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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION EL14-026
OF BLACK HILLS POWER, INC., FOR
AUTHORITY TO INCREASE ITS ELECTRIC
RATES

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Transcript of Proceedings
January 27 & 28, 2015

Volume II of II
January 28, 2015
REDACTED PUBLIC TRANSCRIPT

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BEFORE THE PUBLIC UTILITIES COMMISSION

CHRIS NELSON, CHAIRMAN
KRISTIE FIEGEN, VICE CHAIRMAN
GARY HANSON, COMMISSIONER

COMMISSION STAFF

John Smith
Karen Cremer
Greg Rislov
Tina Douglas
Katlyn Gustafson

APPEARANCES

Amy Koenig and Lee Magnuson, Black Hills Power, Inc.
Mark Moreno, Andrew Moratzka, and Chad Marriott, Industrial
Interveners
Caitlin Collier, Dakota Rural Action
Karen Cremer, Public Utilities Commission Staff

Reported By Cheri McComsey Wittler, RPR, CRR

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TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the Joe Foss Building,
Matthews Training Center, 523 East Capitol Avenue,
Pierre, South Dakota, on the 28th day of January, 2015,
commencing at 8 o'clock a.m.

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1 MR. SMITH: I'm going to call the hearing back
2 to order after we went into recess last evening. Where
3 we ended was at the conclusion of Mr. Kollen's testimony
4 and a Motion by Mr. Magnuson.

5 And to begin with, I don't know, do
6 Commissioners want to weigh in at all on the Motion
7 before I make a ruling that I'm going to make, or should
8 I just make it and then you can react to it?

9 COMMISSIONER HANSON: I say make it.

10 MR. SMITH: I am going to deny the Motion. I
11 read through everything, and I do not see anything in
12 there that, in my opinion, rises to the level of offering
13 legal testimony, a legal opinion.

14 He offers an interpretation of that rule. He's
15 a rate analyst. To me, rate analysts have to look at the
16 rule and attempt to comply with it. And I think that's
17 what I see in there. And is his interpretation maybe
18 different than some other people's? So be it.

19 But that's my ruling, and you Commissioners can
20 either accept it or reject it.

21 CHAIRMAN NELSON: I would support the ruling and
22 your conclusions.

23 COMMISSIONER HANSON: If I don't accept it, then
24 I'll voice that when you make it. So without voicing it
25 means that I support it.

1 MR. SMITH: Hearing nothing, I think the ruling
2 stands.

3 And, Mr. Magnuson -- wait a minute.
4 Mr. Moratzka, are we on your next witness? I think we
5 are.

6 MR. MORATZKA: I believe we are. Black
7 Hills Industrial Interveners would like to call
8 Mr. Steve Baron.

9 (The witness is sworn by the court reporter.)

10 DIRECT EXAMINATION

11 BY MR. MORATZKA:

12 Q. Good morning, Mr. Baron.

13 A. Good morning.

14 Q. Could you please state your full name and spell it
15 for the record.

16 A. Yes. My name is Stephen, S-T-E-P-H-E-N, J. Baron.
17 And my business address? It's J. Kennedy & Associates,
18 Inc., 570 Colonial Park Drive, Suite 305, Roswell,
19 Georgia 30075.

20 Q. Thank you, Mr. Baron.

21 Did you offer direct testimony in this proceeding?

22 A. Yes, I did.

23 Q. Do you have what's been premarked as exhibits
24 Black Hills Industrial Exhibits 3 and 4 before you?

25 A. Yes.

1 Q. And the document that is Exhibit 3, is that the
2 public version?

3 A. Yes.

4 Q. Is Exhibit 4 the trade secret version of your direct
5 testimony?

6 A. Yes.

7 Q. Do you have any corrections to make?

8 A. Not that I'm aware of.

9 Q. Thank you. Do you have a brief opening statement at
10 this point?

11 A. Yes, I do.

12 MR. SMITH: Mr. Baron, I'm going to give you an
13 admonition here.

14 Our rule is here because we have prefiled
15 testimony to keep it brief, please, and then let your
16 attorney -- if you've got material that's related to
17 follow up to after-filed testimony of the other party, of
18 Black Hills, why don't we do that via attorney question
19 and answering.

20 Okay.

21 THE WITNESS: Yes.

22 MR. SMITH: Okay.

23 A. Good morning, Commissioners. I'm presenting
24 testimony pertaining to the Black Hills Class Cost of
25 Service Study and the overall apportionment of the

1 revenue increase approved by the Commission in this
2 case.

3 I'm addressing both the Cost of Service Study, as
4 originally filed by the company, and the proposed, which
5 is associated with their 14.6 million dollar increase and
6 their proposed apportionment of the Settlement increase
7 to rate classes of the 6.89 million dollar increase.

8 As part of my testimony, I present an analysis of
9 the company's Cost of Service Study and identify what I
10 believe to be a number of errors in the company's study.
11 I present an alternative Cost of Service Study where I
12 correct these errors, for the purpose of providing a
13 reasonable valuation of Black Hills Power Company's
14 current rates and the reasonable apportionment of any
15 improved increases to the rate classes.

16 The general thrust of my testimony is that the
17 modifications that I have made to the study coupled with
18 the policy considerations for mitigation that the company
19 has addressed in its testimony provide proper and
20 reasonable support for the increases to each customer
21 class set forth in the company's proposed Rate Mitigation
22 Plan.

23 BHII supports the apportionment of the rate increase
24 to rate classes that is proposed in the Staff-BHP
25 Settlement.

1 My specific conclusions are that the Cost of Service
2 Study should be modified to correct a number of errors,
3 some of which are numerical, some are conceptual, that,
4 in my opinion, result in an inaccurate measure of cost of
5 service to each rate class.

6 These errors when corrected show that the company is
7 earning a higher rate of return than system average on
8 the combined general service large industrial contract
9 rate class. This is in contrast to what the company
10 study, as filed, showed.

11 Notwithstanding the problems with the company's
12 Class Cost of Service Study, the company's proposed
13 apportionment of the revenue increase to rate classes is
14 reasonable and should be accepted. And this is due to
15 the mitigation proposal that the company made.

16 The company's originally filed rate class revenue
17 increases reflect a level of mitigation to each rate
18 class that produces results that are reasonably
19 consistent with the results of the BHII corrected
20 Cost of Service Study that I present.

21 In other words, the BHII corrected cost study
22 provides support for the class rate increases in the
23 Proposed Settlement, which we accept. The revenue
24 apportionment in the Proposed Settlement is based on the
25 company's originally proposed revenue apportionment.

