

24 A I believe it stands for engineering, procurement,
25 and construction contractor.

1 Q Okay. And in that email, did Ørsted instruct KEM to
2 work directly with Blattner to bring power to the
3 O&M building?

4 A They did.

5 Q Referring you to page KEM 135, in the middle of that
6 page is an email from Amanda Coletti at Ørsted to
7 yourself and to Andrew Gallagher of Ørsted dated May
8 30th, 2025; is that correct?

9 A Yes.

10 Q And does that email provide, quote, I apologize for
11 the double email. However, I wanted to follow up
12 because in addition to getting the agreement in
13 place for the installation, we are also tracking the
14 station service agreement that we will need to have
15 in place to pay for Ørsted's use of power from the
16 transmission system at times when we need power from
17 the grid.

18 Could we start working on this station
19 service agreement in parallel with the installation
20 agreement? Please let me know if you would like to
21 schedule a call to talk through this further,
22 unquote.

23 Did I read that correctly?

24 A Yes.

25 Q Ørsted refers to a station service agreement as

1 pertaining to the use of power from the transmission
2 system at times when there is a need for power from
3 the grid, correct?

4 A Yes.

5 Q In other words, Ørsted is inquiring about the
6 backfeed electric service -- or do you interpret
7 this as -- email as referring to the backfeed
8 service at issue in our current case?

9 A Yes.

10 Q Okay. And so this was dated May 30th of 2025?

11 A Yes.

12 Q Over four months -- and so that request was over
13 four months before MDU filed its October 2nd, 2025,
14 Temporary Authority Permit Application with the PSC
15 to provide the same requested electric service; is
16 that correct?

17 A Yes.

18 Q Referring you to the email immediately above the
19 May 30th email from Ørsted we just discussed,
20 appearing at the bottom of page KEM 134 and
21 continuing on to KEM 133, and this appears to be an
22 email from Kevin Horner at KEM Electric to Amanda
23 Coletti at Ørsted and to yourself dated May 30th,
24 2025; is that correct?

25 A Yes, from Amanda to me and Kevin, correct.

1 Q And continuing on to the top of KEM 135, does -- do
2 they basically say, Attached is the paperwork
3 required to be filled out prior to the installation
4 of your new service?

5 A That is correct.

6 Q Okay. I'm going to refer you to an email at the top
7 of page 134, the same exhibit. Is this an email
8 from Amanda Coletti at Ørsted to Kevin Horner at KEM
9 and yourself dated June 25th, 2025?

10 A Yes.

11 Q And what's the nature of this email? What's being
12 communicated?

13 A This is being communicated that they're still
14 looking into stuff for the max demand for the
15 backfeed for the Wishek substation, for the max
16 demand for the Badger collector substation and O&M
17 building, and then whether they need a single-phase
18 or three-phase for them services.

19 Q Okay. And does that message start out with, quote,
20 Please see attached membership application form,
21 opt-out form, and W-9 for Badger Wind, LLC. Do you
22 need any other paperwork filled out from us to begin
23 processing our account, unquote?

24 A Yes.

25 Q Okay. Did KEM receive with this email on June 25th,

1 2025, the referenced membership application, opt-out
2 form, and the W-9 for Badger Wind, LLC?

3 A Yes.

4 Q Referring you to Exhibit KEM 8, do you recognize
5 this document?

6 A Yes, this is KEM's membership application for
7 entities.

8 Q And is that signed on the last page of that exhibit
9 on June 24th, 2025?

10 A Yes.

11 Q Okay. Excuse me, on --

12 A First page.

13 Q First page, yes, correct.

14 All right. And so this application for a
15 KEM membership was executed and provided more than
16 three months prior to MDU's TAPP application in the
17 current proceeding?

18 A Yes.

19 Q Showing you what's been marked as Exhibit KEM 9, do
20 you recognize this document?

21 A I do.

22 Q And what is it?

23 A So this is a -- a board that was approved by KEM
24 Electric's board. Funds that we receive through
25 people staying in this Operation Round Up get

1 distributed throughout most of our service
2 territory. There are times that they will deliver
3 them funds outside of the territory.

4 Q Okay. And in this particular instance, did Badger
5 Wind opt out of that program?

6 A They did.

7 Q Okay. Showing what's been marked as Exhibit KEM 10,
8 do you recognize this document?

9 A I do.

10 Q And what is it?

11 A It's their taxpayer identification number and
12 certification.

13 Q Okay. That -- this is for Ørsted Holdings N.A.,
14 Incorporated, on behalf of a business named Badger
15 Wind, LLC; is that correct?

16 A I believe so.

17 Q Now, those last three exhibits we just referenced --
18 KEM 8, KEM 9, KEM 10 -- those were all the documents
19 that were provided with that June 25th --

20 A Correct.

21 Q -- 2025, email correspondence; is that correct?

22 A I believe so.

23 Q What was the significance to you of these documents
24 being provided to KEM?

25 A I mean, at this point, they are a member of KEM

1 Electric. They've -- they've started the process,
2 they've signed everything to be a member, and
3 they're ready to be provided service.

4 Q Okay. Referring you back to KEM 7, and specifically
5 page 1- -- KEM 134. And, again, this is the email
6 from Amanda Coletti from Ørsted to Mr. Horner at KEM
7 and yourself dated June 25th, 2025, we were just
8 talking about?

9 A Yes.

10 Q Now with respect to the reference at the bottom of
11 that email about they were still looking into
12 obtaining information about the max demand for
13 backfeed at the Wishek substation, max demand for
14 Badger collector substation and O&M building, and
15 confirmation of a single- or three-phase power, was
16 that information subsequently provided to KEM?

17 A Yes.

18 Q Okay. Referring you to the bottom -- to the bottom
19 of page KEM 130 and continuing on to the top of page
20 KEM 131. So at the bottom of page KEM 130, at the
21 very, very bottom, is that an email from Andrew
22 Gallagher at Ørsted to Amanda Coletti at Ørsted,
23 Mr. Horner and yourself at KEM Electric dated July
24 18th, 2025?

25 A Yes.

1 Q In that email, does Ørsted assert the need for an
2 agreement, quote, for receiving power backfeed --
3 backfed through the Wishek substation for project
4 no-load energy use while we are not producing; i.e.,
5 we will not be pulling power from the local
6 distribution system, but directly through MDU's
7 system, unquote.

8 A Yes.

9 Q Did you interpret this email as requesting an
10 agreement with KEM for the provision of backfeed
11 power through the Wishek substation?

12 A Yes.

13 Q Did you respond to Mr. Gallagher that same day with
14 an email?

15 A I did.

16 Q And does that email appear on page KEM 130?

17 A Yes.

18 Q Okay. And how did you respond to Mr. Gallagher in
19 that email?

20 A That we do not need another agreement for the
21 no-load energy. They signed the membership
22 application and we got the documents we needed.

23 Yeah, I think I just mentioned, unless it
24 would fall under a different company, then they
25 would need a new membership application for that

1 company.

2 Q Okay. And that was on July 18th, 2025?

3 A Correct.

4 Q Did Ørsted subsequently confirm KEM was being
5 requested to provide the backfeed service through
6 the Wishek substation?

7 A Yes.

8 Q Okay. Referring you to the same exhibit, KEM 7, at
9 page KEM 129. Okay. I refer you to the email at
10 the very bottom of that page. Is that an email from
11 Jon Langford of Ørsted to yourself and Andrew
12 Gallagher at Ørsted and Amanda Coletti at Ørsted and
13 Kevin Horner at KEM dated July 22nd, 2025?

14 A Yes.

15 Q And in that email is Mr. Langford advising you they
16 don't expect to come close to five megawatts, but do
17 you mind sharing rates and charges for that class?

18 A Yes.

19 Q Okay. Then continuing on to the next page, the
20 communication continues on to KEM 130. Does
21 Mr. Langford state, quote, And just to summarize, we
22 will have three service locations on our account,
23 correct? O&M building, collector project
24 substation, and no-load from transmission system.
25 Also, can you give us a heads-up when that delivery

1 point is added and confirmed by MISO, unquote?

2 Did I read that correctly?

3 A Yes.

4 Q Did you interpret this email as expressing Ørsted's
5 understanding that KEM would be providing and
6 billing for the backup no-load electric service for
7 the Wishek substation, the transmission system?

8 A Yes.

9 Q Did you interpret this email as expressing Ørsted's
10 understanding that the application for MISO approval
11 of the delivery point within the Wishek substation
12 was pending?

13 A Correct.

14 Q Referring you to the email at the bottom of page
15 KEM 128 on the same exhibit. And specifically the
16 email at the very bottom of that page, it continues
17 on to the next page of KEM 129, is this an email
18 from Lee Keller at Innovative Energy to yourself and
19 Mr. Horner at KEM, and Mr. Langford, Mr. Gallagher,
20 and Ms. Coletti at Ørsted dated July 23rd, 2025?

21 A Yes.

22 Q And does that email provide, quote, Jon, see
23 attached for the delivery point request. Please
24 sign and return to me and I will get the application
25 submitted to Basin Electric, unquote?

1 A Yes.

2 Q Did Jon Langford at Ørsted respond to that email
3 later that same day, July 23rd, 2025, pursuant to
4 the email located at the top of page KEM 128?

5 A Yes.

6 Q And in that email from Mr. Langford, July 23rd,
7 2025, does he say, quote, Hey, Lee. I've attached a
8 fully executed version. Only update I made was to
9 change the ultimate customer to Badger Wind, LLC,
10 unquote?

11 A Yes.

12 Q Okay. Was a fully executed new load delivery point
13 initiation application form just discussed provided
14 to Basin Electric Power Cooperative on July 23rd,
15 2025?

16 A Yes.

17 Q I'm going to refer you to Exhibit KEM 11,
18 specifically pages KEM 108 through 110 thereof. So
19 what is this email?

20 A So this, I believe, is an email that Lee has to send
21 to Basin for when we need new load -- when we have
22 new -- we need new interconnection or load -- load
23 delivery point.

24 Q Okay. And is attached to that document a copy of
25 the completed new load delivery point initiation

1 application form?

2 A Yes.

3 Q Okay. And is that new load delivery point
4 initiation application form signed on the last page,
5 KEM 110?

6 A Yes.

7 Q Is it signed July 23rd, 2025, by the ultimate retail
8 customer in this matter, which is identified as
9 Badger Wind, LLC?

10 A Yes.

11 Q And by Travis Kupper on behalf of KEM Electric?

12 A Yes.

13 Q Does this application disclose the transmission
14 provider to be Basin Electric?

15 A Yes.

16 Q And does the application disclose the desired meter
17 location to be the interconnection bay at the Wishek
18 230-kilovolt?

19 A Yes.

20 Q Okay. And is your understanding the interconnection
21 bay at Wishek 230-kilovolt is the Wishek substation
22 at issue in this matter?

23 A Yes.

24 Q Okay. And does the application show that the
25 Class A member that will provide the service will be

1 KEM Electric?

2 A Yes.

3 Q Referring you to Exhibit KEM 13, is this an email
4 from Basin Electric in response to Mr. Keller's
5 July 23rd, 2025, email and submission of the fully
6 executed new load point/new load delivery point
7 initiation application form to Basin?

8 A I believe so.

9 Q And were you copied on that email?

10 A Yes.

11 Q In that email, Basin advises the new load
12 application has been accepted and the application
13 has been assigned a queue number; is that correct?

14 A Yes.

15 Q Okay. Is a copy of the wholesale power agreement
16 between Basin Electric Power Cooperative and KEM
17 Electric Power Cooperative -- Cooperative, as
18 amended and extended, provided as Exhibit KEM 4?

19 I'll refer you to Exhibit KEM 4. Is that
20 a copy of KEM's wholesale power contract with Basin
21 Electric?

22 A I believe so, yes.

23 Q Okay. Did KEM make investments in additional
24 distribution infrastructure to serve the Blattner
25 temporary laydown yard and the Badger Wind O&M

1 building and collection substation?

2 A Yes.

3 Q I'm showing you what's been marked as Exhibit
4 KEM 3D. Do you recognize this document?

5 A I do.

6 Q And what is it?

7 A So this is the distribution lines that we extended
8 for Blattner for their laydown yard; as well as for
9 Badger for their substation -- their collector
10 substation and their O&M building. The blue line is
11 our existing distribution line on the bottom.

12 And then the dollar amounts are the Aid
13 to Construction that they paid. So Blattner paid
14 Aid to Construction of \$16,710, and Badger for the
15 two services up there paid \$11,264.34. That was the
16 Aid to Construction. I believe the total cost for
17 these projects came in at \$44,969.28.

18 Q And so the difference between that \$44,000 figure
19 and the total of these two numbers added up of
20 roughly \$27,000, \$28,000; was that KEM's investment
21 in -- in the infrastructure improvements?

22 A That's correct.

23 Q And, again, the additional line extension we're
24 talking about is the north-south blue line coming up
25 from the east-west line at the bottom; is that

1 correct?

2 A That's correct.

3 Q Along with the short little extension up there at
4 the top?

5 A That's correct.

6 Q Okay. And that was an underground installation?

7 A That's correct.

8 Q Did you prepare this map?

9 A Yes, along with another lineman at KEM Electric.

10 Q Okay. Were those KEM and Badger Wind investments
11 made at a time when Badger Wind's parent company,
12 Ørsted, was also requesting KEM to provide backfeed
13 electric service to the Badger Wind Farm at issue?

14 A I would have to double check as far as when.

15 Yes, we did install these -- at the end
16 of August they were installed. So, yes, this was
17 during the process.

18 Q Okay. If Badger Wind had asked MDU to provide
19 electric service to the laydown yard, O&M building,
20 and collection substation, do you have an
21 understanding of how much distribution line MDU
22 would have needed to construct?

23 A To my knowledge, I believe it would have been over
24 7,000 --

25 MR. SIMPSON: Objection, calls for

1 speculation.

2 JUDGE HOGAN: The objection's noted.
3 I'll let him answer.

4 MR. GRINOLDS: Okay. I can ask some
5 foundation questions.

6 JUDGE HOGAN: Sure.

7 BY MR. GRINOLDS:

8 Q Have you reviewed the question of how much line
9 extension would have been required for MDU to
10 install -- or to service these: The O&M building,
11 the collector substation, and the Blattner temporary
12 laydown yard?

13 A Can you rephrase that?

14 Q So have you reviewed any materials or have you
15 looked into the issue of how much extension MDU
16 would have had to have installed in order to serve
17 these locations?

18 A Yes.

19 Q Okay. And what did you conclude?

20 A I believe it would have been over 7,000 feet, to my
21 knowledge of what I believe to be MDU's nearest
22 distribution service point.

23 Q Okay. And is it your understanding that MDU's
24 nearest distribution point for this purpose would
25 have been the -- I believe there's a golf course, a

1 Badger -- or some sort of golf course to the east of
2 this location; is that correct?

3 A I believe it's actually a residential or general
4 service just to the northwest of the golf course, I
5 believe.

6 Q Okay. Northwest of the golf course?

7 A To my knowledge.

8 Q Okay. So what does that tell you about which
9 utility actually has the established retail
10 distribution presence around the Badger Wind
11 Project?

12 A That KEM does.

13 Q Does KEM make infrastructure investments based upon
14 the expectation that it will serve existing and
15 future loads arising within its traditional service
16 area?

17 A We do.

18 Q In your opinion, would KEM's provision of the
19 requested backfeed service to the Badger Wind Farm
20 better promote the orderly development of retail
21 electric service in this area as compared to MDU
22 providing the service?