1 It's patterned after that. Therefore, the Proposed
2 Settlement rate class increases are reasonable with
3 respect to the apportionment of the 6.89 million.

4 If the Commission approves the overall base rate
5 increase of 6.89 million in the Proposed Settlement, then
6 I would recommend accepting the increases shown in
7 Exhibit 2 of the company's filing.

8 However, if the Commission approves an overall base
9 rate increase that is lower than 6.89 million as BHII
10 witness Mr. Kollen recommends, then the increases in
11 Exhibit 2 should be scaled back proportionately. In
12 other words, the apportionment percentages should stay
13 the same.

14 Going forward in the company's next base rate case,
15 I'm recommending that the Commission require the company
16 to file a Class Cost of Service Study that reflects all
17 of the corrections that I recommend in my testimony as an
18 alternative so that the Commission and the parties to the
19 case can have an opportunity to consider these
20 corrections.

21 The company has already acknowledged that a number
22 of the corrections that I'm recommending should be
23 incorporated in its own study.

24 MR. MORATZKA: Thank you. Mr. Baron.

25 Q. Mr. Baron, have you had the opportunity to review

1 the rebuttal testimony of Kyle White?

2 A. Yes.

3 Q. What is your response?

4 A. With regard to Mr. White's testimony, first I
5 appreciate his willingness to accept a portion of my
6 recommendations for corrections to the cost study.
7 Namely, that it is more appropriate to determine the
8 annual system load factor using a single coincident peak
9 demand, that BHP errs by failing to include excess
10 demand for total electric customers, that account
11 369 services -- these are the service drops to the
12 customer's premise -- should be assigned to classes based
13 on the number of customers, and that it is appropriate
14 to recognize that customers who take service at the
15 69,000 volt, 69 kV voltage, should not be allocated
16 distribution costs associated with lower voltage
17 distribution facilities that are designed to serve other
18 customers.

19 I am troubled, however, by what appears to be
20 Mr. White's suggestion regarding industrial customer
21 participation in this case. As I read it, Mr. White's
22 rebuttal testimony, he is claiming that it would be
23 appropriate and that the company would support a
24 Commission adjustment to the Proposed Settlement, the
25 company's own Settlement, to specifically increase the

1 rates of large industrial customers by an amount over and
2 above the increases agreed to in the Settlement. And it
3 appears that this is based solely on BHII's involvement
4 in this proceeding.

5 Q. Mr. Baron, how many years have you been testifying
6 as an expert?

7 A. I've been working in this industry testifying as a
8 consultant for close to 40 years.

9 Q. And have you ever seen such a proposal?

10 A. I have not, in my experience, seen a situation where
11 a utility is party to a settlement, is filing the
12 settlement, and then subsequently recommends that one
13 particular set of customers should receive increases
14 higher than the settlement and that money go to other
15 classes.

16 I think this kind of action on the part of the
17 company really creates a chill with respect to customers
18 such as BHII participating in rate proceedings.

19 There's --

20 Really, I mean, when you read Mr. White's testimony
21 in this regard, I certainly would interpret it as a
22 representative of Industrial customers as saying that you
23 guys have caused us a lot of problems, and as a result we
24 think now that you should pay full cost of service based
25 on our newest study without any mitigation. And,

1 whereas, for our customer classes, such as the
2 residential class, mitigation is fine.

3 Q. Mr. Baron, do you have any specific references from
4 Mr. White's testimony that supports this interpretation
5 that you referred to?

6 A. Yes. On page 23 of his rebuttal testimony that
7 relates to the rates to one Industrial contract customer
8 he states "this customer's rates 'could be increased to
9 benefit other customers and reduce the subsidiary the ICS
10 customer is receiving.'"

11 Q. Thank you.

12 Mr. Baron, do you have any other concerns with
13 Mr. White's testimony?

14 A. Yes. Mr. White's calculation, his recommendation
15 to, for example, increase the rates for the ICS 69 kV
16 contract customer, is based entirely on his revised
17 Cost of Service Study that I just received a copy of the
18 study, the work papers, I think, on Friday. And I don't
19 accept the adjustments.

20 Some of the adjustments he made I agree with. As he
21 said in his testimony he agreed with the adjustments that
22 I recommended. But I don't agree with a number of the
23 adjustments in that study for -- and I'm not even certain
24 100 percent of everything that was actually done in that
25 study.

1 So it would be entirely inappropriate, in my
2 opinion, at this stage in the case to rely on that
3 analysis to make a decision as to what particular rate
4 class should receive in terms of an increase.

5 Q. Thank you, Mr. Baron.

6 Are there aspects of Mr. White's testimony that
7 would benefit from clarification?

8 A. Yes. One of the objections or issues that Mr. White
9 discusses in his rebuttal testimony is his rejection of
10 the adjustment that I made to reflect the interruptible
11 nature of 2,300 kW of general service large and
12 industrial contract load.

13 Mr. White is simply incorrect when he testifies at
14 page 20 of his testimony that interruptible load requires
15 the utility to have complete control over when the
16 electric load is served.

17 I've been involved in developing and evaluating
18 interruptible rates for almost 40 years, and this is not
19 the basis for defining interruptible load.

20 I do a lot of work involving utilities on the PJM
21 Regional Transmission Organization System. PJM has
22 10 million kW of interruptible load. That's compared to
23 2,300 kW in this case. They have 10 million. And none
24 of that load is under PJM's control with respect to their
25 system operators actually curtailing the load.

1 Interruptible load is a commitment by customers to
2 curtail loads subject to requirements in the tariff, and
3 those customers must fulfill that obligation or face
4 significant penalties. And it's the penalties that
5 provide the assurance to a utility that they can rely on
6 interruptible load for planning purposes.

7 During the test year in this case which ended
8 September 30, 2013, BHP in my view had 2,300 kW of
9 interruptible load, most of which was associated with the
10 GCC Dacotah Cement contract.

11 At the time the company filed the case the GCC
12 contract still reflected 2,000 kW of interruptible load.
13 And that was the interruptible load that was in the test
14 year, and that was the interruptible load that the
15 customer was obligated to provide to the company.

16 The interruptible load that I made is reasonable and
17 appropriate. I've been doing, as I said, these types of
18 studies for many years, and this is the methodology to
19 reflect a credit for interruptible load in the form of an
20 alternative supply to supply side resources.

21 In other words, utilities have to build combustion
22 turbines to meet peak demand, or they can use
23 interruptible load to provide that same type of peak
24 load liability. And it's inappropriate not to recognize
25 that in the cost study. The company completely ignored

1 that.

2 Finally, even if the GCC interruptible load is
3 removed as Mr. White suggests, it can't be removed in a
4 vacuum because the customer, pursuant to the contract
5 provisions that Mr. White cited, would end up paying
6 higher revenues. And those revenues aren't reflected in
7 the company's Cost of Service Study.

8 I'm not advocating that they should be, but if
9 you're going to completely revise the cost study from
10 what the test year was, you have to reflect all of the
11 elements.

12 Q. Thank you, Mr. Baron.

13 MR. MORATZKA: I suppose we should ask. We're
14 kind of borderline confidential.

15 Do we have folks here that have not signed the
16 confidentiality agreement?

17 MR. SMITH: There's three gentlemen. You're
18 behind the other guy. I couldn't see you. There's three
19 gentlemen there that are not subject.

20 So we're going to go into confidential?

21 MR. MORATZKA: Yeah. Just for a couple of
22 minutes to wrap up. I don't want to cross any lines.

23 (Beginning of confidential portion of transcript.)

24

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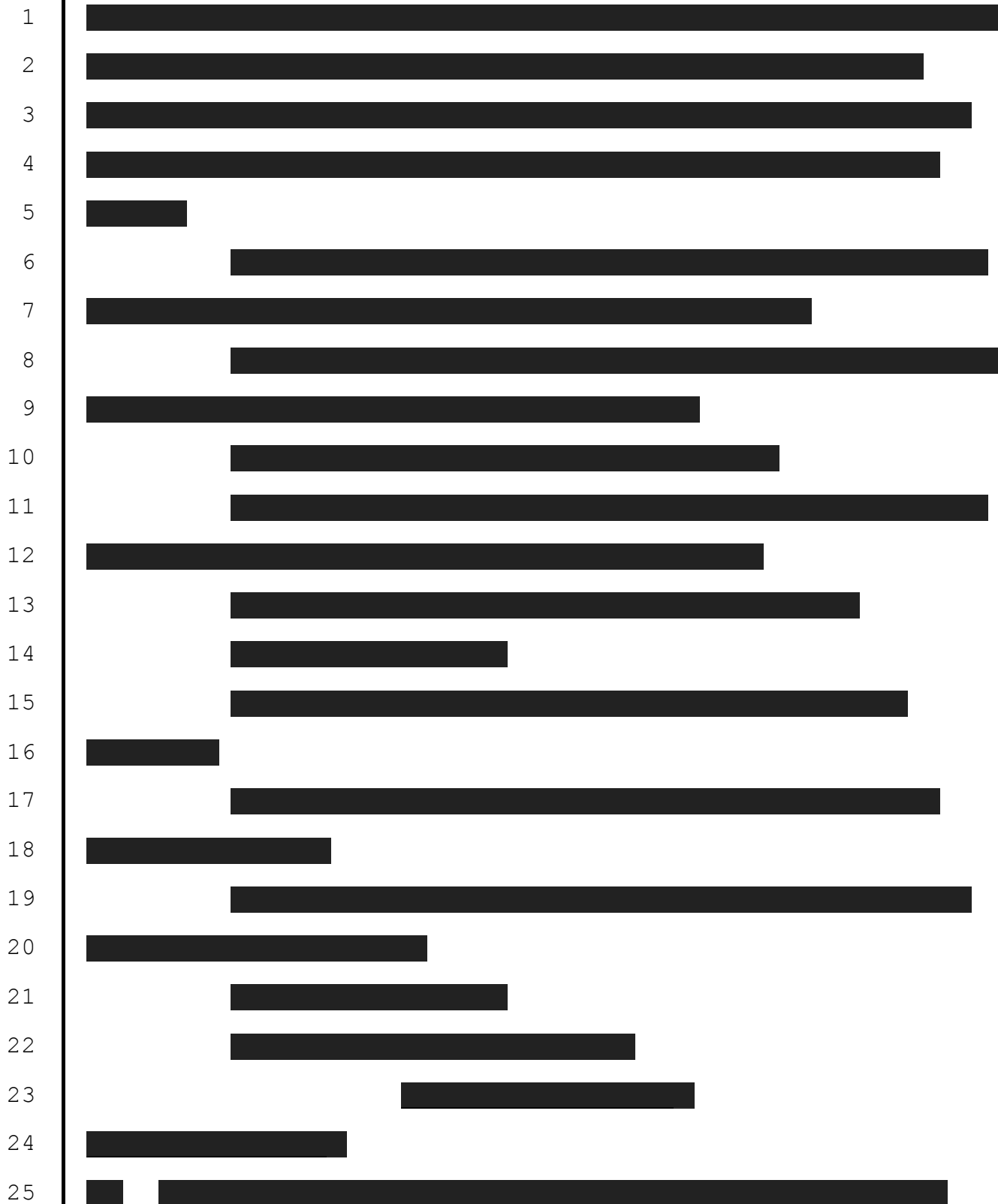
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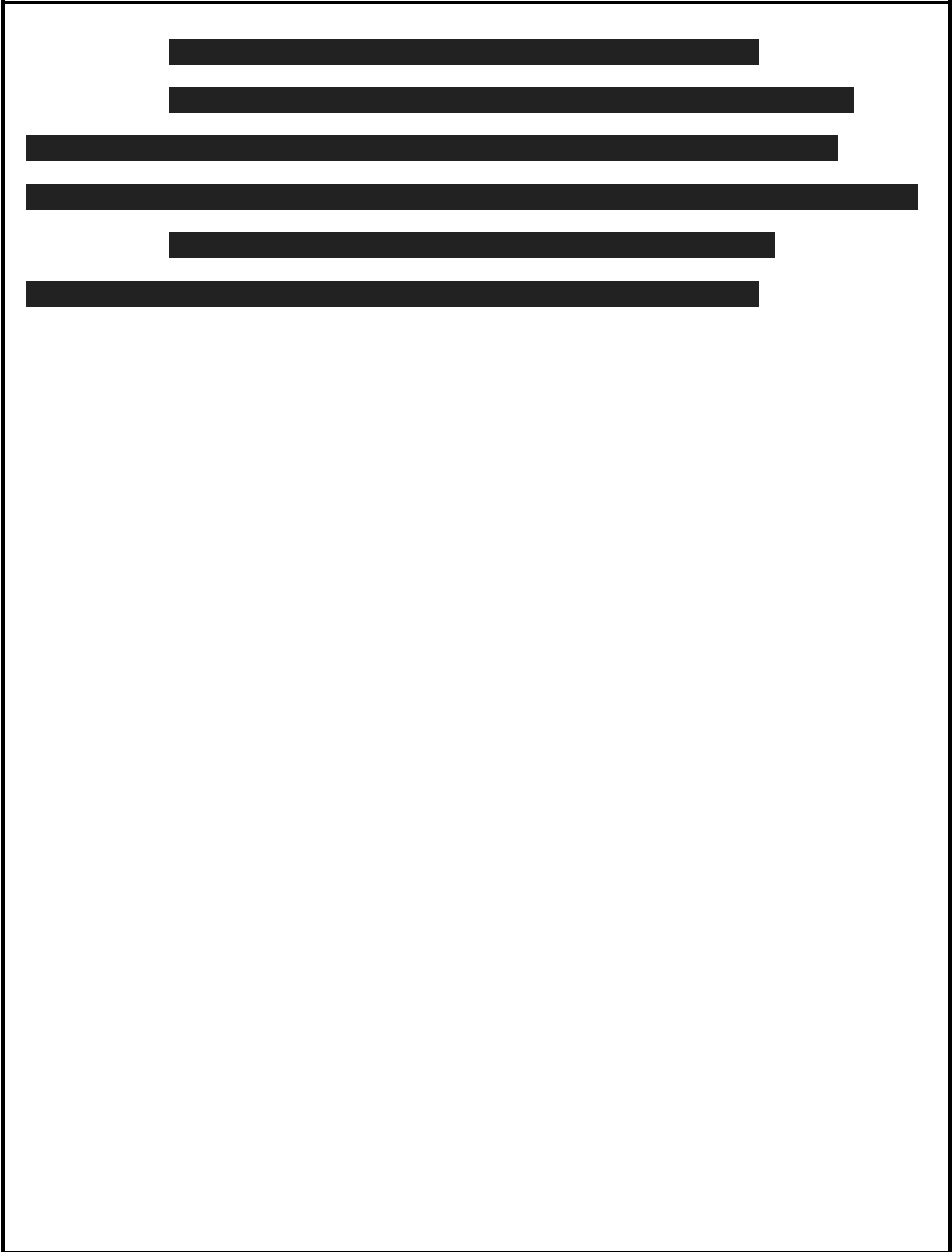
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1 (End of confidential portion of transcript.)