23 A I do.

24 Q Okay. And why do you believe that?

25 A Because we are the ones -- you know, right now that

1 we are the ones putting new services in that area.
2 In the last eight years, we've installed, I believe,
3 five new services. It'd be nine years now, I
4 believe, since this passed.

5 But to my knowledge, in the last decade,
6 KEM has been the only one that have added new
7 services out in that -- in this area besides this
8 temporary permit.

9 Q Okay. Is KEM required to provide electric service
10 to everyone who requests service within its
11 traditional service area regardless of revenue
12 generated pursuant to KEM's bylaws?

13 A Yes, as long as they fill out the membership
14 application and do the necessary paperwork.

15 Q Would permitting MDU to cherry-pick the high-revenue
16 customers diminish resources available to KEM which
17 could be utilized to reduce costs to all members in
18 the service area?

19 A I believe so.

20 Q Does KEM already supply retail electric service to
21 other members nearby in the requested distribution
22 point?

23 A Yes.

24 Q Is KEM currently providing retail electric service
25 to Badger Wind, LLC, at the O&M building and

1 collector substation?

2 A Yes.

3 Q When did service to the collector -- project
4 substation commence?

5 A The substation, I believe, came online -- I'd have
6 to double check the exact dates, but the underground
7 was installed at the end of August. I believe the
8 substation came online --

9 Q Does September 2nd, 2025, sound right?

10 A September 2nd, 2025, that is correct.

11 Q And when did its service to the O&M building
12 commence?

13 A That one, I did find an error on that. That should
14 have been October and not September.

15 Q In any event, October of 2025?

16 A Correct.

17 Q Had --

18 A October 21st, yep.

19 Q What date was it?

20 A October 21st of 2025 is when that service became
21 energized to my knowledge.

22 Q Okay. After Badger Wind executed the no -- new load
23 application for service through KEM and Basin, had
24 submitted that request to MISO, did KEM learn that
25 MDU was seeking authority to provide the same

1 backfeed station service?

2 A Yes.

3 Q Did KEM inform the PSC it intended to protest the
4 application?

5 A Yes.

6 Q Was temporary authority subsequently granted to MDU
7 by the PSC?

8 A Yes.

9 Q Has Badger Wind ever told KEM that it no longer
10 wants KEM to provide the backfeed station service at
11 issue?

12 A Not to my knowledge.

13 Q Did Badger Wind ever ask KEM to withdraw their July
14 23rd, 2025, new load application with Basin for
15 electric service at the wind farm through KEM?

16 A Not to my knowledge.

17 Q Referring you to Exhibit KEM 3E, is this an email
18 chain from Marcy Sanders at KEM Electric to
19 Jon Langford at Ørsted?

20 A Yes. The specific pages, yes.

21 Q And is the date range of this email chain September
22 3rd, 2025, through October 23rd, 2025?

23 A Yes.

24 Q Are you familiar with the contents of this email
25 chain?

1 A Yes.

2 Q And by the way, who is Marcy Sanders?

3 A She's the manager of member services for KEM
4 Electric.

5 Q Okay. So summarizing, is Ørsted essentially
6 requesting information to set up KEM as one of its
7 vendors for billing purposes in this email chain?

8 A Yes.

9 Q Pursuant to Sanders' email of October 23rd, 2025, to
10 Langford located on the second page of Exhibit
11 KEM 3E, does Sanders inform Ørsted that, quote,
12 Construction on KEM's side of the O&M building has
13 been completed. Therefore, billing will start with
14 the first invoice being on November 5th, 2025,
15 unquote?

16 A Yes.

17 Q Had construction of KEM's side of the O&M building
18 been completed by October 23rd, 2025?

19 A Yes.

20 Q Did billing for electric service to the Badger O&M
21 building commence November 5th, 2025?

22 A Yes.

23 Q Is KEM still providing electric service to the O&M
24 building to this day?

25 A Yes.

1 Q Is KEM providing retail electric service to the
2 Badger Wind collector substation to this day?

3 A Yes.

4 Q In an email from Langford to Ørsted -- Langford of
5 Ørsted to Sanders dated October 23rd, 2025, located
6 at the bottom of the first page of Exhibit KEM 3E
7 and continuing on to the second page, Langford
8 states, in relevant part, quote, Thank you, Marcy,
9 10-4 on invoice. I can't remember, will this be a
10 separate invoice or will it be on the same bill?
11 Also, seems like the backfeed bill on -- is on pause
12 while KEM and MDU work out who gets to bill at the
13 PSC. Just making sure we are on the same page here,
14 unquote.

15 Did I read that correctly?

16 A Yes.

17 Q And so this message from Mr. Langford dated October
18 23rd, 2025, that was 21 days after MDU first filed
19 this temporary authority permit application in this
20 matter on October 2nd, 2025; is that correct?

21 A Yes.

22 Q Afterwards, correct?

23 A Yes.

24 Q Did you interpret this message from Mr. Langford as
25 requesting Badger Wind's new load application

1 through Basin to be withdrawn?

2 A No.

3 Q Did you interpret this message from Langford to mean
4 Badger Wind had a preference between MDU and KEM for
5 the provision of retail electric backfeed service of
6 the Badger Wind Farm?

7 A No.

8 Q Did you interpret Mr. Langford's message to -- what
9 did you interpret his message to mean?

10 A That it was a -- they were going to wait to see what
11 the PSC decided.

12 Q Has Badger Wind withdrawn its July 23rd, 2025, new
13 load application for electric service at the wind
14 farm from Basin through KEM?

15 MR. SIMPSON: Objection, asked and
16 answered.

17 JUDGE HOGAN: The objection's noted. He
18 can answer.

19 THE WITNESS: Not to my knowledge.

20 BY MR. GRINOLDS:

21 Q Okay. Has Badger Wind directly -- directly informed
22 KEM that Badger Wind does not want KEM to be the
23 supplier of retail power at the delivery point for
24 the Badger Wind Farm?

25 A Not to my knowledge.

1 Q Okay. I'm going to ask you some questions about
2 factor two now, which is, What electric suppliers
3 are operating in the general area?

4 So what electric suppliers are operating
5 in the general Wishek area?

6 A General Wishek area is MDU and KEM Electric.

7 MR. SIMPSEY: Objection, all of this has
8 been already covered by -- by KEM's prior witness.

9 JUDGE HOGAN: To the extent we're not
10 reviewing the same ground, that would be good.

11 MR. GRINOLDS: Sure.

12 BY MR. GRINOLDS:

13 Q Okay. Moving on to factor three, What electric
14 supply lines exist within at least a two-mile
15 radius?

16 MR. SIMPSEY: I renew the same objection.

17 JUDGE HOGAN: He can answer.

18 MR. GRINOLDS: I'm just stating what the
19 factor is, so there's no question pending.

20 BY MR. GRINOLDS:

21 Q Factor three, What electric supply lines exist
22 within at least a two-mile radius?

23 Yesterday, Lee Keller testified about the
24 existence of KEM Electric supply lines within a
25 6,000-foot radius of the Wishek substation; do you

1 recall that?

2 A Yes.

3 Q Do you agree with Mr. Keller's testimony in that
4 regard?

5 A I believe so.

6 Q If the radius around the Wishek substation were
7 increased to two miles, would that encompass any
8 additional KEM Electric supply lines than are
9 already depicted in the 6,000-foot radius map
10 Mr. Keller testified about yesterday, Exhibit
11 KEM 3A?

12 A Can you repeat that?

13 Q I'll refer you to -- Exhibit -- Exhibit KEM 3A.
14 Okay. Do you recall Mr. Keller's testimony
15 regarding this map yesterday?

16 A Yes.

17 Q And this is the 6,000-foot radius map around the
18 delivery point; is that correct?

19 A That's correct.

20 Q If we were to expand this map out to a two-mile
21 radius, are there any additional KEM distribution
22 lines that would be included that aren't already
23 depicted here on this map?

24 A Yes.

25 Q Okay. Would they essentially be just extensions of

1 these same lines?

2 A Yes, they're -- these are kind of all intertwined.

3 Q Okay. So in other words, what we're seeing here on
4 this map depicts what distribution lines KEM has in
5 the two-mile radius area; would that be accurate?

6 A (No audible response on digital recording.)

7 Q The locations would extend out to other locations,
8 but it's the same essential lines; is that correct?

9 A Correct.

10 Q Okay. Moving on to factor four, What customers are
11 served by electric suppliers within at least a
12 two-mile radius?

13 Okay. Again, referring you to Exhibit
14 KEM 3A, that map; who prepared that map?

15 A Myself and a lineman from KEM.

16 Q Okay. And did you review KEM's records in preparing
17 that map?

18 A Yes.

19 Q Is the information provided on this map accurate to
20 the best of your knowledge based upon your
21 experience and review of KEM records?

22 A Yes, to the best of my knowledge, except for the
23 existing member, Blattner, is no longer there. That
24 service has been retired.

25 Q Okay. And I believe you testified you were present

1 yesterday during Mr. Keller's testimony; is that
2 correct?

3 A Yes.

4 Q And do you agree with Mr. Keller's descriptions of
5 what is depicted on this map?

6 A I guess not -- not without remembering everything
7 that he said --

8 Q Okay.

9 A -- I'd rather not answer that.

10 Q Okay. Well, if I understand correctly, the orange
11 arrow is the distribution point; is that correct?

12 A Yes.

13 Q And the yellow dots are the KEM members in the area;
14 is that correct?

15 A Yes.

16 Q And the green -- green dot is the nearest MDU
17 service to your knowledge?

18 A Yes.

19 Q Okay. And the red circle is the 6,000-foot radius;
20 is that correct?

21 A Yes.

22 Q Okay. How many members does KEM serve within a
23 two-mile radius of the Wishek substation?

24 A So currently I believe we serve 26 members within a
25 two-mile radius.

1 Q Okay. And those are all in rural areas?

2 A That is correct.

3 Q Okay. So you filed a declaration in this PSC
4 proceeding in support of KEM's protest; is that
5 correct?

6 A That's correct.

7 Q Okay. And does your declaration at paragraph 27
8 list 15 examples of KEM not opposing MDU's provision
9 of electric service within KEM's traditional service
10 territory?

11 (Indiscernible chatter.)

12 A (No audible response on digital recording.)

13 Q I'll refer you to Exhibit KEM 3, and specifically to
14 paragraph 27.

15 And just to confirm, Exhibit KEM 3, that
16 is your declaration on file --

17 A Yes.

18 Q -- is that correct?

19 All right. And the information contained
20 in this exhibit is true and accurate to the best of
21 your knowledge?

22 A To best of my knowledge, yes.

23 Q Okay. So referring you to paragraph 27 on page 6 of
24 that declaration, does this list 15 examples of KEM
25 not opposing MDU's provision of electric service

1 within KEM's traditional service territory?

2 A That is correct.

3 Q And of those 15 examples, do two of them involve
4 situations where the provision of electric service
5 was governed by a prior service agreement entered
6 into between MDU and KEM?

7 A Yes.

8 Q And do the remaining 13 examples involve situations
9 where MDU's existing distribution facilities were
10 located substantially closer to the requested
11 delivery point than KEM's existing distribution
12 facilities?

13 A Yes.

14 Q Can you give the Commission just a couple of
15 examples of the differences -- in extension
16 differences in those cases where MDU requested
17 permission to provide electric service within KEM's
18 traditional service area?

19 A Yes, Case 17-182, MDU's extension length was 100
20 feet and KEM's extension length was 1,700 feet.
21 23-334, MDU's was 2,280 feet and KEM's was six
22 miles.

23 Q Okay. How does the present Badger Wind situation
24 differ from those cases where MDU has provided
25 electric service within KEM's territory?

1 A Besides the franchise, all of these, you know, there
2 are significant cost differences for what KEM would
3 have had to pay compared to MDU.

4 Q To serve the retail load?

5 A Yes.

6 Q Okay. In your experience, is MDU's present request
7 consistent with its historical practice in the KEM
8 traditional service area?

9 A I don't believe so. I've kind of personally
10 probably -- I saw -- I saw these come across my desk
11 from the Case 20-366 to Case 25-250. And then ones
12 older than that, 18, 17, 17, and 16, I did not -- I
13 was not directly involved with them. However, they
14 all -- you know, they depict there's a -- there's a
15 large dollar amount difference.

16 Q So is the information contained in paragraph 27
17 based on your review of PSC filings on these
18 matters?

19 A Say that again.

20 Q So where did the information on this paragraph 27
21 come from?

22 A On this came from the PSA [sic] cases.

23 Q Moving on to factor five, reliability of service,
24 and factor eight, wasteful duplication of service,
25 which we'll cover together at one -- one shot.

1 Regardless of whether KEM or MDU provided
2 the backfeed electric service, would the electric
3 service be provided through the Wishek substation?

4 A Yes.

5 Q Would that electric energy pass through the Wishek
6 substation -- would the electric energy passing
7 through the Wishek substation be metered?

8 A Yes.

9 Q In that regard, and based upon your understanding of
10 the FERC law previously discussed, would KEM or MDU
11 utilize the same meter located in the Wishek
12 substation?

13 A I believe so.

14 Q Does the meter already exist?

15 A Yes.

16 Q Would the reliability of the electric service differ
17 depending upon whether MDU or KEM provided the
18 service through the meter within the Wishek
19 substation or near the Wishek substation?

20 A I don't believe so.

21 Q Okay. Would there be any wasteful duplication of
22 investment or service if one service provided --
23 were to -- would there be any wasteful duplication
24 of investment or service if KEM were to provide the
25 electric service in this situation?

1 A Not to my knowledge.

2 Q Okay. Moving on to factor six, which is, which
3 supplier can serve economically and still earn an
4 adequate return?

5 Does MDU's application state that no
6 extension or additional facilities are needed to
7 service the Badger Wind Farm?

8 A I believe that is correct.

9 Q And would provision of the requested electric
10 service simply involve metering with -- within the
11 existing Wishek substation or near the Wishek
12 substation, which is already in place?

13 A I believe that is correct.

14 Q Would you expect the delivery point metering costs
15 to be materially different depending upon which
16 utility is design- -- designated to -- to be the
17 retail supplier?

18 A I don't believe, if we were able to use the meter in
19 the substation per FERC, that there would be any
20 difference.

21 Q Okay. Is -- is KEM willing to provide the service
22 economically?

23 A Yes.

24 Q Capable of providing it economically?

25 A Yes.

1 Q Okay. Would KEM be able to provide this service
2 under its applicable rate structure?

3 A Yes.

4 Q And what rate would KEM charge Badger Wind on this
5 service?

6 A IP-1.

7 Q Okay. Referring you to Exhibit KEM 12, do you
8 recognize this document?

9 A I do.

10 Q And what is it?

11 A This is our rate class for IP-1.

12 Q Okay. And does that document reflect the current
13 rates under schedule IP-1?

14 A That is correct.

15 Q How is KEM's rate structure determined?

16 A There's a lot of factors that go into play. It
17 ultimately is voted on by the board. However, they
18 do do -- we do do a cost of service study. I'm not
19 sure how many years are in between each cost of
20 service study, but we use the cost of service study,
21 as well as just looking at our revenues and other
22 financial things to -- to set up these rates so that
23 one's not subsidizing the other, but we're getting
24 the return we need.

25 Q Okay. And are the rates established by KEM's board?

1 A Yes.

2 Q Okay. And so KEM Electric is member-owned; is that
3 correct?

4 A That's correct.

5 Q And, again, the members are the customers of KEM; is
6 that correct?

7 A That's correct.

8 Q So it's essentially a -- a member-governed entity;
9 is that correct?

10 A That's correct.

11 Q Does KEM have a profit-centered business model?

12 A No.

13 Q Okay. If KEM's revenues exceed its expenses, do its
14 members receive a benefit thereof?

15 A They do.

16 Q And you talked about the capital credits and the
17 bill credits, et cetera; is that correct?

18 A Yes.

19 Q Moving on to factor seven, Orderly and economic
20 development of electric service in the general area.

21 So I believe you've already testified
22 about that KEM already has an established
23 distribution system surrounding this location; is
24 that correct?