2 MR. SMITH: I think it's good to go.

3 MS. COLLIER: Thank you.

4 CROSS-EXAMINATION

5 BY MS. COLLIER:

6 Q. Mr. Baron, in the time that witnesses have testified
7 this week the term "test year" has been used over and
8 over again and just most recently in questions by the
9 BHII attorneys and the company attorneys. And, in fact,
10 in the last questions the end of the test year as opposed
11 to the times for various other things like contracts
12 became important.

13 In your 40 years of working in the industry and
14 doing analysis how important is the rigidity of the
15 concept of a test year in doing these analyses?

16 A. Well, it's very important because it -- to the
17 extent that if you're using an historic test year, it is
18 reasonable to set a period of time, 12 months, where you
19 can capture the relationships, as I indicated, between
20 investment, revenues, expenses, and load behavior with
21 respect to a class cost of service analysis.

22 It is appropriate when a utility files a rate case.
23 In this case the company filed in -- I think around April
24 or so or May. I guess April of 2014. It is appropriate
25 when a filing is made to reflect some known and

1 measurable changes that have occurred to the test year in
2 the company -- in a study.

3 Because the test year, as I have said, is not
4 dynamic. It's static. And so to the extent that there
5 are certain changes at that time when the company files
6 its case, if they're legitimate and they properly reflect
7 all of the elements, some types of adjustments like that
8 are reasonable.

9 Usually those are considered known and measurable
10 changes, pro forma adjustments.

11 For example, let's say -- I mean, some of these
12 include things like annualizations. Let's say the last
13 month of the test year there was some increase in postage
14 stamps. And so it's reasonable at that point when your
15 company files its case to say, well, let's assume that
16 that occurred all 12 months during the test year.

17 There are other adjustments that might occur after
18 the test year. It depends on the jurisdiction, the
19 extent to which those can be accepted. Because, again,
20 the whole idea of a test year is to pick a static period
21 when you can consider -- excuse me. Pick a fixed period
22 when all of the costs are related to each other.

23 I think that's what you're asking. So there is some
24 flexibility, but it's not unlimited, and it can't keep
25 going on forever as the case proceeds.

1 Q. And to follow up on that, based upon some of the
2 prior testimony that you've given here today, those
3 adjustments or changes that might affect test year, which
4 would be you said reasonable and appropriate, would not
5 necessarily then include actions by the company such as
6 cancellation or nonrenewal of contracts that normally
7 would continue?

8 A. Well, that's correct. And certainly let's focus on
9 a contract that might have been in place in February of
10 2014. That was a known and measurable change because we
11 know now that that contract was going to be going forward
12 at the time the company filed its case.

13 So there's a reasonable basis to make an adjustment
14 in like a test year Cost of Service Study, for example.

15 I'm trying to be -- not discuss any confidential
16 information.

17 MS. COLLIER: Thank you.

18 MR. SMITH: Staff.

19 MS. CREMER: Thank you.

20 Staff does not have any questions.

21 MR. SMITH: Okay.

22 Commissioners.

23 CHAIRMAN NELSON: Mr. Baron, very early in your
24 opening statement and probably the first sentence or two
25 I thought I heard you use the phrase in reference to one

1 of the issues, and the phrase I thought I heard was
2 "approved by the Commission."

3 Do you recall that?

4 THE WITNESS: Yes. I recall putting those words
5 in.

6 CHAIRMAN NELSON: And would you agree with me,
7 and this is very important for the public that's
8 listening, that this Commission has not approved anything
9 in this case yet?

10 THE WITNESS: Yes. That's my understanding,
11 that whether it's a settlement or a contested case, the
12 rates have to be approved by the Commission before --

13 CHAIRMAN NELSON: And we have not done that yet;
14 correct?

15 THE WITNESS: That's correct. That's my
16 understanding.

17 CHAIRMAN NELSON: Thank you.

18 MR. SMITH: Other -- Mr. Rislov.

19 MR. RISLOV: Mr. Baron, I'm on page 13 of your
20 filed testimony --

21 THE WITNESS: Yes.

22 MR. RISLOV: -- I believe.

23 Page 14. Excuse me.

24 And beginning on line 6 to the end of the page.
25 You're discussing the avoided capacity cost. Is this the

1 basis for PJM's determination of a market rate for
2 interruptible load?

3 THE WITNESS: No. In the PJM system there's a
4 very complicated process that's evolved over time called
5 a Reliability Pricing Model. It's known as RPM.

6 And the Reliability Pricing Model actually uses
7 a market-based mechanism to determine the cost of
8 capacity and the charges for capacity for all capacity.
9 Not just interruptible or demand side resources but all
10 capacity.

11 So if a utility like Black Hills Power were a
12 member of PJM, generally speaking, the utility would bid
13 its capacity into the market. And there's an annual
14 base -- what's called a base residual auction that takes
15 place. Would bid that capacity in and say we have so
16 many megawatts of combustion turbines, so many megawatts
17 of combined cycle and we're bidding it at this price.
18 And all the other utilities in PJM do the same, and
19 through a process of basically looking at supply and
20 demand there's a market price established.

21 But with that said, there are a lot of
22 administrative aspects to that. It's not a pure -- like
23 it's not like the stock market where the price can be
24 anything.

25 And so in PJM there's basically a demand curve

1 that they artificially set up, and that demand curve -- I
2 don't want to get into too much detail, but it's called
3 the variable resource requirement. And that curve is set
4 by the cost of new combustion turbine capacity similar to
5 the calculation I did.

6 MR. RISLOV: I'm roughly familiar with PJM, what
7 they're going through. And I guess that was my question.

8 Is there a similarity toward what you're doing
9 here and at least valuing interruptible load in the PJM
10 market?

11 THE WITNESS: Yes. To the extent that this VRR
12 curve is first set at basically the cost -- it's called
13 the cost of new entry. It's always referred to as CONE,
14 which is the cost of a new combustion turbine, which is
15 the same calculation that I did.

16 That is the starting point. But depending on
17 how much supply is bid in versus the load, the actual
18 market price can vary. And, again, this is the same
19 price paid to generators.

20 And that finally is evolving. That's the last
21 thing I was going to say.

22 MR. RISLOV: How does that compare to what's
23 happening within MISO and SPP?

24 THE WITNESS: MISO is -- SPP hasn't really
25 gotten going on that, that I'm familiar with in terms of

1 a market-based determination. SPP I think still uses a
2 reserved margin criterion, which is what PJM used to
3 use.

4 MISO is starting -- does have a capacity auction
5 market now.

6 MR. RISLOV: Yes. I'm familiar with that too.

7 I guess my question is this. Do you see any
8 difference between PJM, which is primarily a competitive
9 type atmosphere within the state's PJM service, versus
10 the vertically integrated nature of MISO when it comes to
11 valuing interruptible load within a market?

12 THE WITNESS: Do I see differences?

13 MR. RISLOV: Yes. Between MISO and PJM in the
14 way they value interruptible load.

15 THE WITNESS: I think there are -- the
16 constructs are different, but basically now that PJM has
17 moved to a market-based capacity protocol, I would think
18 that they will eventually produce similar results.

19 MR. RISLOV: Thank you.

20 COMMISSIONER FIEGEN: I just have a quick yes or
21 no question. You talked certainly about PJM on your
22 interruptible service and that you certainly question
23 Mr. White and his definition of interruptible.

24 Do you believe that PJM and all utilities across
25 the country have the same definition of interruptible and

1 they treat them in their contract the same all across the
2 country? Yes or no?

3 Thank you.

4 THE WITNESS: Contracts, no.

5 COMMISSIONER FIEGEN: Thank you.

6 MR. SMITH: Following Commissioner questions.

7 Mr. Magnuson, do you have any follow on?

8 MR. MAGNUSON: Thank you, Mr. Smith. I have no
9 further questions.

10 MS. SMITH: Ms. Collier.

11 MS. COLLIER: No. Thank you.

12 MR. SMITH: Staff.

13 MS. CREMER: Staff does not.

14 MR. SMITH: Okay. We'll turn back to
15 Mr. Moratzka then for redirect.

16 MR. MORATZKA: Very briefly. It will be
17 confidential.

18 COMMISSIONER FIEGEN: They have chairs now,
19 though.

20 (Beginning of confidential portion of transcript.)
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[Redacted content]

1 (End of confidential portion of transcript.)

2 MR. MORATZKA: Thank you.

3 No further questions.

4 MR. SMITH: I think you're done then.

5 THE WITNESS: Thank you, Commissioners. Thank
6 you, your Honor.

7 MR. SMITH: You may step down.

8 (The witness is excused.)

9 MR. SMITH: Are you set to go on rebuttal,
10 Mr. Magnuson, or do you want a break for a little while?

11 MR. MAGNUSON: We would still need Staff.

12 MS. CREMER: Thanks.

13 MR. SMITH: I'm sorry.

14 Staff, do you want to proceed immediately?

15 Okay. I guess you can proceed, Karen.

16 MS. CREMER: Thank you. This is Karen Cremer of
17 Staff. I'm just going to do a brief opening.

18 And first I want to confirm, Dave Peterson, are
19 you on the phone?

20 MR. PETERSON: Yes, I am.

21 MS. CREMER: Okay. Thank you. Pursuant to
22 ARSD 20:10:01:19, Staff and Black Hills Power have filed
23 a Joint Exhibit 1, which is a Motion For Approval of a
24 Settlement Stipulation.

25 The Settlement reflects the efforts of many

1 individuals from both parties. We were able to work
2 through the many issues that we encountered, and Staff
3 conducted extensive discovery, including more than 500
4 formal data requests.

5 Staff believes we have reached an appropriate
6 balance of all the various parties' interests, and the
7 result of that is the Settlement Stipulation that is
8 before you today.

9 We believe this Settlement is in the public
10 interest and approval of the Settlement will permit
11 Black Hills Power's customers to continue to receive
12 safe, adequate, and reliable service at just and
13 reasonable rates.

14 The Settlement resolves all of the issues in
15 this proceeding based on sound regulatory principles and
16 is consistent with South Dakota Law, in particular,
17 SDCL 49-34A-6, 49-34A-8, and 49-34-A-11.

18 The record before you supports the granting of
19 the Joint Motion, and Staff respectfully requests the
20 Commission adopt the attached Stipulation without
21 modification for resolution of all issues subject to this
22 proceeding.

23 As already noted, Staff will be calling one
24 witness, which is Mr. Dave Peterson, and he will speak on
25 behalf of Staff advocating our support of the Settlement

1 Stipulation.

2 He will answer the questions he feels qualified
3 to speak to and will refer other questions to the
4 appropriate Staff witnesses.