25 A Yes.

1 Q Including members immediately surrounding this
2 location?

3 A Yes.

4 Q Does KEM already provide service to other portions
5 of the Badger Wind Project?

6 A Yes.

7 Q And we've already talked about the O&M building, the
8 collector substation, and the Blattner service yard;
9 is that correct?

10 A Yes.

11 Q And we've already talked about how KEM makes
12 infrastructure investments based upon the
13 expectation that it will serve loads arising within
14 its traditional service area?

15 A Yes.

16 Q In your opinion, would KEM's provision of the
17 requested service better promote the orderly
18 development of retail electric service in this area
19 as compared to allowing MDU to provide the retail
20 electric service?

21 A In my opinion, yes.

22 Q Is KEM required to provide electric service to
23 everyone who requests service within the traditional
24 service area regardless of revenue generated
25 pursuant to KEM's bylaws?

1 A If they fill out the correct paperwork, yes.

2 Q Moving on to factor nine, Probability that the
3 location will be annexed into a municipality.

4 What is the nearest municipality to
5 the -- to the proposed delivery point?

6 A Wishek, North Dakota.

7 Q Approximately how far is the delivery point from the
8 corporate limits of Wishek?

9 A I believe it's just right at 1.1 miles.

10 Q Which is 6,000 feet; is that correct?

11 A Correct.

12 Q Based on your knowledge of this area, is this
13 presently a rural location outside Wishek's
14 corporate limits?

15 A Yes.

16 Q Do you think it is unlikely that the proposed
17 delivery point will be included within Wishek's
18 corporate limits in the foreseeable future?

19 A I do believe so.

20 Q Is it your understanding that Wishek has a declining
21 population historically?

22 A Yes.

23 Q Moving on to factor ten, Unreasonable interference
24 with other supply -- supplier service or system.

25 Would KEM's provision of the service

1 through the meter serving the Wishek substation
2 unreasonably interfere with MDU's service or system?

3 A Not to my knowledge.

4 Q Okay. I believe you testified earlier that to your
5 understanding, when KEM requests a new delivery
6 point through Basin, FERC requires MDU as the MISO
7 transmission provider to provide equal access to the
8 facilities necessary to effectuate delivery of the
9 electric service; is that correct?

10 A I believe so.

11 Q And if MDU intends to use the meter if it provides
12 the retail service, it is your understanding MDU
13 must allow others to also use the meter to provide
14 the retail service; is that right?

15 A That's my understanding.

16 MR. SIMPSON: I just want to lodge one
17 more objection that this really does require a legal
18 analysis as to what MISO and FERC and the MISO
19 tariff do require. We're okay with his
20 understanding, but I just want to get that out
21 there. I don't think that -- that's a -- that's a
22 legal question at the end of the day.

23 JUDGE HOGAN: All right. The objection
24 is noted, and I'll also note that Mr. Nagel is not
25 an attorney, so this is his opinion based on his

1 experience.

2 MR. SIMPSEY: Sure.

3 BY MR. GRINOLDS:

4 Q If KEM were to provide this retail service, would
5 MDU continue to perform its role as the owner or
6 operator of the relevant transmission facilities?

7 A Yes.

8 Q Okay. You were present yesterday when Darcy Neigum
9 testified; is that correct?

10 A Yes.

11 Q And do you recall some testimony regarding the
12 Emmons Logan Wind Farm?

13 A Yes.

14 Q Okay. Are you familiar with the location of the
15 Emmons Logan Wind Farm?

16 A I am.

17 Q And where is it located?

18 A It would be northeast of Linton and southwest of
19 Napoleon, kind of in the middle.

20 Q Okay. So it's located in a rural area; is that
21 correct?

22 A Yes.

23 Q Was KEM provided notice of an application by MDU to
24 the PSC for either a temporary authority permit or
25 an application for permanent authority and

1 certificate of public convenience and necessity in
2 relation to that wind farm?

3 A Not to my knowledge.

4 Q Was KEM ever requested to provide that retail
5 service?

6 A Not to my knowledge.

7 Q Based on your experience with KEM and to your
8 knowledge of this location, does KEM have an
9 established history of serving the area surrounding
10 the proposed delivery point?

11 A Yes.

12 Q Does KEM have existing customers and facilities
13 surrounding the location?

14 A Yes.

15 Q Has KEM recently constructed additional facilities
16 to serve Badger Wind and its contractors in that
17 immediate area?

18 A Yes.

19 Q Did Badger Wind initially request this backfeed
20 station service through KEM?

21 A Yes.

22 Q Did Badger Wind apply for membership with KEM before
23 MDU filed its temporary authority permit
24 application?

25 A Yes.

1 Q Did Badger Wind and KEM execute a new load
2 initiation application with Basin to initiate the
3 process of obtaining backfeed electric service for
4 the Badger Wind Farm through KEM?

5 A Yes.

6 Q Did Basin then submit the requested new load
7 application to MISO?

8 A Yes.

9 Q Can KEM provide the station service without
10 constructing duplicative transmission facilities?

11 A Yes.

12 Q Can KEM provide service with reliability comparable
13 to service provided by MDU?

14 A I believe so.

15 Q Would KEM's provision of service unreasonably
16 interfere with MDU system?

17 A Not to my knowledge.

18 Q Is there any reason, from an engineering or
19 operational standpoint, that MDU must be the retail
20 supplier merely because the delivery point is
21 located at MDU's Wishek transmission substation?

22 A Not to my knowledge.

23 Q Is KEM willing to provide the service?

24 A Yes.

25 Q What action is KEM asking the Public Service

1 Commission to take on MDU's application for
2 permanent authority?

3 A To deny it.

4 Q Is MDU's application -- if MDU's application is
5 denied, would KEM request the Commission to permit
6 MDU to continue providing the retail backfeed
7 service until such time as KEM is un- -- is able to
8 assume the retail backfeed service?

9 A I believe so.

10 MR. GRINOLDS: That's all the questions I
11 have.

12 JUDGE HOGAN: Mr. Simpser, any questions?

13 MR. SIMPSE: Yeah, plenty.

14 CROSS-EXAMINATION

15 BY MR. SIMPSE:

16 Q Let's start with -- I think there was a lot of
17 information covered and I thought that there's a lot
18 to talk about, but let's start with just the concept
19 of orderly development.

20 If I heard you testify correctly -- and
21 please correct me if I'm wrong -- your theory of the
22 case is that because KEM serves a critical mass of
23 customers right in and around the delivery point,
24 that orderly development would mean that you must
25 serve all customers in that critical mass; is that a

1 fair characterization?

2 A I believe so.

3 Q You do, okay.

4 Now, when you're thinking about orderly
5 development, you know, is -- is it because when you
6 have a critical mass of customers, it's cheaper?
7 You obtain the economies of scale to either add a
8 new customer or otherwise expand your system to
9 serve those customers?

10 A Can you rephrase that?

11 Q Sure. You are claiming you have a critical mass of
12 customers, right? So if there is another customer
13 directly in that area, it would ostensibly be
14 cheaper to extend service to that additional
15 customer, correct?

16 A Yes.

17 Q And that's fundamentally the theory of orderly
18 development that you're proposing here?

19 MR. GRINOLDS: Well, objection, it's
20 calling for a legal conclusion as to our theory of
21 our case, which is for the attorney to decide.

22 MR. SIMPSON: I mean, he -- he talked
23 about orderly development, he was asked questions
24 about orderly development. I'm allowed to explore
25 the concepts and purposes behind that.

1 JUDGE HOGAN: The objection's noted.
2 I'll allow him to answer.

3 THE WITNESS: I believe so. KEM has been
4 serving all new services in this area. So I -- I
5 believe orderly would be for us to serve this member
6 as well.

7 BY MR. SIMPSER:

8 Q And that's consistent with that whole list of 15
9 services where MDU was -- was chosen ultimately to
10 be the service provider because they were
11 functionally closer than KEM was, correct?

12 A So, no, at that -- at that -- we always look at the
13 end user. If it's cost-prohibitive, you know, for a
14 member or future member to serve, for example, if
15 it's \$100,000 for KEM to serve and \$10,000 for MDU
16 to serve, you know, we would let that go to MDU for
17 the benefit of the --

18 (Indiscernible cross-talking.)

19 Q It would just make -- because that's essentially
20 orderly development. The next closest person to
21 extend your system, really it's going to be cheaper
22 if MDU is closer or KEM is closer, correct, all
23 things being equal?

24 A Correct.

25 Q Now, MDU's system in the -- sorry, KEM's system in

1 the area, that goes as high as 40-and-a-half kV, is
2 that --

3 A 41.6.

4 Q 41.6, I'm not an engineer, but I'll play one on TV.

5 But most of the services in the area that
6 you have, at what voltage are you serving those
7 customers?

8 A 7,200 or 12,470.

9 Q Or 12,470, so real low distribution voltages?

10 A Correct.

11 Q Okay. And so if you had -- and what kind of
12 customers, are they farmsteads, homes, that kind of
13 stuff?

14 A Yeah, a little bit of everything.

15 Q Any small commercial customers?

16 A I guess it's the O&M building and maybe the back --
17 (Indiscernible cross-talking.)

18 Q Okay, fair enough.

19 And the O&M building is served at what
20 voltage?

21 A 7,200.

22 Q 7,200, so real low distribution voltage.

23 Okay. And so if you had -- so let's use
24 that O&M building as an example, right? You're
25 serving lots of customers in the area at 7,200, and

1 the O&M building comes along and, oh, it needs -- it
2 needs service at 7,200. Doesn't it make the most
3 sense for KEM to go serve the O&M building?

4 A We're closest, yes, I believe.

5 Q Yeah, you're closest and it's -- it would be much
6 cheaper for you to extend, whatever, a hundred -- a
7 few hundred feet of service than MDU's, right?

8 A Yeah. If it's close, it would be cheaper.

9 Q Yeah, it'd be cheaper.

10 All right. And just to make sure I'm
11 covering this, there was a contribution in Aid of
12 Construction to serve the O&M building, correct?

13 A Correct.

14 Q But it didn't cover 100 percent of the cost,
15 correct?

16 A Correct.

17 Q Now, was that contribution in Aid of Construction
18 calculated from some kind of extension policy that
19 KEM has?

20 A Yeah. So not necessarily a policy, but rather a
21 spreadsheet that the engineers have put together
22 over years and, basically, it's just a
23 plug-and-play. We have some -- you know, if it's
24 bored, you put that footage in there; if it's
25 plowed, you put that footage in there; and it's

1 basically a spreadsheet that they came up with
2 that's way beyond my thing. But that is how right
3 now, in the last couple years, we have been
4 calculating our Aid to Construction and then have
5 been tweaking it over time.

6 Q Okay. And that Aid to Construction, that wasn't
7 calculated with the assumption of the -- of the
8 revenues coming from the offline station service,
9 was it?

10 A No.

11 Q No, so at the end of the day -- service to the
12 investment you made, along with the contribution Aid
13 of Construction to the O&M building, at the end of
14 the day, that's a separate and distinct project from
15 KEM's perspective, correct?

16 A Yes.

17 Q Correct, and the two aren't really related?

18 A Not -- besides they're a member, no.

19 Q No, and at the end of the day, under your theory of
20 orderly construction, of course it would make sense
21 for KEM to serve the O&M building?

22 A Yes.

23 Q Correct, okay.

24 Now let's talk a little bit about the
25 Badger Wind service. Because under your theory of

1 orderly construction -- or orderly development,
2 because Badger Wind is within the heart of a
3 critical mass of customers that you serve, you
4 should also serve Badger Wind?

5 A Yes. My belief is if we are closer in all
6 directions, we would be -- you know, if it was --
7 you know, what was talked about earlier, if we are
8 closer in all directions, then, yes, we should be
9 able to serve this load because we are closer.
10 Therefore, it should be cheaper to serve.

11 Q And Mr. Keller testified yesterday that to extend
12 your own facilities to Badger Wind to serve them for
13 offline station service would be, I believe he said,
14 a complicated engineering solution; do you agree
15 with that?

16 A If we were not able to use that meter in the
17 substation, I believe so, yes.

18 Q If you were not able to use the meter in the
19 substation. Well, but you're -- but you're not
20 extending any service to the Badger Wind Farm for
21 offline station service?

22 A Correct.

23 Q There's no KEM facilities or Basin facilities that
24 would be used to serve the offline station service?

25 A Correct.

1 Q The facilities that are there are owned by MDU?

2 A Yes.

3 Q The facilities that are there exist already today?

4 A Yes.

5 Q So there's no development that's needed, nobody
6 needs to extend service, correct?

7 A Nobody needs to extend it, they just need to provide
8 it.

9 Q They just need to provide it, so somebody needs to
10 provide the service?

11 A Yes.

12 Q So there's -- so this issue of orderly development,
13 under your concept, is really kind of moot, right,
14 there's nothing to develop?

15 A No, but there's a member to be served.

16 Q There's a member to be served, and we can talk --
17 we'll talk about that in a minute.

18 Now, you talked a lot about your
19 traditional service area, and I talked to Mr. Keller
20 yesterday about that, too, and I just want to make
21 sure you guys are -- are in agreement. This concept
22 of traditional service area, it has no basis in law
23 to your understanding, correct?

24 A To my understanding, no.

25 Q Is this a concept that's used by KEM in its internal

1 documents or you guys use that as sort of a, hey,
2 this is in our traditional service territory?

3 A I would say so, yeah.

4 Q So -- so it's just kind of a colloquialism?

5 A I'm not --

6 MR. GRINOLDS: Objection.

7 THE WITNESS: -- familiar with that word.

8 BY MR. SIMPSON:

9 Q Okay. So there's no basis in law for your
10 traditional service area, and Mr. Keller also noted
11 yesterday that even if you were to take this concept
12 of traditional service area as a legal concept, that
13 it's not exclusive; do you agree with that?

14 A That this area is not exclusive?

15 Q Correct, that you're not the only one who serves in
16 your traditional service area.

17 A Yes.

18 Q Okay. And we looked at the map on 3A, and it showed
19 one MDU service within that critical mass, correct?

20 A Yes.

21 Q And you've testified that there's at least 17
22 services within your traditional service area that
23 MDU was the better outcome for service as well?

24 A We have 15 services -- had 15 --

25 Q 15, sorry.

1 A -- services; now we have 14.

2 Q Okay. No, but I'm talking about in your
3 declaration, Mr. Nagel, in KEM 3. And if you go
4 look at paragraph 27, all of those services that
5 you're discussing there, those are within your
6 traditional service area, as you call it?

7 A Yes.

8 Q Okay.

9 A I believe so. I guess, to be honest with you,
10 without going straight to the map and looking, I'm
11 not 100 percent sure --

12 Q Well --

13 A -- but I would -- I would believe so.

14 Q -- is there a map of your traditional service area?

15 A You know, we just have colored ones. Is it GPS
16 coordinated or anything? No. I guess I would say,
17 being these are PSC case numbers that they would be
18 considered -- what I would consider traditional
19 service territory.