5 Staff analyst Pat Steffensen and Eric Paulson
6 are present in the hearing room, and one of Staff's other
7 consultants, Basil Copeland, is available by phone should
8 you have any questions of him.

9 All of the aforementioned are available for
10 questions, and if needed, those witnesses can be sworn in
11 at that time, if Dave can't answer your question.

12 Along with Mr. Peterson's testimony, the Staff
13 memo pretty much sets out our position on all of the
14 issues.

15 At this time Staff would call Mr. Peterson and
16 ask that he be sworn in.

17 (The witness is sworn by Chairman Nelson.)

18 DIRECT EXAMINATION

19 BY MS. CREMER:

20 Q. Good morning, Dave.

21 Would you please state your name and address for the
22 record.

23 A. Yes. My name is David Peterson, and my business
24 address is 10351 Southern Maryland Boulevard, Suite 202,
25 Dunkirk, D-U-N-K-I-R-K, Maryland 20754.

1 Q. By whom are you employed?

2 A. I am a rate consultant with the firm of
3 Chesapeake Regulatory Consultants, Inc. of Annapolis,
4 Maryland.

5 Q. And could you briefly explain who Chesapeake
6 Regulatory Consultants are and how CRC came to be
7 associated with this Docket?

8 A. Yes. CRC is a group of -- it's a small group of
9 consultants. There are only three of us, that we devote
10 our time to assisting mostly state commissions or
11 consumer advocates in rate proceedings such as this, as
12 well as at times large industrial interveners.

13 But our work involves regulatory work, accounting,
14 finance, and other rate making aspects of utility
15 operations.

16 CRC and its consultants have been associated with
17 the South Dakota Commission and have assisted in working
18 on rate cases in South Dakota essentially since the
19 inception of regulation in South Dakota back in the
20 mid-1970s. And one or all of us have been involved in
21 virtually every major rate case in South Dakota since
22 1975.

23 Q. Do you have Staff Exhibit 1 in front of you?

24 A. If that's my direct testimony in this case, yes, I
25 do.

1 Q. Thank you. And at the time your testimony was filed
2 was it true and correct to the best of your information
3 and knowledge?

4 A. Yes, it was.

5 Q. Do you have any corrections to your exhibit?

6 A. No.

7 Q. Would you please summarize the content of your
8 testimony.

9 A. Yes. It will be very brief.

10 There are really two purposes of my testimony. The
11 first purpose, as you stated in your opening statement,
12 is to support the Settlement Stipulation that was reached
13 between the Commission Staff and Black Hills Power.

14 The second purpose of my testimony was to address
15 certain issues that were raised by Black Hills Industrial
16 Interveners. They were both revenue requirement issues
17 and cost of service issues.

18 My testimony describes several issues that were
19 raised by Mr. Kollen for the Industrial Interveners that
20 were addressed in one form or another in the Settlement.
21 It addresses other issues raised by Mr. Kollen with which
22 we disagree with. And it addresses -- on the cost of
23 service and apportionment of increase it acknowledges
24 Black Hills' support for the Settlement in the
25 apportionment of revenues between rate classes.

1 And I think that's the end of the inquiry as far as
2 cost of service goes.

3 Mr. Baron pointed out a number of what he called
4 errors in the study. In my opinion, the Commission
5 probably doesn't need to issue a finding on any of those
6 so-called errors in this case because they will not
7 impact the apportionment of revenues. And Mr. Baron just
8 acknowledged that.

9 But we did want to point out disagreement with
10 Mr. Baron on the largest single what he called error in
11 this study, and that's the use of the minimum
12 distribution system. And I discussed that at length in
13 my testimony.

14 MR. SMITH: Is he loud enough for you?

15 THE WITNESS: That concludes my summary.

16 Q. Based on your education and experience, do you have
17 an opinion as to whether the Settlement Stipulation
18 results in just and reasonable rates?

19 A. Yes, I do. And not only my education and experience
20 but the -- my involvement in this rate case.

21 I was involved with the Commission's in-house staff
22 since the beginning of this rate case, since it was
23 filed. And I watched and oversaw, in some instances, the
24 Staff's review of, as you said, over 500 discovery
25 requests and the hundreds of hours that the Staff devoted

1 to this case in identifying the issues and recommending
2 alternative rate making treatments for some of the items
3 claimed in the company's cost of service and revenue
4 requirement.

5 Those issues are all identified specifically in the
6 Staff memorandum in support of the Settlement, and I
7 believe there's a high level of transparency. The
8 Commission can see for itself. The extent of the review
9 and the resolution of what the Staff considers each
10 issue, important issue in the case.

11 And, yes, based on the -- based on the resolution
12 that we've reached with the company, we believe that the
13 resulting rates will be just and reasonable.

14 MS. CREMER: Thank you.

15 Mr. Peterson is available for
16 cross-examination.

17 MR. SMITH: Mr. Magnuson, please proceed.

18 MR. MAGNUSON: Thank you, Mr. Smith.

19 We have no questions of this witness.

20 MR. SMITH: Okay. We'll go to Mr. Moratzka
21 then.

22 MR. MORATZKA: Just a few brief questions.

23 CROSS-EXAMINATION

24 BY MR. MORATZKA:

25 Q. Good morning, Mr. Peterson.

1 A. Good morning.

2 Q. This is Andrew Moratzka. I'm an attorney at
3 Stoel Rives, and I will be asking you a few questions
4 today on behalf of the Black Hills Industrial
5 Interveners.

6 A. Okay.

7 Q. To make sure that we are all on the same page, I
8 want to make sure that we clarify a few dates.

9 You would agree, wouldn't you, that the test year
10 for the company's Application began on October 1, 2012,
11 and ended on September 30, 2013?

12 A. Yes.

13 Q. The company then filed its Application within six
14 months of the conclusion of the test year on March 31,
15 2014; is that correct?

16 A. I believe that date is correct. Although the
17 Commission officially noticed the filing on April 3,
18 2014.

19 Q. Thank you for the clarification, Mr. Peterson.

20 And, finally, the date that would be 24 months after
21 the end of the test year would be September 30, 2015; is
22 that correct?

23 A. Yes.

24 Q. Your testimony contains your interpretation of a
25 South Dakota Administrative Rule; is that correct?

1 A. Yes, it does.

2 Q. That rule is 20:10:13:44; is that correct?

3 A. Yes.

4 Q. Sorry, Mr. Peterson. I have to turn the mic. off to
5 allow you to speak; otherwise, we get quite a bit of
6 feedback in here.

7 A. Okay.

8 Q. Mr. Peterson, do you have at your -- in front of you
9 or nearby you the ability to pull up that South Dakota
10 rule?