20 Q Okay, gotcha.

21 Let's talk about how service to the O&M
22 building and your relationship with Ørsted began.

23 A Okay.

24 Q You went through a series of emails with your
25 attorney that essentially had Blattner, who was the

1 EPC contractor for Ørsted, reach out to you; is that
2 correct?

3 A They reached out to Basin first.

4 Q To reach -- they reached out to Basin first, and if
5 I'm recalling the emails correctly, they essentially
6 said, Hey, we're looking in the area and we see some
7 Basin lines, so let's go call Basin; is that --

8 A That's correct.

9 Q -- that's pretty fair?

10 And is that how service is normally
11 figured out for things like this?

12 MR. GRINOLDS: Objection, calls for
13 speculation.

14 THE WITNESS: I honestly don't --

15 JUDGE HOGAN: Well, hang on.

16 The objection's noted. I'll allow him to
17 answer.

18 THE WITNESS: I honestly don't know.

19 This is the second wind farm; I wasn't part of,
20 really, much of the first one. I did help with the
21 substation backup on the other one.

22 As far as how they came, I guess I don't
23 know 100 percent. But I would say typically, yes,
24 they're going to look at whoever's, you know,
25 lines -- if they know who their lines are, sometimes

1 they might not even know whose, and they pass them
2 on to whoever's.

3 BY MR. SIMPSER:

4 Q Right. I mean, because if they were to look and
5 they had seen MDU's lines, Blattner probably would
6 have reached out to MDU?

7 MR. GRINOLDS: Objection, calls for
8 speculation.

9 JUDGE HOGAN: Noted. He can answer.

10 THE WITNESS: I would believe it would be
11 if, they thought they were MDU's, they'd reach out
12 to MDU first.

13 BY MR. SIMPSER:

14 Q And so this is a rural area, there's not a ton of --
15 of people there. So it makes sense that if
16 somebody's coming in to construct something, they'd
17 have to try to figure out a little bit to see who's
18 the right person, right?

19 A Correct.

20 Q I think that that makes sense. So you get
21 contact -- so ultimately, Basin says, Hey, KEM, here
22 you go. They're reaching out. They need some
23 service, that's -- that's for you guys, and you guys
24 move the process forward. Am I following all this
25 correctly?

1 A I know they had reached out -- Blattner had reached
2 out, but I'd to have to double check to see if
3 Ayesha had reached out to me prior.

4 Q I mean, they were happening somewhat
5 contemporaneous; would that be fair?

6 A That, I'll agree.

7 Q Yeah, okay. And when they reached out to you, did
8 you tell them, Hey, you know what, MDU is also in
9 the area, you should also be talking to them?

10 A No.

11 Q No. Did you provide any notice or did anybody tell
12 MDU, Hey, these guys are in the area, just FYI,
13 there's new load coming?

14 A No.

15 Q No, okay. And as -- the initial discussions were
16 really just for construction power, the O&M laydown,
17 and the O&M building, right?

18 A To start off, yes.

19 Q That started off.

20 And then if I'm interpreting this
21 correctly, it would be probably fair to say that
22 they said, Oh, hey, you're providing us this power,
23 can you provide us offline station service power,
24 too? That's -- was that a fair read of what
25 happened?

1 A Yeah, I would say so.

2 Q And at that time, did you tell MDU, Hey, these guys
3 are coming in, we should talk about what makes the
4 most sense?

5 A No.

6 Q No, okay. And you just moved forward with
7 providing -- with working that process through?

8 A Correct.

9 Q Okay. And that was in the July-ish time frame,
10 July, August of '25-ish?

11 A Yeah, June, July, somewhere in --

12 Q The summer of '25 --

13 A Yeah, there we go.

14 Q -- how about that?

15 A Yes.

16 Q So in the summer of '25, you're moving forward and
17 you're having conversations with Blattner and
18 Ørsted, and, hey, you're the local utility as far as
19 they're concerned and so they're going to try to get
20 all their service from you guys, right?

21 MR. GRINOLDS: Objection, calls for
22 speculation as to what they were thinking.

23 MR. SIMPSON: I mean, he was asked to
24 interpret the email from Ørsted directly from
25 Mr. Langford: What do you think Mr. Langford said

1 in this email? I think it's reasonable to --

2 JUDGE HOGAN: I'll allow --

3 MR. SIMPSEY: -- to investigate his view.

4 JUDGE HOGAN: I'll allow him to answer.

5 THE WITNESS: Can you repeat the
6 question?

7 BY MR. SIMPSEY:

8 Q Sure. You guys are moving on, it's likely that
9 Ørsted thought, Hey, you guys are the local utility,
10 we've got to go do business with you guys?

11 A It's possible.

12 Q You don't have -- this was the first time you had --
13 KEM had ever done business with Ørsted in the state,
14 correct?

15 A (No audible response on digital recording.)

16 Q To the best of your knowledge?

17 A Yes, to the best of my knowledge.

18 Q Okay. And Ørsted, they're not from here, they're
19 not local?

20 A I don't believe so.

21 Q No, okay. So as this goes forward, they make an --
22 they made an application with you guys, you guys
23 made your application to MISO, all those things sort
24 of happened, we've been through that.

25 And you are aware, I talked to Mr. Keller

1 about it, but if you go to KEM 1, I believe, and
2 it's got the Bates number -- well, it's -- it's this
3 Appearance by Customer, and I talked to Mr. Keller
4 about that the other day. It's -- I guess, one --
5 it's the third page in in KEM 1.

6 That's Mr. Langford's signature, correct?

7 A I believe so. I mean, I really can't make it out,
8 but without comparing --

9 Q Well, let me -- if you're comparing --

10 A I'll take your word -- I'll take your word for it.

11 Q Well, let's just compare it to the signature that is
12 on -- it's in back here somewhere. Just one second,
13 please. We can compare it to the signature in, I
14 believe it's KEM -- yes, KEM 11 -- KEM0110. If you
15 look at that signature of Ultimate Retail Customer,
16 that sure looks like the same signature --

17 A I would agree.

18 Q Yeah, okay. And let's just stipulate that that's
19 Mr. Langford's signature because you could sort of
20 make it out to say that.

21 MR. GRINOLDS: Objection, calls for the
22 witness to stipulate to the signature, as a
23 matter --

24 (Indiscernible cross-talking.)

25 BY MR. SIMPSON:

1 Q It's the same person who's representing Ørsted in
2 both instances, correct?

3 A I believe so, yes.

4 Q Okay. And in this Appearance by Customer, it
5 directly says that Badger Wind, LLC, quote, Desires
6 electric service from Montana-Dakota Utilities as a
7 public utility subject to the jurisdiction and
8 regulation of the Commission?

9 A Correct.

10 Q Correct, okay. And that postdates any requests or
11 any work that you had been doing with Ørsted for
12 backup station service? In other words, this is the
13 end of September?

14 A Correct.

15 Q And then the only other document that's in the
16 record from Mr. Langford would be in October when
17 they essentially were confirming that any offline
18 station service coming from KEM is paused?

19 A I believe so.

20 Q Okay. And that service is still paused, correct?

21 A To my knowledge, yes.

22 Q Yes, okay. Now, when I -- when I -- if I were a
23 member of your co-op and I wanted to -- and I've
24 signed up, I'm a member, am I required now to take
25 service from you?

1 A If you sign up as a member, I would say, no. For
2 instance, we have members that are probably
3 customers of KEM -- of MDU or Capital Electric. You
4 know, just because you are a member doesn't mean you
5 can't get power from a different provider.

6 Q And just like anything, I can cancel at any time,
7 right?

8 A Correct --

9 (Indiscernible cross-talking.)

10 Q So as long as I pay you for the electricity I take,
11 I can cancel it?

12 A Correct.

13 Q Correct, okay. And you don't have a service
14 contract or anything like that? I didn't see one in
15 the record.

16 A Nope. Besides the -- what's been shown, the new
17 delivery and the membership application.

18 Q Just -- just confirming that, okay.

19 All right. Hold on, sorry. I'm just
20 gathering my notes here, if you don't mind.

21 So at the end of the day, we have Ørsted
22 or Mr. Langford explicitly saying he prefers service
23 from MDU, and that postdates any of the work that
24 Ørsted did to get service from you guys?

25 A Correct.

1 Q Okay. And the cluster of -- well, let's go back to
2 this orderly development concept because I want to
3 just -- just talk about this -- this critical mass.
4 From your perspective, this critical mass of
5 customers around the delivery point, right, MDU can
6 serve it just as well as you could, right?

7 A (No audible response on digital recording.)

8 Q Or serve the Badger Wind Farm offline station
9 service just as well as you could?

10 A Correct.

11 Q And I think Mr. Neigum testified that KEM could
12 serve it probably just as well as MDU could?

13 A I believe so.

14 Q Yeah, okay. Do you think that the customer choice
15 factor and the fact that Ørsted prefers -- or Badger
16 Wind prefers service -- or I should actually say,
17 MDU prefers service from MDU, should be a factor in
18 the Commission's decision here?

19 A I don't believe so. I mean, that's stating that in
20 the future, if somebody wants power from somebody,
21 regardless, they can -- they can -- that's who they
22 can have because that's their number one preference.

23 Q Well, I don't think that that states that at all,
24 but thank you for saying that.

25 Let me ask the question then, do you

1 think that -- well, there's a factor that says
2 economic stability and being able to earn a
3 reasonable rate of return. You talked to your -- to
4 your counsel about that.

5 KEM doesn't need this load to stay
6 solvent, does it?

7 A We're not going to go bankrupt if we don't get it,
8 no.

9 Q And, in fact, you're doing so well that you're
10 providing bill credits as late as last year?

11 A And we go year by year, it all depends.

12 Q Yeah.

13 A Last year we had a good year.

14 Q Last year you over-collected, correct?

15 A Last year we had margins, correct.

16 Q And if you were to look at the comparative rates
17 between KEM and MDU, the record is very clear that
18 KEM is about 50 percent more expensive than MDU for
19 service?

20 A I have not studied MDU's rates.

21 Q No, but Mr. Neigum did testify to that; you heard
22 him say that?

23 A He did.

24 Q Okay. Now, let's -- so you wouldn't be in a
25 position to extend service from the wind farm, would

1 you?

2 A What do you mean by that?

3 Q Well, it goes back to orderly development. If
4 you -- you know, the theory of the case is you have
5 a critical mass of customers. None of them served
6 at transmission voltage, none of them served at
7 voltage anywhere near possible to serve the Badger
8 Wind Farm. MDU currently has existing
9 infrastructure that serves the Badger Wind Farm,
10 right, today?

11 A Correct.

12 Q At the correct voltage?

13 A Correct.

14 Q With all of the things it needs, it requires nothing
15 new because it's doing it today, correct?

16 A I can agree to that.

17 Q But because the customer taking service at a voltage
18 that you cannot provide is near your other
19 customers, that orderly development would require
20 you to be the service provider, notwithstanding the
21 fact that you're 50 percent more expensive?

22 A Minus the 50 percent, which he said, I -- I don't
23 think so. We have lines that are served by MDU MISO
24 facilities all over. So I wouldn't say, you know
25 what, I -- we have just as much right to it. So I

1 would say orderly, we are in the area, we would be
2 served by a MISO facility.

3 Q Why do you have just as much right to it?

4 A Because it's an open-access tariff facility.

5 Q Well, let's talk about that then a little bit. Open
6 access does not mean equal access, does it?

7 A I guess in my opinion, it does.

8 Q It does. Would you -- under your understanding,
9 would the phrase nondiscriminatory access be a
10 little bit more accurate than equal access?

11 MR. GRINOLDS: Objection, he's asking him
12 to interpret what the law says.

13 MR. SIMPSEY: Your Honor, I've objected
14 several times that he's asking for legal
15 conclusions. I'm allowed to -- I'm allowed to
16 explore this.

17 JUDGE HOGAN: The objection's noted.
18 I'll allow him to answer.

19 THE WITNESS: Can you repeat it?

20 BY MR. SIMPSEY:

21 Q Sure. Do you think the word "nondiscriminatory"
22 would be better than the term "equal access"?

23 A I think they'd be kind of one or the other, but
24 sure.

25 Q Okay. And there are rules you have to follow,

1 correct?

2 A Correct.

3 Q Correct. There's all sorts of different things you
4 have to do?

5 A Correct.

6 Q And if you recall the discussion with Mr. Keller, we
7 were talk- -- yesterday we were talking about an
8 email from MISO about the current service request.

9 A Yeah.

10 Q And I think the status of it is not important, so
11 we're not going to go down that path. But that
12 email from MISO essentially says, We still need to
13 study your request, correct?

14 A Honestly, we passed that off to them guys. They're
15 the experts on it. I'm -- I'm not going to say, I
16 guess, exactly where that is.

17 I don't know, maybe if you repeat the
18 question, I can answer it a little bit better,
19 but --

20 Q Sure, then I'll ask the question a different way.
21 That email from MISO essentially says, Hey, we need
22 more information; is that a fair read of that email?

23 A I believe so, yeah.

24 Q Okay. And what does MISO do with that additional
25 information; do you know?

1 A I do not.

2 Q You don't, so there's a whole -- there could be a
3 whole series of steps between you providing your --
4 your request and ultimately getting that delivery
5 point established that you just don't know anything
6 about, correct?

7 A That's correct.

8 Q Others handle that on behalf of KEM?

9 A Correct.

10 Q But notwithstanding that, you're here testifying
11 saying open access gives you the right to serve this
12 customer?

13 A That's correct.

14 Q And you've also argued that FERC law requires us to
15 give you all the metering rights as well?

16 A My understanding is that you --

17 Q Your understanding, where did you gain this
18 understanding?

19 A I guess from just general talking with people over
20 the 15 years, it's my understanding. Like you said,
21 I'm not a lawyer. I could be incorrect, but from my
22 understanding, that is what I believe.

23 Q That is what you believe. So talking to people for
24 15 years and working with the MISO process and
25 working with Basin, you never learned about the

1 study processes at MISO that are necessary to
2 establish a new delivery point though?

3 A Not really. We just know that Lee, if you need a
4 new delivery point, we pass it off to him and he
5 takes it from there. And this doesn't happen every
6 day at KEM, so...

7 Q Gotcha. And Lee was unable -- if you recall, was
8 unable to even interpret the email from MISO on its
9 technical basis?

10 MR. GRINOLDS: Objection, misstates his
11 testimony.

12 MR. SIMPSEY: Well, I asked him what an
13 SIS was, and he said he didn't know. I asked him
14 what the capitalized term annulment means, and he
15 didn't know.

16 JUDGE HOGAN: Can you rephrase your
17 question?

18 MR. SIMPSEY: Sure.

19 BY MR. SIMPSEY:

20 Q There are lots of unknowns within the process; would
21 that be fair?

22 A Yes.

23 Q And based on the record before us, those unknowns
24 have not been filled in?

25 A Not to my knowledge.

1 Q Okay. Pardon me.

2 Oh, I just wanted to confirm, within this
3 traditional service area, right, which is undefined,
4 as we've sort of established, you don't have a legal
5 obligation to serve every customer, do you?

6 A I don't know if we have a legal one. I believe our
7 RUS we borrow from, I believe there might be
8 something in there. But as far as legality, I'm not
9 100 percent sure.

10 Q And you wouldn't serve an entity -- you wouldn't
11 serve -- you wouldn't extend a service to an entity
12 if it was uneconomic to do so, correct?

13 A If they pay for Aid to Construction, we would.

14 Q In other words, if they made it economic to do so?

15 A Correct.

16 Q Okay. And so if somebody requested service from you
17 and they didn't want to pay that Aid in
18 Construction, you're not required to serve them?

19 A That is correct. The rest of the membership then
20 would have to pay for that line.

21 Q Okay. Okay. Just confirming.

22 MR. SIMPSON: I have nothing further.

23 JUDGE HOGAN: All right. Why don't we
24 take our morning break before we circle back to
25 redirect. Let's see, it's 10:27. Let's try to

1 reconvene at 10:40.

2 (Recess taken.)

3 (Indiscernible chatter.)

4 JUDGE HOGAN: Ready? All right. We are
5 going to get started again.

6 Mr. Grinolds, did you have any redirect?

7 MR. GRINOLDS: Yes, I do. Thank you.

8 JUDGE HOGAN: Go ahead.

9 REDIRECT EXAMINATION

10 BY MR. GRINOLDS:

11 Q Mr. Nagel, opposing counsel asked you some questions
12 about -- on what does KEM base this determination
13 that this was a traditional KEM service area; do you
14 remember those questions?

15 A Yes.

16 Q And he had some questions about, does KEM base that
17 determination --

18 UNIDENTIFIED: Is your microphone on?

19 BY MR. GRINOLDS:

20 Q Does KEM base that determination on the critical
21 mass of KEM members in the area; do you remember
22 that question?

23 A I believe so.

24 Q Okay. So is the concentration of KEM members alone
25 the only factor upon which KEM bases its

1 determination of a traditional service area?

2 A No.

3 Q So is it your understanding that under North Dakota
4 law, MDU, as an IOU, is prohibited from providing
5 retail service outside the corporate city limits
6 absent Commission approval?

7 A Yes.

8 Q Okay. Now, with respect to this issue of MDU
9 ownership of the Wishek substation, does KEM rely on
10 MDU transmission through the MISO facilities to
11 serve essentially all of its members in this area?

12 A That's correct.

13 Q Okay. And your understanding, this is a MISO
14 facility; is that correct?

15 A That's correct.

16 Q And that when requested by Badger Wind, KEM started
17 the process to obtain MISO permission to serve this
18 load; is that correct?

19 A That's correct.

20 Q Opposing counsel asked you -- or had asked you
21 whether KEM had provided MDU notice of the fact that
22 Badger Wind was requesting electric service at this
23 location. Is that -- do you remember that question?

24 A Yes.

25 Q And you said that KEM did not notify MDU; is that

1 correct?

2 A That's correct.

3 Q Is it your understanding that KEM has an obligation
4 to notify MDU when a customer in a rural area
5 requests a new load?

6 A Not to my knowledge.

7 Q Okay. Conversely, is it your understanding that MDU
8 is obligated to tell KEM when a rural customer is
9 requesting service in a rural area?

10 A Yes, I believe they have to follow the PSC, and then
11 that comes to KEM Electric to be -- I guess, to
12 protest or not.

13 Q Okay. And so the notice would come through -- at
14 the very latest, would be through the application
15 for a certificate of public convenience and
16 necessity and the notice that naturally comes to KEM
17 along with that process; is that what you're saying?

18 A That's correct, yeah. Or MDU has in the past
19 reached out to let us know, too, prior to the PSCs.

20 MR. GRINOLDS: That's all the questions I
21 have.

22 JUDGE HOGAN: Mr. Simpser, any recross?

23 MR. SIMPSE: No, Your Honor.

24 JUDGE HOGAN: Mr. Martens, any questions?

25 MR. MARTENS: No questions for this

1 witness, Your Honor.

2 JUDGE HOGAN: Mr. Frank, any questions?

3 (No audible response on digital
4 recording.)

5 JUDGE HOGAN: All right. Commissioner
6 Haugen-Hoffart.

7 COMMISSIONER HAUGEN-HOFFART: Thank you.

8 EXAMINATION

9 BY COMMISSIONER HAUGEN-HOFFART:

10 Q I just want to follow up on the questioning that was
11 done regarding the obligation of KEM to reach out to
12 MDU. You said that -- just to reiterate, that you
13 did not reach out to MDU that Ørsted was in contact
14 with you, nor do you have an obligation; that's
15 correct, right?

16 A That's correct.

17 Q Then you also said MDU has reached out to us. Can
18 you give me an example when MDU reached out to you,
19 to KEM?

20 A So I can't believe if -- in this case, yeah, if the
21 dates align, I'm not 100 percent sure without
22 looking out -- looking at it, I believe they have.
23 I can't recall an exact case.

24 Q Okay. Would it be fair to say that they reached out
25 to you because it was maybe a residential in your

1 area? I mean --

2 A Yeah, I would say. Because it was in our area, so
3 that's why they'd reached out, our traditional area.

4 Q Okay. You went through some of the emails with your
5 counsel regarding the communication between you and
6 Ørsted. Based on all those emails and stuff, were
7 there any expenses incurred by KEM?

8 A There were -- time occurred, yes.

9 Q Do you know how much of those expense -- how much
10 expense?

11 A I do not.

12 Q Okay. Not even a rough part -- rough idea?

13 A Nope.

14 Q Okay. Can you tell me then what the expenses are
15 attached to? Was it the engineering, or just the
16 topics of --

17 A Yeah. So, I mean, the majority of it would be
18 engineering, so it'd be Lee's time and then myself.
19 Kevin was the other one in here, but he, you know,
20 was dealing a lot with the O&M building and the
21 other thing more than this. The manager of member
22 services, Marcy, was part of this. We typically --
23 I don't know. We don't really, I guess, bill for --
24 for her time.

25 Q How much time did you put into --

1 A There was quite a bit of time. I mean, it's -- so,
2 I believe over a year or close to a year's worth of
3 emails back and forth, engineering stuff. Lee had a
4 lot more time in it, I guess, than I did. I was
5 just part of the email string. What he did with
6 Basin and MISO and stuff like that, I would say he
7 had more time into it.

8 Q When going through the points with your attorney and
9 you heard Darcy's response, there's just a few of
10 them that you have a difference of. And I think the
11 orderly development has -- I'm not even going to go
12 there. It's been beaten to death.

13 And we're getting the number of members,
14 the number four, within the two-mile radius. So
15 we're going to have -- be able to quantify that.
16 That usually -- it's been pretty close or pretty
17 equal to determine who can serve.

18 So would -- is there anything we haven't
19 discussed that you think we should know regarding
20 service serving that -- that backfeed?

21 A Yeah, I don't think anything that hasn't been
22 discussed. I do -- you know, my opinion is this is
23 a MISO facility that we do serve everything out of.
24 I guess, in my opinion that, in the future if we had
25 new loads come online that we weren't able to serve,

1 you know, in our general area, let's just say north
2 of or south of Wishek, North Dakota, and our
3 distribution lines can't handle it, but they have a
4 line running right there, what's to say that they
5 don't have just as much right to serve that load
6 than we would?

7 COMMISSIONER HAUGEN-HOFFART: Okay. I
8 have no further questions.

9 JUDGE HOGAN: Thank you.
10 Commissioner Christmann.

11 EXAMINATION

12 BY COMMISSIONER CHRISTMANN:

13 Q Would you go to your Exhibit 3A, please? In the
14 middle of the page where it shows MDU's nearest
15 service, do I remember correctly that that's a golf
16 course?

17 A The green pin, I believe the golf course is just to
18 the southeast. I'm -- from what you can see from
19 the highway, I believe that would be a residential
20 service.

21 Q Okay. So, like, was that MDU customer before you --

22 A To my knowledge --

23 Q -- for your tenure --

24 (Indiscernible cross-talking.)

25 A -- before my time, yes.

1 Q Why do you suppose that one didn't -- or maybe it
2 did receive objection from KEM -- but I see it's
3 right by the substation, but it's also right by
4 KEM's transmission line. So how is it that that is
5 served by MDU?

6 A I have no idea. I mean, I would say we have issues
7 like this throughout our system. I would say they
8 all are, if I had to guess, 40-plus years. Like I
9 said, I could be wrong. I know though that service
10 to me was -- it's been here for at least longer than
11 15 years. I'm not sure when everything took into
12 place as far as the laws of when everything had to
13 go to the PSC.

14 Q Do you -- do you think it's possible -- and I mean,
15 I just don't know the history of that area as well
16 as I know where I come from. Is it possible that
17 that is a farm, or whatever it might be, that
18 existed before the cooperative was established, but
19 after MDU had been established, going from community
20 to community and -- and so it was right along their
21 drop line? I presume their transmission line runs
22 there too, right?

23 A Yeah, I mean, not in that exact area. I honestly
24 couldn't tell you. I just -- I don't want to guess,
25 I guess, of what this --

1 Q Well, thank you.

2 (Indiscernible cross-talking.)

3 Q I appreciate that, too.

4 And then go to number seven and page 130.

5 So you talked about this and -- and this is where

6 Mr. Langford is talking about the three loads to be

7 served, where it says no-load from transmission

8 system, is that the offline station service?

9 A That's my interpretation because --

10 Q Okay.

11 A -- we only had three of these that we've been

12 talking with them on, so...

13 COMMISSIONER CHRISTMANN: Excuse me, Your

14 Honor. I just want to make a note of that.

15 JUDGE HOGAN: Sure.

16 BY COMMISSIONER CHRISTMANN:

17 Q And then, I guess -- and you don't need to turn back

18 to it, but it refers back to Number 3 again and

19 the -- the 15 examples that were given about, like,

20 not protesting.

21 I'm trying to understand this exactly --

22 where the line is on open access now here, too. So

23 in those 15 examples, I think all of them --

24 certainly the vast majority of them -- show clear

25 differences that it would have been a lot farther

1 for KEM to serve that load than for MDU.

2 But am I reading into this correctly that
3 it's the distance from -- that MDU has to go, that's
4 from something they have there that is not part of
5 open access, or else you could just start there and
6 have the same distance; do I -- am I understanding
7 this correctly?

8 A Are you, like, talking about the meter?

9 Q Well, let's go to 3 and maybe it would be better if
10 I cite you an example. I think it was in 3, those
11 15.

12 Yeah. So let's start with the first one.
13 I'm not going to go through all of these. The first
14 one, 1,175 feet for MDU, 8,000 feet for KEM, so you
15 did not protest.

16 But whatever MDU has that was 1,175 feet
17 away, apparently that was something in their system
18 that is not open to open access or else you wouldn't
19 have had to go 8,000 feet. You'd have just had to
20 take off from there through open access and go
21 1,175?

22 A That's correct. I believe that is correct. I
23 believe all these PSC cases are for distribution,
24 which I don't believe open access covers any of
25 that. That's a transmission issue.

1 Q And so it's an unfair question to you, but I believe
2 you're the last witness, is there somewhere where we
3 find -- where I can find and read for myself exactly
4 where that line is, what is subject to open access
5 and what is not?

6 A I -- I feel there probably is. I can't tell you
7 where that is.

8 Q Okay. Staff will make note of that.

9 And then lastly -- and this is probably
10 another one, this is what you get for going cleanup,
11 you know. If it was explained, it wasn't well
12 enough to hit home with me, exactly why MISO
13 annulled that request and what all steps have
14 occurred since, like for Basin to move forward with
15 reapplying or correcting faults.

16 I work more with SPP more than I do with
17 MISO. I don't think SPP would just randomly say an
18 application for transmission service or for a
19 load -- a transmission -- or a generation
20 interconnection agreement, I don't believe they
21 would just annul something and not give an
22 explanation of either why they were -- and I don't
23 remember them really saying "annulling" anything. I
24 think we say deny, but anyway.

25 Whatever the case may be, it seems like

1 the cases I've followed up on have always had an
2 explanation of either what they need or why they're
3 denying something, and I don't feel like we've
4 really gotten clarity on that or what Basin exactly
5 has done subsequently. Do you have that
6 information?

7 A I do not. This is my first go-around with something
8 like this. From my understanding though, this is in
9 Basin's court. We had told them to continue -- I
10 forgot what the exact language was, but continue
11 with studying it. I think that's right -- or we
12 told the Basin to continue, if I recall correctly.

13 COMMISSIONER CHRISTMANN: Well, Your
14 Honor, sorry, but -- this isn't a question, but I
15 will just say I've appreciated your forthrightness,
16 your clarity on the things that do fall within your
17 wheelhouse and your caution. Which, to me,
18 indicates honesty, and so thank you for your
19 testimony.

20 THE WITNESS: Thank you.

21 JUDGE HOGAN: Commissioner Kringstad.

22 EXAMINATION

23 BY COMMISSIONER KRINGSTAD:

24 Q Yes, I don't know how -- how you drew the short
25 straw and had to go last because that's a tough

1 place to be because, yes, you get all the -- all
2 kind of, the final questions that maybe don't have a
3 home anywhere else.

4 But for mine, I think I did kind of give
5 you a preview that I was -- I was going to ask this
6 yesterday, so I left you with some homework. So
7 hopefully these aren't too bad, but, you know, you
8 and counsel kind of walked through the ten factors,
9 but I just want to reiterate and kind of ask the
10 same question that I had asked Mr. Neigum yesterday.

11 So with KEM's application, if we're
12 looking at these ten factors, what -- what would you
13 say, do you think, are the top -- top three factors
14 that provide the strongest support for KEM's
15 application?

16 A Can I get a copy of them just so that I can --

17 Q Yes.

18 A Okay, sorry. I don't know if it's in here.

19 MR. GRINOLDS: Your Honor, it might be
20 easier, I know the Notice of Hearing today has the
21 ten factors listed, can I give him a copy of that?

22 JUDGE HOGAN: Yeah, absolutely.

23 THE WITNESS: All right. Well, I
24 appreciate --

25 BY COMMISSIONER KRINGSTAD:

1 Q Yeah.

2 A -- you did give me a heads-up, so there's a little
3 bit of -- there's a little bit of good things about
4 being last.

5 Okay. So from my aspect, what I believe,
6 what I think would be for three of the best ones for
7 KEM Electric would be number two, What electric
8 suppliers are operating in the general area? I know
9 we're both operating in the general area. We both
10 have lines in the general area.

11 However, as we have shown, KEM Electric
12 has the most growth in the area. It is in our
13 traditional service territory where we don't have to
14 get permission to serve; MDU has to get permission
15 from PSC to serve this area. So I do think that
16 would be one of our factors.

17 Another one would be seven, which
18 supplier's extended electric service would best
19 serve orderly and economic development of electric
20 service in the general area? Also, I feel that we
21 have shown that we've been adding services in the
22 area. It is our traditional service area.

23 We do pay taxes in megawatt hour, which
24 not only benefits KEM members, but also MDU members.
25 That's paid to the state, which is then paid -- I

1 believe the state gives that back 50 percent to the
2 district, I believe, and 50 percent to the county.

3 So if the city of Wishek is in that
4 district, I believe actually in this case, MDU's
5 customers may benefit more from the megawatt hour
6 tax than KEM Electric members because of their
7 density.

8 And then number nine, unfortunately, like
9 a lot of our communities, we have seen a gradual
10 decline. So I don't think there will be -- there
11 will be spreading anytime soon.

12 Q Okay. And then the flip side to that, what -- what
13 would you say is maybe the greatest weakness of
14 these ten factors? And is there any evidence that
15 you can point us to that would kind of resolve that
16 weakness?

17 A Yeah. So I'm going to start with number three, what
18 electric supply lines exist within at least a
19 two-mile radius of the location to be served, and
20 when were they constructed? MDU, you know, serves
21 the city of Wishek. This is -- the two-mile radius
22 almost encompasses the whole city of Wishek. It
23 doesn't have it all, but most of it. So right there
24 I would say that this is an -- you know, benefit
25 MDU.

1 The same for -- for number four. You
2 take a two-mile radius of this, it almost
3 encompasses all the city of Wishek. Therefore,
4 there would have been way more members served in the
5 area, so that would be a benefit as them -- to them
6 as well.

7 Number one, although we -- they've never
8 told us that they don't want us to -- to serve them
9 or withdraw from us, they did provide a document to
10 MDU that states that they want MDU to serve them.
11 So I believe number one would also be in their favor
12 then.