11 A. Yes, I do.

12 Q. Mr. Peterson, we're going to just take a moment to
13 pass around a copy of the statute for the benefit of all
14 the other parties.

15 A. Okay.

16 Q. Okay, Mr. Peterson. We've passed around the rule,
17 and it's a -- just for your benefit, it is a
18 printer-friendly version of what is available on the
19 South Dakota -- State of South Dakota's website.

20 So hopefully as I'm trying to refer to lines of
21 text, that you and I are about the same.

22 A. Okay.

23 Q. Now I understand you're not a lawyer, and so I'm not
24 asking for legal analysis. I just would like to walk
25 through a couple of the phrases that are in the rule and

1 hopefully get a better understanding of your
2 interpretation.

3 A. Okay.

4 MS. CREMER: If I could just interrupt for a
5 moment, did he talk about this rule in his testimony?

6 MR. MORATZKA: Yes, he did.

7 MS. CREMER: Where? I'm not -- I don't doubt
8 you, Drew, but --

9 MR. MORATZKA: Rebuttal, page 8, lines 22
10 through page 9, line 14, page 13 --

11 MS. CREMER: Okay. There I found it.

12 And so your line of questioning has to do with
13 what?

14 MR. MORATZKA: Mr. Peterson's understanding of
15 the rule.

16 MS. CREMER: Okay.

17 Q. Mr. Peterson, you would agree, wouldn't you, that
18 the Administrative Rule 20:10:13:44 requires analysis of
19 a 12-month historical test year; is that correct?

20 A. Yes. That's correct.

21 Q. And would you agree, Mr. Peterson, that the
22 qualification to that that would prohibit adjustments is
23 set forth in the final five lines of the rule beginning
24 with the word "however"?

25 A. Yes.

1 Q. Could you, for the benefit of the record, read the
2 sentence that starts with the word "however"?

3 A. Certainly. "However, no adjustment shall be
4 permitted unless they are based on changes in facilities,
5 operations, or costs which are known with reasonable
6 certainty and measurable with reasonable accuracy at the
7 time of the filing and which will become effective within
8 24 months of the last month of the test period used for
9 this section and unless expected changes in revenue are
10 also shown for the same period."

11 Q. Thank you, Mr. Peterson.

12 Could you turn to page 13 of your rebuttal
13 testimony.

14 A. I'm there.

15 Q. Could you, Mr. Peterson, look to lines 21 through
16 23?

17 A. Okay.

18 Q. I guess I'm having a hard time understanding what I
19 understand your claim to be. And I'll state my
20 understanding, and then if you could correct me or
21 confirm my understanding, that would be great.

22 I understand that your testimony is that although
23 the rule requires expected changes in revenue to be
24 incorporated into any proposed -- any adjustment, that
25 your interpretation of that language is that the

1 adjustment has to be one that produces revenue.

2 Is my understanding correct?

3 A. Almost correct.

4 The adjustments that are revenue producing or income
5 producing would have to reflect either the additional
6 revenue or the additional income that results from that
7 change in operation before it would be recognized as a
8 known and measurable adjustment.

9 And those types of changes are not included in the
10 Settlement between the company and the Staff.

11 Q. Thank you, Mr. Peterson. And maybe to put a finer
12 point or a better portion in your testimony that
13 discusses this, is that laid out on page 9, lines 1
14 through 6?

15 A. Yeah. That's my restatement or my understanding of
16 the Commission's practice and the Commission Staff's
17 interpretation of the rule, yes.

18 Q. But, Mr. Peterson, I wonder, wouldn't that
19 interpretation allow the company to cherry pick cost
20 adjustments that don't have a revenue component?

21 MS. CREMER: Well, and I'm just going to
22 interrupt here because that seems a more appropriate
23 question for the company to ask them if they're cherry
24 picking as opposed to asking Staff if the company is
25 cherry picking. So I would object.

1 MR. SMITH: Okay. I think that's already been
2 asked of the company a couple of times.

3 MS. CREMER: I would agree.

4 MR. SMITH: I'm going to let him answer it, and
5 I'm going to overrule it if he has an opinion. And
6 that's fine too.

7 A. The company -- we're using an historic test year to
8 set rates for a future period. So the idea is to use
9 those known expenses during the test year but reflect any
10 known changes that occurred after the test year that will
11 be reflected or will occur also during the rate effective
12 period.

13 So the company has an opportunity to come forward
14 with any number of adjustments as long as they meet the
15 specific criteria that they're known and measurable and
16 that they fall within the 24-month period.

17 If they are expense reducing -- or, you know, income
18 producing aspects or revenue producing aspects of those
19 changes, then the Commission has a choice or has the
20 ability to examine those changes and determine whether
21 they are sufficiently known and measurable to reflect
22 them or if the revenue aspects of, let's say, a
23 generating facility you just added are not known and
24 measurable, to exclude that plant investment from the
25 cost of service or revenue requirement.

1 That's precisely what we've done in the Settlement.
2 I don't consider that cherry picking at all. It's really
3 the company's fiduciary responsibility to come forward
4 with all known changes that it's aware of, and it's also
5 the Staff's responsibility to closely examine the
6 evidence that those changes are known and measurable,
7 normal and recurring expenses.

8 Q. Thank you, Mr. Peterson. And I appreciate your and
9 Commission Staff's interpretation of the rule.

10 For my benefit, could you point me to a place in the
11 rule that supports the interpretation that the changes
12 that -- that the last portion of the sentence in the last
13 line of the rule only requires an analysis of changes in
14 revenues when those revenues relate to an expense or
15 investment that has an incremental revenue component?

16 A. Yeah. Here's my take on that, and I tell you, I'm
17 not a lawyer.

18 But if the rule intended that all revenues, not just
19 those associated with plant additions, if all revenues
20 are intended or are supposed to be recognized -- well,
21 all changes in revenue are supposed to be recognized
22 within that 24-month period, the rule would require a
23 forecast test year. It does not.

24 So the only logical conclusion is that the revenue
25 effect of posttest year changes, specific posttest year

1 changes, has to be acknowledged or recognized in an
2 adjustment before the adjustment itself can be reflected
3 in the revenue requirement.

4 And that's precisely the standard that the
5 Commission Staff has relied on since the inception of
6 this rule.

7 Q. Mr. Peterson, thank you.

8 Can you point me to a docket or some other opinion
9 where -- the Commission has issued where the Commission
10 has been asked for an interpretation of this rule and one
11 was provided?