13 Q Okay. Thank you for your -- I'm going to echo a lot
14 of what Commissioner Christmann said, as far as your
15 openness and your honesty and -- and willing to even
16 say, I don't know. Honestly, that's sometimes one
17 of my favorite answers because I would -- I would
18 rather people be honest and -- and say that they're
19 not sure, than, you know, attempt to come up with
20 something that may or may not be true. So, thank
21 you.

22 A Thank you.

23 JUDGE HOGAN: Thank you.

24 All right. Mr. Grinolds, any other
25 questions?

1 MR. GRINOLDS: Yeah, just a couple of
2 follow-ups.

3 FURTHER REDIRECT EXAMINATION

4 BY MR. GRINOLDS:

5 Q So, Mr. Nagel, there are some questions regarding
6 the 15 examples that are in your declaration that
7 shows the substantial difference in proximity
8 between the MDU extensions required to serve a
9 customer and the KEM extensions required to serve
10 that same customer.

11 So in each of those cases, there never
12 was a KEM objection to begin with; is that correct?
13 KEM didn't object to MDU's provision of those
14 services?

15 A Not in them cases, no.

16 Q And so the ten factors that we're dealing with here
17 today, were never -- never became an issue because
18 KEM just decided not to -- to object; is that
19 correct?

20 A Correct.

21 Q Now, you had mentioned you weren't exactly sure, but
22 you thought that perhaps these were services off
23 distribution lines versus transmission lines; is
24 that correct?

25 A Correct.

1 Q Did I understand correctly that your understanding
2 is that MISO open-access tariffs only pertain to
3 transmission lines, not necessarily to distribution
4 lines?

5 A That's my understanding.

6 Q On this issue of the word "annulled" in the
7 communication from MISO, I'm just going to have you
8 refer to Exhibit KEM 15. And I guess the question
9 from Commissioner Christmann was, why -- did you
10 know why they annulled it? And I believe you
11 testified you didn't know why.

12 But I'm just going to refer you to that
13 last sentence of that where that term shows up. It
14 says, quote, Please note the AREF Number 106855236
15 has been annulled and cannot start until the SIS has
16 been completed, unquote.

17 Is it your understanding that SIS stands
18 for a system impact study?

19 A I guess that could be one abbreviation of it. Yeah,
20 I'm not 100 percent sure that's what it stands for.

21 Q Okay, you're not sure.

22 All right. But was it -- was it your
23 understanding that there was a requirement that a
24 study be completed before the matter could proceed?

25 A I believe that was talked about.

1 Q All right. Commissioner Kringstad had asked you a
2 question as to the -- the factors you thought were
3 not necessarily in KEM's favor. And one of them was
4 number four, What customers are served by electric
5 suppliers within at least a two-mile radius of the
6 location to be served?

7 And you had mentioned that -- if I
8 understood your testimony correctly, that you
9 thought that because that would encompass the whole
10 city of Wishek, that there'd be a numerical
11 advantage for MDU; did I understand that correctly?

12 A Yes, I believe so.

13 Q Is it your opinion that in the context of the
14 certificate -- the requested certificate for public
15 convenience and necessity, since we're dealing with
16 provision of service into a rural area, that MDU's
17 customers within the corporate city limits shouldn't
18 be taken into consideration for purposes of this
19 proceeding?

20 A I mean, being this is a rural matter, I would say
21 not.

22 Q Okay. And is it your understanding that after that
23 communication on KEM 15 came through about MISO
24 asserting something was annulled and that some study
25 had to be completed, that following -- well, is the

1 point -- is KEM's point that Badger made the request
2 and KEM followed through with Basin to obtain MISO
3 access for this new load?

4 A Yes, I believe Lee did that.

5 MR. GRINOLDS: Okay. That's all the
6 questions I have.

7 JUDGE HOGAN: Mr. Simpser, any other
8 questions?

9 MR. SIMPSE: No, Your Honor.

10 JUDGE HOGAN: Mr. Martens?

11 MR. MARTENS: No, Your Honor.

12 JUDGE HOGAN: Any other Commissioner
13 questions? No?

14 (No audible response on digital
15 recording.)

16 JUDGE HOGAN: All right. Thank you,
17 Mr. Nagel.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 JUDGE HOGAN: And, Mr. Grinolds, does
21 that conclude the testimony?

22 MR. GRINOLDS: It does. Yes, Your Honor.

23 JUDGE HOGAN: All right. And,
24 Mr. Simpser, any rebuttal testimony?

25 MR. SIMPSE: No, we're going to -- we're

1 going to rest.

2 JUDGE HOGAN: Okay. Then that brings us
3 to the end of our hearing. I know there's going to
4 be that late-filed exhibit, and then it was my
5 understanding the parties wanted to file briefs. So
6 can we set deadlines for submissions?

7 MR. SIMPSON: 60 days?

8 MR. GRINOLDS: Yeah, that's -- that's
9 fine with us.

10 MR. SIMPSON: Do you want to do
11 responsive briefs as well?

12 MR. MARTENS: And I guess I'll chime in
13 there because I -- I do have a list of things
14 that -- based on discussions with the Commissioners,
15 that might be helpful to be part of said briefs.
16 And one of them might, depending on what the parties
17 file, require a need to respond. So it probably --
18 I'll let you determine that, Your Honor, but would
19 you like me to go through kind of --

20 JUDGE HOGAN: Sure.

21 MR. MARTENS: -- a list I have?

22 Okay. So I think first and foremost, as
23 we've discussed, I think the -- the range or the
24 limitations of open access -- or, you know, the
25 limits of open access is probably something that

1 should be briefed. I don't think any of the parties
2 are trying to argue just complete unrestricted
3 acc- -- physical use, but just where that line is
4 would be helpful for the Commission from each
5 party's perspective.

6 Specifically, the -- the matter of the
7 meter is if that's subject to that functional
8 control of the MISO tariff. And then any other --
9 if you believe there's any other components or parts
10 of this infrastructure that you dispute that MISO
11 control or shouldn't be -- and that's the part that
12 might elicit a need for a response, just depending
13 if somebody raises something, and then just anything
14 on that point.

15 I think, Counsel, you already mentioned
16 you plan to argue how the ten factors should be
17 applied -- the facts should be applied to the ten
18 factors. So I'll throw that out there.

19 I have a note from a -- a very good hint
20 that one of the Commissioners gave to me while he
21 was asking questions. I think some more information
22 on why MISO annulled that -- that initial filing and
23 what actions occurred subsequent to that would be
24 helpful.

25 And then, finally, since it was brought

1 up, if you could just, I guess, compare and contrast
2 the Emmons Logan situation -- wind farm situation
3 from that -- that substation and just indicate if
4 there's any -- anything distinguishable or not,
5 might be helpful for the Commission as well.

6 And I'll let the parties chime in if they
7 have any concerns with what I just listed.

8 MR. SIMPSON: Three points, just the
9 issue with the MISO annulment and subsequent
10 actions, that's an issue of fact. It's not an issue
11 of law for briefing. I don't know what the answer
12 is. We were trying to elicit that information from
13 KEM's witnesses. They were unable to respond on
14 information and testimony that they put into the
15 record.

16 I have a pretty good feeling I know what
17 it all means, but without some opportunity to know
18 what KEM's going to come back with and see what that
19 means, you know, I would be more than happy to
20 stipulate where KEM is, which is ultimately, MISO
21 requested additional information that there needs to
22 be a system impact study, even though KEM was unable
23 to establish that that's what SIS means, but we're
24 willing to stipulate to that.

25 And that the word annulment, we'll just

1 leave as a -- as a vague question. I think we're
2 also willing to stipulate that at the end of the
3 day -- and I think this is really what matters --
4 MISO has to study this through its MTEP process. It
5 has to determine if there's sufficient transmission
6 capacity available to establish a load delivery
7 point, and then it will go and do so. I think
8 that's really what has to happen.

9 If you guys are willing to stipulate to
10 that, we can just solve this problem without having
11 to go through more, just, factual outcomes and come
12 back for hearing for something like this.

13 MR. GRINOLDS: Yeah, we'll stipulate to
14 that.

15 MR. MARTENS: Okay. Thank you.

16 JUDGE HOGAN: Mr. Grinolds, any response
17 or anything you want to address on those issues?

18 MR. GRINOLDS: I think we can address
19 these issues.

20 JUDGE HOGAN: Okay.

21 MR. SIMPSON: We would also query that,
22 although raised with respect to the Emmons Logan,
23 that there's nothing to compare, and that any
24 comparison would also be a question of fact and not
25 a question of law for briefing.

1 I think we'd be willing to stipulate as
2 follows: MDU serves Emmons Logan and that KEM
3 didn't receive any notice that it is serving Emmons
4 Logan. That's what the record reflects. There's
5 nothing more to really talk about here.

6 MR. GRINOLDS: Well, I guess my only
7 response to that is, I understand this was the
8 fact-finding hearing right here, but I also
9 understand the Commission has the discretion to ask
10 for additional information. I mean, if the
11 Commission wants additional information on that, we
12 can see what we can find and provide it.

13 So I guess I'll leave that to the
14 discretion of the Commission of whether or not they
15 want to have further information on that point or
16 not, so...

17 MR. SIMPSON: And we would just reserve
18 the right to be able to challenge it, and that
19 becomes part of the fundamental issue is we're --
20 you know, in the interest of justice as well. I
21 defer to Commission counsel.

22 MR. MARTENS: I guess, are either of the
23 parties -- I mean, and maybe it's just in my
24 thinking, it seems like a comparable situation and
25 just informative on the matter. I don't know that

1 it's obviously binding in any way. I'm not -- not
2 suggesting that. It's just I find it as informative
3 to -- you know, because that situation was obviously
4 handled differently, unless the parties are saying
5 it -- and I don't necessarily want to have this
6 discussion on the record, I guess, so...

7 MR. SIMPSEY: We can have it off. I'm
8 happy to --

9 MR. MARTENS: Yeah.

10 MR. SIMPSEY: -- take it off the record
11 as well. I hear your point. I think I understand
12 why it would be useful. It's been introduced into
13 evidence. To the extent it's been introduced into
14 evidence, from that perspective, I think it's fair
15 game for briefing, but it's on a pretty limited
16 basis. So if the information is sufficient for you,
17 that -- that --

18 (Indiscernible cross-talking.)

19 MR. MARTENS: I guess to the extent that
20 if somebody -- sorry to interrupt you, but if
21 somebody is arguing that it would have been handled
22 slightly different had the notice been there, I
23 guess I'd be curious of that argument as to why.
24 But if that's not something that's being contended,
25 then I guess I'd agree, it's not completely

1 relevant.

2 MR. GRINOLDS: Well, we're not conceding
3 that it wouldn't have been handled differently.
4 Obviously, KEM wasn't provided the opportunity. It
5 was within KEM's service area; KEM didn't get notice
6 and opportunity to object to it. So I guess along
7 those lines, it would be something we'd want to
8 point out.

9 But, again, I guess the issue is, if
10 additional information that's not already in the
11 record is being requested, that's a little different
12 situation. But the Commission has the discretion, I
13 believe, to request for additional information on
14 any topic they -- they want. So I guess that's why
15 I'm saying I'm leaving it to the Commission,
16 Commission counsel.

17 MR. SIMPSON: And I'm comfortable with
18 what you just noted with one addition, if you're
19 willing to stipulate, that KEM never filed a
20 complaint either, which is just a fact.

21 MR. GRINOLDS: Yeah, no.

22 MR. MARTENS: And I guess at the end of
23 the day, I am really just looking to, if there is
24 a -- I know that's a separate set of facts, but if
25 there is any correlation to how the law should be

1 applied, like, if there's anything that
2 distinguishes that from an application-of-the-law
3 standpoint is really what I'm more focused on, if
4 that makes sense. I might be talking in circles,
5 but --

6 MR. SIMPSON: I think we have sufficient
7 on the record to be able to give you that and --

8 (Indiscernible cross-talking.)

9 MR. MARTENS: Okay, Counsel.

10 MR. GRINOLDS: I think for purposes of
11 our argument and what we're dealing with here, I
12 believe we have enough on the record right now.
13 But, again, if the Commission thinks they want more
14 information on that topic that hasn't been
15 presented, I'm fine with that, too.

16 MR. MARTENS: I don't want to expand --
17 unnecessarily expand it, so we'll keep it to the
18 application of law to the proceedings.

19 COMMISSIONER CHRISTMANN: Your Honor.

20 JUDGE HOGAN: Commissioner Christmann.

21 COMMISSIONER CHRISTMANN: Could we take a
22 break for -- could we take a break for two minutes,
23 unless someone else has something else that it needs
24 to be longer?

25 JUDGE HOGAN: I -- nobody's --

1 MR. SIMPSEY: I just want an opportunity
2 for closing before we leave.

3 JUDGE HOGAN: Oh, sure. Do you want to
4 hear closings first before you --

5 COMMISSIONER CHRISTMANN: No, I want to
6 talk to counsel first.

7 JUDGE HOGAN: Okay. We'll take a short
8 break.

9 (Recess taken.)

10 JUDGE HOGAN: All right. Okay. We are
11 back on the record.

12 Mr. Martens.

13 MR. MARTENS: How'd you know, Your Honor,
14 that I have more to say?

15 Okay. I think I'm going to -- to re-,
16 kind of, phrase. I don't know that the -- the issue
17 of the MISO annulment needs to be part of a legal
18 brief, but I think the Commission would like to
19 request more information maybe in a separate late
20 filing as to more substance of that decision in any
21 subsequent action.

22 UNIDENTIFIED: From what? I'm sorry.

23 MR. MARTENS: On Basin's part.

24 MR. SIMPSEY: Would we be able to review
25 such submission before it's filed? Just so we have

1 an opportunity to lodge an objection or have
2 discussions with counsel.

3 MR. GRINOLDS: Before it's filed?

4 MR. SIMPSEY: Before it's filed so that
5 we can talk about it if we have any particular
6 issue.

7 MR. MARTENS: I mean --

8 MR. GRINOLDS: I think it makes more
9 sense to file it and then file an objection to it
10 after the fact.

11 MR. MARTENS: Yeah, could that be handled
12 by just the Hearing Officer? Okay.

13 JUDGE HOGAN: Yeah, I think KEM should
14 file that information. Then, if MDU has an
15 objection, then that should get filed --

16 MR. SIMPSEY: That's fine.

17 JUDGE HOGAN: -- for the docket as well.

18 MR. SIMPSEY: I just -- we don't -- we --
19 KEM introduced this information. We tried to
20 actually elicit an explanation of what it is and
21 what it means. KEM was unable to do so. And so I
22 don't -- I actually don't have a sense of what it
23 means other than what I surmise it means.

24 And I think we should have -- we didn't
25 have an opportunity to -- to do any investigation on

1 the -- on the record as to what it means or doesn't
2 mean. So all I'm asking is an opportunity to have
3 an idea prior to objecting. But if you prefer that
4 we see it and then not have an objection, that's
5 fine. But if we have questions or we believe that
6 it's incomplete, I think I -- I'm just trying to
7 find a simple way for the Commission to get
8 everything they want and to make sure that there
9 isn't a -- you know, I don't know what the facts
10 are.

11 So that's all I'm trying to get at, and
12 to hopefully do it in a way that isn't adversarial.

13 JUDGE HOGAN: Well, and if we need to do
14 a prehearing or something to discuss how we're going
15 to handle this, that's fine --

16 MR. SIMPSEY: That would be --

17 (Indiscernible cross-talking.)

18 JUDGE HOGAN: -- as well, so you can
19 request that at any time.

20 MR. SIMPSEY: Thank you, Your Honor.

21 JUDGE HOGAN: Anything else, Mr. Martens?

22 MR. MARTENS: No, that covers it --

23 JUDGE HOGAN: Okay.

24 MR. MARTENS: -- Your Honor, thank you.

25 JUDGE HOGAN: So I just want to make sure

1 we're clear on briefing deadlines as well, and let's
2 set deadlines, but if this additional information
3 changes that, we can address that later. I don't
4 know how impactful that's going to be.

5 But if we're looking at a briefing
6 deadline 60 days out, November 10th, and then do we
7 want to set a deadline for reply briefs?

8 MR. SIMPSEY: We're going to hit the
9 holidays.

10 JUDGE HOGAN: Do you want to go to the
11 end of the month; would that be sufficient,
12 November 30th?

13 MR. GRINOLDS: It'd be sufficient for
14 KEM. I mean, 30 days. I know it's 30 days --

15 (Indiscernible cross-talking.)

16 MR. SIMPSEY: -- Thanksgiving, but that's
17 fine. So we'll call it -- why don't we just call it
18 December 1st?

19 JUDGE HOGAN: Sure. That's a Tuesday,
20 so --

21 MR. SIMPSEY: That's a Tuesday, okay,
22 good. I was about to say, don't -- don't make it a
23 Saturday, which is --

24 JUDGE HOGAN: All right. Okay. Any
25 other housekeeping matters we need to address?

1 MR. SIMPSEY: I -- I just wanted to ask a
2 question. So we are going to be briefing Emmons
3 Logan; is -- is that correct?

4 MR. MARTENS: I think to the extent we --
5 again, I'm trying to keep it focused on this matter,
6 but I think it's informative. So as much as it can
7 be tied into the facts of this case and the law
8 being applied.

9 MR. GRINOLDS: Yeah, okay.

10 MR. SIMPSEY: And the only reason I ask
11 is it's just come to my attention that KEM did
12 provide station -- or construction power to Emmons
13 Logan, and they were fully aware of the project. So
14 to the extent we're going to raise issues of notice
15 and things like that, I think we do have some
16 missing facts on the record. But anyway, we'll --
17 we'll leave it to -- work it out with the ALJ to the
18 extent --

19 MR. MARTENS: Yeah, I just -- again, I
20 want to avoid litigating a separate issue, but --

21 MR. SIMPSEY: That --

22 (Indiscernible cross-talking.)

23 MR. MARTENS: -- I understand your
24 concern.

25 MR. SIMPSEY: Okay.

1 MR. MARTENS: And I know I'm bringing
2 this into it, but I -- I --

3 MR. SIMPSEY: That's fine.

4 MR. MARTENS: It's for limited purposes
5 of more of just a comparison as informational, but
6 not binding to the decision.

7 JUDGE HOGAN: Mr. Grinolds.

8 MR. GRINOLDS: I guess there's -- one
9 other deadline would be, as far as how much time do
10 we have to submit the information from Basin as to
11 the reason for the annulment, what was annulled, and
12 that sort of thing?

13 JUDGE HOGAN: How much time do you want?

14 MR. GRINOLDS: Well, would 30 days be --
15 if we have 60 days for the briefing, if we get that
16 out in 30 days; is that fine?

17 JUDGE HOGAN: So October 10th, which is a
18 Saturday; do you want the 9th or the 12th?

19 MR. GRINOLDS: The 12th.

20 JUDGE HOGAN: Okay. So we'll set that
21 deadline for both of the late-filed --

22 MR. SIMPSEY: Exactly.

23 JUDGE HOGAN: -- exhibits. Okay. Oops,
24 October 12th.

25 Okay. All right. Closing arguments,

1 Mr. Simpson, you indicated you wanted to give a
2 closing.

3 MR. SIMPSON: I do. I think Mr. Grinolds
4 gets to go first, unless he wants to waive.

5 MR. GRINOLDS: I believe the Applicant
6 would typically go first.

7 JUDGE HOGAN: I think the Applicant goes
8 first.

9 MR. SIMPSON: Okay, I'll go first.

10 Thank you, Commissioners. I think we've
11 had a very good discussion here, and I think there's
12 just a couple of things that MDU wants to raise as
13 the Commission considers what's going on here.

14 The first is this is a unique
15 circumstance for a unique type of load, and that
16 when looking at how to apply the Commission's
17 factors, the factors set -- created by the Supreme
18 Court and the statute, it's important to recognize
19 the unique nature of this load and how it's -- and
20 the unique way in which it's intended to be served.

21 This is critical utility infrastructure.
22 It's a wind farm. It's a wind farm owned by MDU, at
23 least in part, which is very different than an
24 industrial load, a third-party load, or anything
25 else that may be coming in. And in addition to

1 the -- the general views of how a CPCN is supposed
2 to be granted or not granted, it's important to keep
3 that in mind.

4 From that perspective, I would argue that
5 in this case, customer preference really needs to be
6 considered. And the fact of the matter is, is that
7 the customer prefers service by MDU, and that the
8 service by MDU is going to be materially less
9 expensive than service by KEM.

10 And that finding MDU to serve a special
11 load connected to MDU's facilities to -- that is
12 owned by MDU to be served by MDU does not
13 necessarily set any impacts to KEM's other
14 development in the area.

15 The record actually reflects a very
16 cooperative -- no pun intended -- relationship
17 between KEM and MDU. It made perfect sense for KEM
18 to expend its service to the O&M building and to
19 extend its service to the other parts there at
20 distribution voltages, the -- at the basic voltage
21 and at the basic level of which KEM's service is in
22 the area.

23 And KEM has even testified that when it
24 made more sense for MDU to extend its distribution
25 facilities, there was no argument between the two.

1 MDU did not protest KEM's support or service for
2 either construction service, because it made more
3 sense for KEM to do so for the -- for the O&M
4 building and for other distribution-level services.

5 We are talking about something that's
6 very, very specific. In addition, as you're looking
7 to how that specific issue is determined, the
8 question of open access is an interesting one, but
9 it's not a determinative one. As you're looking at
10 the record, the -- both sides have -- have testified
11 that, one, both MDU and KEM can serve this load this
12 way.

13 I think what -- the discussion with
14 respect to the meter, I think the discussion with
15 respect to the annulment of the -- of the request,
16 all of those things are -- fundamentally means it's
17 complicated. It's not as simple as KEM says, which
18 is, We have equal access; they do not. These are
19 open access facilities that are provided for on a
20 nondiscriminatory basis, subject to complicated --
21 very complicated rules and requirements and
22 procedures. It's not the same.

23 It's also important to note MDU needs to
24 do nothing. In fact, under its temporary authority,
25 MDU is providing offline station service today. The

1 wind farm is running, everything is working as it
2 should. That demonstrates MDU does not require
3 anything more. But looking at the facts on this
4 case, while we -- while KEM can do what it says,
5 more or less, it does require something more, and I
6 think that's also important to think about.

7 Granting a CPCN for MDU to serve its own
8 wind farm with its own facilities will, in our
9 belief, in no way, shape, or form impact KEM's
10 ability to continue to extend service in what it
11 calls its traditional service area.

12 Now, the law gives no credence to this
13 concept of a traditional service area, and we'll
14 provide that in briefing. But we do recognize that
15 KEM has a critical mass of customers in this
16 1.1-mile radius, and it would make more than enough
17 sense that, should there be another customer in the
18 area that needs service at distribution voltage,
19 that KEM is likely the right person to serve it.
20 And if KEM is not likely the right person to serve
21 it, MDU will come in and serve it. Most
22 importantly, service will occur in the area. People
23 who need electricity will get it, but this is just
24 not that, for lack of a better way to think about
25 it.

1 And so when you're thinking about it in
2 that framework, the Commission's ten factors are
3 really intended to help guide the Commission to make
4 a decision to ensure that as new customers are added
5 and as new service is extended, that it's going to
6 make the most sense in the long run.

7 KEM extending service to the next
8 customer makes it closer to the following customer
9 and the following customer, and the idea is that
10 over time, KEM's system will develop in a way that
11 makes it the most economical to serve in what
12 they're calling their traditional service area.

13 The same is true with MDU. And the way
14 North Dakota does it -- which is very different than
15 other states. There are states that say, there's --
16 in Wisconsin, there's something called the 500-foot
17 rule. Whoever's with -- if there's a 500-foot
18 radius, that's the utility, period, full stop,
19 doesn't matter.

20 That's not how the North Dakota system is
21 set up and it's not how it's intended to be set up.
22 There's a much more thoughtful way to go about doing
23 this, and the statute directs the Commission to use
24 its discretion to make sure that as customers are
25 added and services are extended, it's going to make

1 sense not only for today, but for the future.

2 And there's nothing about MDU serving its
3 own wind farm with its own facilities that will
4 impact the Commission's decision to make those --
5 the Commission's ability to make those decisions
6 into the future.

7 Now with that framework, I think it's
8 important to go through all ten factors. From whom
9 does the customer prefer electric service? It's
10 very clearly from MDU. And the record also reflects
11 not only is it very clearly from MDU, but that MDU
12 service to its own facility will be materially less
13 expensive than service from KEM to MDU's facility
14 and all of the ratemaking implications that come
15 from that.

16 What electric suppliers are operating in
17 the general area? It's KEM and MDU. We're here
18 having this discussion. This factor here is really
19 to help guide the Commission to determine what are
20 the possible and potential options, and I think the
21 record is very clear. The two possible and
22 potential options are MDU and KEM.

23 What electric supply lines exist within
24 at least a two-mile radius of the location to be
25 served, and when were they constructed? This goes

1 to that fundamental question and that fundamental
2 principle, where does it make sense to grow for each
3 particular utility system? The issue at hand here,
4 it's just not fundamentally relevant from this
5 perspective.

6 This is a single line at 340 -- at
7 230-kV, it's transmission voltage to a single
8 customer, already owned by MDU. It's not really
9 relevant if we add a customer here, are we going to
10 be crossing lines 1,000 miles down the road a year
11 from now or not?

12 Similarly, what customers are served by
13 electric suppliers within at least a two-mile radius
14 of the location to be served? Again, this is that
15 critical mass question. How many customers are
16 there? What is ultimately going to be the most
17 efficient growth of any particular utility service?
18 That fundamental question is not being asked here
19 because it is MDU's facilities that KEM is just
20 looking to use under a federal right that they just
21 so happen to have.

22 Which of the available electric suppliers
23 will be able to serve the location in question more
24 economically and still earn an adequate return on
25 its investment? Factor six is a key part of the

1 Commission's authority. There's no question on this
2 record that MDU will be able to serve the wind farm
3 more economically. Nobody's contested MDU's pricing
4 figures, and there are both tariffs in the record
5 for other people to make their own determination.

6 But most importantly: And still earn an
7 adequate return on its investment. The North Dakota
8 Supreme Court has at times found that the Commission
9 is within its rights to grant service to a
10 cooperative if that service was necessary to keep
11 the cooperative solvent, and the record here does
12 not reflect that.

13 In fact, KEM's own witness said, Hey, if
14 we don't serve this, we're not going to go bankrupt.
15 In fact, KEM's rates have -- are sufficiently high
16 that they're over-collecting and provided bill
17 credits last year. And so from an economic
18 perspective, MDU is by far the better entity to be
19 providing this service.

20 Which supplier's extended electric
21 service would be -- would best serve orderly and
22 economic development of electric service in the
23 general area? Per Commissioner Haugen-Hoffart's
24 point, I'm not going to address that.

25 Number eight, Would approval of the

1 application result in wasteful duplication of
2 investment or service? I think the record you have
3 before you, Commissioners, shows that there's not
4 going to be wasteful duplication. There would be
5 very wasteful duplication if KEM were to extend
6 service to serve the wind farm, but nobody's asking
7 you to do that.

8 But I think Mr. Neigum testified that
9 this is also a fundamental issue of fairness when it
10 comes to duplication of facilities. And KEM even
11 testified, we're going to use their line to provide
12 this service, but MDU is still responsible for
13 owning and operating the line and for maintaining
14 the line. If the line goes down, MDU's crews are
15 responsible to clear it up, not KEM's.

16 Now, does that get compensated? Yes, but
17 at the end of the day, this is MDU's obligation to
18 keep this facility in service and KEM will only be
19 using it to provide retail electric service, and
20 it's up to the Commission to decide if that would be
21 wasteful or not.

22 Is it probable the location in question
23 will be included within the corporate limits? This
24 is a question of, is the whole proceeding itself
25 moot? And I think with respect to the city of

1 Wishek, the answer is no, it's not moot.

2 The city of Wishek, where MDU has a
3 franchise, is unlikely to take over the delivery
4 point, and so that issue guiding the Commission as
5 to what makes the most sense with respect to what
6 system should be extended to govern is not
7 necessarily applicable here.

8 Number ten, Will service by either
9 electric supplier in the area unreasonably interfere
10 with the service or system of the other? You know,
11 the reality is, is that this load is going to be
12 taking over capacity on MDU's system, and so will
13 that trigger a need for an upgrade for the next load
14 that's going to need to be served by MDU's system?
15 We'll never know. But it's going to be the same if
16 it's MDU serving it or if it's KEM serving it.

17 The real issue is, is how do the
18 economics of all that play out for each of our
19 customers into the future? And I would ultimately
20 argue that number ten is as well moot because we've
21 all agreed that we're going to be using the same
22 facility.

23 So at the end of the day,
24 Commissioners -- and we'll -- we intend to spend a
25 lot of time in our brief about this -- this is

1 really a question of how best to apply an old law to
2 very new facts, and how to take how we've always
3 thought about the purpose of a certificate of public
4 convenience and necessity and really apply it to a
5 reasonably unique situation.

6 But the reality here is that we have a --
7 we have that load that needs to be served at
8 transmission voltage. If this was a distribution
9 load that needed to be served at a voltage that KEM
10 didn't have, there's case law that would say it's
11 the nature of the service, not necessarily the
12 nearness of the service that might control the day,
13 depending on all the other factors.

14 MDU came, they took the interconnection
15 request. This is not a transmission-to-load
16 interconnection, the kind of agreement that would be
17 necessary for KEM to serve its load off of our
18 transmission system. This is a generator
19 interconnection agreement between MISO, MDU, and
20 Badger Wind that has provisions for station service.

21 All of those factors together ultimately
22 say MDU spent its efforts to ensure that this wind
23 farm can come to the state, can interconnect to the
24 state, and can be operated and inject power safely.
25 This offline station service is really just a -- is

1 really just a corollary to all of that.

2 But those facilities are in place to
3 service the wind farm, and MDU should be the
4 appropriate entity to service the wind farm.
5 Especially when the wind farm wants MDU to service
6 it and MDU can service it at a significantly,
7 significantly lower cost.

8 So we look forward to briefing this
9 issue. We look forward to providing Commission
10 counsel with as much guidance as we can on our
11 interpretation of the law to help the Commission do
12 this. But I just want everybody to walk away today
13 to recognize that these are unique circumstances,
14 and we encourage you to think about it a little
15 differently than you would with respect to extending
16 service under a normal CPCN to the next customer in
17 line. Thank you.

18 JUDGE HOGAN: Thank you.

19 Mr. Grinolds, any closing argument?

20 MR. GRINOLDS: Yes, thank you.

21 Commissioners, thank you. At the outset,
22 I want to make clear about what KEM is and is not
23 claiming in this proceeding. KEM is not claiming
24 that there's a written territorial agreement that
25 gives KEM an exclusive legally defined service area

1 around the Wishek substation; there is no such
2 agreement. KEM is not asking the Commission to
3 enforce a boundary line that does not exist on any
4 map.

5 What the evidence does establish is that
6 the Wishek substation and this proposed retail load
7 is located in the general rural area traditionally
8 served by KEM, and that factual history matters
9 greatly under North Dakota law.

10 This case, therefore, comes down to the
11 question the legislature has directed the Commission
12 to answer: Has MDU demonstrated that public
13 convenience and necessity require that MDU be
14 authorized permanently to furnish retail electric
15 service to this rural customer? North Dakota
16 Century Code Section 49-03-01.1 places the burden on
17 MDU. A public utility may not serve a customer
18 outside municipal corporate limits unless the
19 corporation authorizes -- unless the Commission
20 authorizes that service and finds the public
21 convenience and necessity require it.

22 And North Dakota precedent tells us how
23 that determination is made. The Commission
24 considers the location of the supplier's facilities,
25 reliability, economics, ability to serve, orderly

1 development of electric service in the general area,
2 wasteful duplication, customer preference, and the
3 other circumstances reflected in the Commission's
4 ten-factor analysis.

5 Customer preference is relevant, but it
6 does not control. Contrary to MDU's argument the
7 customer preference is the most important factor in
8 this case, the Supreme Court has described customer
9 preference in rural cases as a minor consideration
10 that cannot prevail over the economic and public
11 interest considerations governing the appropriate
12 supplier.

13 And that's from Application of
14 Montana-Dakota Utilities Co., 219 N.W.2d, 174 at
15 pages 181 to 80 -- 180 to 181, North Dakota 1974.
16 And Capital Electric Cooperative, Inc. v. North
17 Dakota Public Service Commission, 2016, North Dakota
18 73, at paragraphs 7 to 10.

19 There is a North Dakota case remarkably
20 similar to this one, and it involved the same two
21 suppliers. In Application of Montana-Dakota
22 Utilities Co., the rural customer preferred MDU.
23 MDU had already received temporary authority and was
24 actually serving the customer. MDU had extended its
25 line approximately 1,116 feet to do so, and KEM's

1 existing line was approximately 2,330 feet away.

2 Yet, the Commission denied MDU's
3 permanent authority. And why? Because the
4 Commission found that KEM was the dominant supplier
5 in the general rural area, that KEM had historically
6 served the surrounding area, that KEM could provide
7 the service, and that KEM's service was consistent
8 with orderly development of electric service in that
9 area.

10 The Commission concluded that allowing
11 MDU permanently to serve that particular load would
12 duplicate service capability in an area already
13 being served by KEM. The Commission even allowed
14 MDU's temporary service to continue until KEM was
15 ready to take over that service.

16 That case is important because it
17 demonstrates that neither customer preference,
18 temporary service, nor the fact that MDU can reach
19 the customer more easily decides the permanent
20 certificate of public convenience and necessity
21 question.

22 And the record here presents an even
23 stronger history of KEM's service in the immediate
24 rural vicinity. Mr. Nagel and Mr. Keller testified
25 to KEM's longstanding service in this area. Within

1 a 6,000-foot radius of the delivery point, KEM has
2 15 services. KEM has three services within
3 approximately 1,000 feet. KEM has customers north,
4 south, east, and west of this location.

5 In the recent past, KEM constructed three
6 additional services within approximately 3,000 feet,
7 including two for Badger Wind itself and one for
8 Badger Wind's contractor. KEM has also constructed
9 two residential services within 1,000 feet during
10 the preceding eight years.

11 Exhibit 3A makes that point visually.
12 This is not an isolated load sitting in an area
13 where KEM has no presence. KEM's distribution
14 system and KEM members surround the location. MDU's
15 own discovery responses and Mr. Neigum's testimony
16 do not contradict that evidence. When asked about
17 KEM's 15 services within 6,000 feet, MDU said it had
18 no basis to dispute Mr. Nagel and expressly stated
19 that it took his sworn testimony at his word. And
20 MDU instead identified only eight MDU customers
21 within that 6,000-foot radius.

22 MDU has emphasized that it serves
23 hundreds of customers within two miles of the
24 substation, but context matters. The substation is
25 only a little more than a mile from the city of

1 Wishek. A two-mile radius, therefore, sweeps
2 substantially into the municipality MDU serves. The
3 relevant question is not simply which utility has
4 more customers if we draw a sufficiently large
5 circle that captures Wishek. The question is, which
6 supplier has historically developed and served the
7 rural area at the location in question?

8 And the Supreme Court has cautioned
9 against allowing the customer count from neighboring
10 municipalities to obscure the rural service pattern.
11 In -- in Minn-Kota Ag Products, Inc. v. North Dakota
12 Public Service Commission at 2020 North Dakota 12 at
13 paragraphs 32 to 34, the Court distinguished
14 municipal customers from customers in the rural
15 vicinity and focused on what provider had developed
16 infrastructure serving the rural area at issue.
17 That reasoning fits this case particularly well
18 because Wishek lies just over a mile from the
19 substation. The evidence on that point favors KEM.

20 The customer conduct also deserves
21 careful attention. MDU now emphasizes Badger Wind's
22 appearance requesting MDU service, but that is not
23 where this story ends. Badger Wind and its
24 developer spent months working with KEM. Badger
25 submitted the documents necessary to establish a KEM

1 account. Badger discussed with KEM not merely the
2 O&M building and collector substation, but
3 specifically the no-load backfeed service from the
4 Wishek substation. Badger's representative
5 summarized the arrangement as one account with three
6 service locations: The O&M building, the collector
7 project substation, and the no-load from
8 transmission system.

9 Then, on July 23rd, 2025, Badger Wind and
10 KEM executed the new load delivery point initiation
11 application. That document identifies Badger Wind
12 as the ultimate retail customer, KEM Electric as the
13 member serving the load, Basin Electric as the
14 transmission provider, MISO as the relevant
15 transmission arrangement, and MDU's Wishek
16 facilities as the host transmission facilities.
17 Basin followed through, it submitted the network
18 load request to MISO for a four-megawatt Badger Wind
19 station service load at the MDU Wishek substation.

20 Only later did the customer request that
21 MDU provide the service permanently. To this day,
22 the customer has not requested the new load
23 application to Basin be withdrawn, and the customer
24 has not informed KEM that it no longer wants KEM to
25 provide the backfeed service at issue.

1 So even if customer preference were
2 controlling, which it is not, the evidence does not
3 establish one consistent preference by -- for MDU.
4 It establishes an initial formal course of dealing
5 with KEM followed by a possible later preference for
6 MDU. At best for MDU that factor is mixed.

7 The Commission should also separate two
8 very different concepts that have sometimes become
9 blurred in this case: Ownership of transmission
10 facilities and the right to furnish retail electric
11 service. No one disputes that MDU owns the Wishek
12 substation, and no one disputes that MDU's
13 transmission facilities are under MISO's functional
14 control and subject to MISO tariff. MDU has
15 admitted that.

16 MDU's argument that the meter is treated
17 differently is contrary to applicable law under
18 FERC, and KEM requests permission to submit briefing
19 on that issue, which we understand will be
20 proceeding following this hearing.

21 But ownership of the transmission
22 substation does not itself answer who should be
23 authorized under North Dakota law to sell the
24 electricity at retail. If it did, there would be
25 little need for this proceeding. The statute asks

1 whether public convenience and necessity require MDU
2 to furnish the retail service. MDU itself admits
3 that this station service load is retail electric
4 service and could be provided by KEM.

5 Similarly, KEM does not contend that MISO
6 access is automatic. Basin initiated the -- the
7 MISO process, and whatever studies, metering
8 arrangements, transmission service, or technical
9 approvals MISO requires must be completed. Those
10 are legitimate technical matters.

11 Even assuming for purposes of argument
12 only that Basin's new network load application to
13 MISO was annulled due to a need for completion of a
14 system impact study, that would not prevent KEM from
15 proceeding with that process again upon the
16 Commission's denial of MDU's application.

17 But those are transmission access
18 questions. They do not determine as a matter of
19 North Dakota retail law that the owner of the
20 transmission facility necessarily becomes the retail
21 supplier. MDU says it can provide the service using
22 the existing wind generation revenue meter without
23 installing additional equipment. However, KEM would
24 also utilize the same meter, just like it does at
25 the MDU-owned Linton Substation through remote

1 readings. MDU's interpretation of applicable FERC
2 law is simply incorrect.

3 Whether MDU could provide the retail
4 electric service at a lower cost is also not
5 dispositive. Minn-Kota Ag Products, Inc. v. North
6 Dakota Public Service Commission is particularly
7 instructive. There the Supreme Court explained that
8 the Commission weighs its ten factors together as a
9 whole.

10 Even factors important to the customer,
11 including preferred supplier and lower customer
12 cost, may be outweighed by the overall public
13 convenience and necessity analysis. Likewise, in
14 the 1974 MDU-KEM case, MDU already had temporary
15 service and had constructed only about 1,116 feet of
16 line, while KEM's existing line was more than twice
17 that distance from the new load. Nevertheless,
18 ordinary rural development and KEM's established
19 service in the area justified denying the permanent
20 authority to MDU.

21 The Commission's inquiry, therefore,
22 cannot begin and end with the proposition: MDU
23 already owns the substation, so MDU can serve the
24 load at little incremental cost. If that were
25 sufficient, ownership of the transmission asset

1 would effectively establish retail service rights
2 around that asset without regard to the existing
3 pattern of rural service. That is not the analysis
4 the Supreme Court has prescribed.

5 The orderly development factor strongly
6 favors KEM here. Badger Wind is already a KEM
7 customer for other electric services associated with
8 the same wind project. KEM invested in and
9 constructed those services. The customer itself
10 initially contemplated the station service load as
11 the (indiscernible) service location on that KEM
12 account.

13 And MDU has historically recognized KEM's
14 role in the surrounding rural area. Mr. Nagel's
15 evidence concerning prior MDU applications shows a
16 consistent pattern. KEM did not oppose MDU where
17 MDU was substantially better positioned physically
18 to serve an isolated rural load.

19 Those prior cases often involved dramatic
20 differences in extension distance, hundreds of feet
21 for MDU compared to thousands of feet of -- miles
22 for KEM. That history is important because it
23 demonstrates that KEM is not asserting some absolute
24 territorial right. KEM has accommodated sensible
25 exceptions where the facts warranted them.

1 What KEM opposes is converting ownership
2 of this particular transmission substation into a
3 base for permanently carving a high-value retail
4 load out of a rural area KEM has historically
5 developed and served. MDU admits it solicited the
6 backfeed service for Badger Wind following MDU
7 seeing Badger Wind and KEM's new load application to
8 Basin.

9 It is also contrary to the purposes
10 underlying North Dakota's territorial jurisdiction
11 statutes and the principles underlying MISO
12 open-access transmission tariff to permit MDU to
13 frustrate KEM's request for new load service at the
14 Wishek substation by denying access to the choke
15 point through which the retail power flows; namely,
16 the revenue meter. Under MDU's logic, it would not
17 matter whether all ten factors were in KEM's favor
18 because MDU could simply refuse access to the
19 revenue meter.

20 Finally, the Commission need not choose
21 between protecting the integrity of orderly rural
22 service and keeping Badger Wind's lights on. The
23 legislature gives the Commission authority to
24 condition a certificate and fashion appropriate
25 relief. That's under Section 49-03-02.

1 The 1974 MDU-KEM case provides the model.
2 There the Commission denied MDU permanent authority
3 but allowed MDU temporary service to remain in place
4 until KEM was prepared to assume the load. The
5 Commission can do the same here if a transition
6 period is necessary to complete the MISO process and
7 assure uninterrupted service.

8 The question is whether MDU has
9 demonstrated that public convenience and necessity
10 require permanent MDU retail service at this rural
11 location. The record shows that KEM is the
12 traditional rural supplier in the immediate area, it
13 has facilities and customers surrounding the
14 location, it has recently invested in new facilities
15 for this very wind project, Badger Wind originally
16 selected KEM at this very station service load and
17 initiated MISO process through KEM and Basin, KEM
18 remains willing to provide the service, and North
19 Dakota precedent teaches that the permanent
20 development of rural electric service is not
21 determined simply by which supplier a customer
22 presently prefers or which supplier happens to own
23 the transmission facility at the point of
24 interconnection.

25 The temporary authority permit served its

1 intended purpose. It allowed an immediate need to
2 be met while the Commission considered the permanent
3 question. Temporary service should not become
4 permanent service merely by inertia.

5 For those reasons, KEM respectfully
6 requests the Commission deny Montana-Dakota Utility
7 Company's application for permanent authority, if
8 necessary, to assure continuity of service. KEM
9 further requests that the Commission allow temporary
10 MDU service only for such reasonable transition
11 period as is necessary for KEM and Basin to complete
12 the applicable MISO arrangements and for KEM to
13 assume service. Thank you, all.

14 JUDGE HOGAN: All right. Thank you.

15 I'll just ask if the Commissioners have
16 any closing remarks?

17 Commissioner Haugen-Hoffart.

18 COMMISSIONER HAUGEN-HOFFART: First of
19 all, thank you. There was a lot of information to
20 go through, and I still feel there's a lot of
21 information to be received.

22 I'm going to say, again, I was a little
23 disappointed in some of the documents that we did
24 not receive. I was expecting more. So I feel like
25 my work is on the other end on this, but I do

1 appreciate your guys' time. Both utilities have a
2 lot of compassion for serving and looking at things
3 economically, which is good to see. Even though the
4 structures might be different between an IOU and a
5 cooperative, I believe you -- all of you have the
6 same intent to serve the customer.

7 So I look -- thank you again for your
8 time, and I look forward to reading the briefs.

9 JUDGE HOGAN: Commissioner Christmann.

10 COMMISSIONER CHRISTMANN: I will only say
11 that I -- based on what was filed in advance, I
12 didn't think this was such a complex case. And so I
13 really want to commend Mr. Frank for recognizing
14 that this could be and nagging us at a time when our
15 schedule is pretty cramped up to schedule enough
16 time here to get this done so we didn't end up
17 having to reschedule and delay things for two months
18 or something. So just hats off to our staff for
19 recognizing things like that.

20 JUDGE HOGAN: Commissioner Kringstad.

21 COMMISSIONER KRINGSTAD: I'll just say
22 thank you.

23 JUDGE HOGAN: All right. Any other
24 matters that the parties have?

25 MR. SIMPSON: One last matter is

1 transcripts.

2 MR. GRINOLDS: Yeah. How long would that
3 take, I guess, is the issue. I'd be -- we'd be
4 willing to split the cost on transcripts if you want
5 to proceed with that.

6 MR. SIMPSEY: All right. So we'll go
7 ahead and call the -- we'll have -- we'll do it the
8 normal way we've done it in the past. We'll have
9 one of our old court reporters take the recording,
10 provide a transcript. We'll call that the official
11 transcript. It takes three weeks or so.

12 MR. GRINOLDS: That's fine.

13 MR. SIMPSEY: I think there's enough to
14 brief and then we can fill in the blank.

15 MR. GRINOLDS: Okay. Sure.

16 JUDGE HOGAN: All right. Well, I'll note
17 for the record then that it's 11:56 a.m., and that
18 will conclude our hearing for Case Number PU-25-261.

19 (End of digital recording.)
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23
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25

1 STATE OF MINNESOTA)
2 COUNTY OF RAMSEY) SS.

3
4
5 **REPORTER'S CERTIFICATE**

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8 I, Christine Simons, do hereby
9 certify that the above and foregoing transcript of the
10 tape-recorded proceeding, consisting of the preceding
11 143 pages is a full, true and complete transcript of the
12 tape-recorded proceedings to the best of my ability.

13 Dated October 5, 2026.

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18 Registered Merit Reporter,
19 Registered Professional Reporter
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