12 A. I'm not aware of that specific finding by the
13 Commission, but it is imbedded in virtually every
14 settlement that the Commission has approved since the
15 inception of this rule.

16 Q. And, Mr. Peterson, you would agree that the
17 Settlement in this case is not precedential, wouldn't
18 you?

19 A. No. I wasn't intending to state that it's not
20 precedential. And it is not.

21 But I'm just saying that that is the standard that
22 the Commission Staff has relied on for all of these
23 years, and the Commission has accepted settlements based
24 on the reliance of that standard.

25 Q. And, I guess, finally, Mr. Peterson, you don't see

1 any inherent unfairness in looking back for a historic
2 test year using sales revenue from a backward looking
3 test year and allowing cost adjustments to come in
4 without -- and letting them come in for up to 24 months
5 after that test year, without requiring the utility to
6 put forth some analysis on the change in revenue?

7 MS. CREMER: I'm going to object as to the
8 argumentative nature of the question. I think you can
9 probably modify that to be a question as opposed to
10 really an opinion on your part as to what his opinion
11 should be.

12 MR. SMITH: I think the question is
13 understandable as a question.

14 Mr. Peterson, can you understand it?

15 THE WITNESS: Yes.

16 MR. SMITH: Okay. I'm going to overrule then
17 and go ahead and answer.

18 A. I think I have a couple of different responses to
19 the question.

20 24 months was set by the rule. You know, I have no
21 ability to change that. That's not the standard used
22 everywhere. Some commissions have the 12-month rule.
23 New Jersey has a three-month, six-month, nine-month rule
24 on posttest year changes. So it really depends on the
25 jurisdiction in which you operate.

1 The law is the law here in South Dakota. We have
2 to recognize changes that are known and measurable up to
3 24 months beyond the end of the test year. But the
4 Commission Staff is very careful to identify any of those
5 changes that have a revenue aspect to it. And those
6 changes the Staff considers are not reasonably known and
7 measurable and have been excluded from the Staff's
8 proposed revenue requirement in this case and ultimately
9 excluded in the Settlement Stipulation.

10 So I don't think it's unfair, the treatment that the
11 Staff is afforded posttest year changes, given the
12 24-month rule in South Dakota.

13 Q. Thank you, Mr. Peterson.

14 Just to clarify, you would agree that according to
15 the rule, that any adjustments would have to be known and
16 measurable at the time the company filed its case;
17 correct?

18 A. No. I wouldn't agree with that, no.

19 Q. And could you point me to the spot in the rule that
20 would support that interpretation?

21 A. Yeah. Unfortunately, the rule was written by
22 legislators or legislative research assistants, not by
23 rate consultants or utility analysts.

24 It says at the time of the filing. The term "the
25 filing" is not defined. There are many filings within a

1 rate case. There's the application and initial direct
2 testimony of the company.

3 If the drafters of this rule intended it to be at
4 the time of the application, the word would be
5 application, not filing.

6 The Interveners filed testimony. The Staff filed
7 testimony. You're asking for permission to file
8 posthearing briefs. Like I said, there are many filings
9 in the case, and the term is simply not defined in the
10 rule.

11 So the Commission Staff has interpreted it that the
12 adjustments have to be sufficiently known and measurable
13 at the time of their review within the filings of the
14 case.

15 Q. Thank you, Mr. Peterson.

16 You would agree, wouldn't you, that the word
17 "filing" is used multiple times in 20:10:13:44, would you
18 not?

19 A. Yes.

20 Q. Thank you.

21 Briefly, Mr. Peterson, could I have you turn to
22 page 19 of your testimony?

23 A. Yes. I'm there.

24 Q. And you would agree that -- or at least as I
25 understand your testimony, you agree that Mr. Kollen

1 properly identified -- or correctly identified an error
2 in certain Black Hills Utility Holding Company figures
3 that were allocated to the South Dakota retail
4 jurisdiction under the Settlement?

5 A. Yes. That's correct.

6 Q. In other words then, the revenue requirement as set
7 forth in the Proposed Settlement includes \$286,000 that
8 the customers of -- or at least per Black Hills Power's
9 books, will not be paying?

10 A. I'm not sure that I would go that far. We believe
11 that the end result of the -- of the Settlement is --
12 results in just and reasonable rates, and it reasonably
13 reflects the cost that the company will incur going
14 forward.

15 There were a number of issues with which the Staff
16 and the company disagree on. The Staff's resolution of
17 those issues are stated in the Settlement Memorandum, but
18 the company had its own basis for settling certain
19 issues which were either advantageous or adverse to the
20 company.

21 We did not -- we don't see the company's analysis of
22 that. But the end result, we believe, was just and
23 reasonable rates and reasonably reflects the cost that
24 the company expects to incur going forward.

25 Q. Thank you, Mr. Peterson.

1 Could I have you turn to page 6 of your rebuttal
2 testimony.

3 A. I'm there.

4 Q. And it's my understanding that your testimony is
5 that the Settlement is not a black box; is that correct?

6 A. From Staff's point of view it's not. The company
7 had to analyze the Staff's offer using whatever methods
8 they wished.

9 You know, we weren't privy to those discussions that
10 the company held within itself. But from Staff's point
11 of view, it is not a black box. And in all the terms --
12 or the resolution of each issue it's set forth in the
13 Staff's memorandum.

14 And that's really Staff's position.

15 Q. Thank you, Mr. Peterson.

16 But just to confirm, that analysis contains an
17 error.

18 A. Yes, it does.

19 MR. MORATZKA: Thank you.

20 No further questions.

21 MR. SMITH: Ms. Collier?

22 MS. COLLIER: No questions.

23 MR. SMITH: Okay.

24 Commissioners.

25 CHAIRMAN NELSON: Yes.

1 Mr. Peterson, this is Commissioner Nelson.
2 Several questions.

3 You have listened to the past day's worth of
4 questions, and several times I've questioned this concept
5 of the five-year normalization. We're seeing that with
6 pension expenses, and I think we also see it with some
7 Worker's Comp costs. And in both of those cases those
8 normalizations benefit the company.

9 How do you know that there may not be other
10 five-year normalization opportunities that would benefit
11 ratepayers?

12 What is your analysis process to determine if
13 those opportunities are there and take advantage of
14 those?

15 THE WITNESS: Yeah. First of all, one is to
16 make it clear that the company itself isn't the primary
17 beneficiary or the only beneficiary of this normalization
18 adjustment.

19 The expense, the pension expense in particular
20 that is reflected in the Settlement Agreement, reflects
21 nearly a -- or over a \$500,000 reduction in expense from
22 the test year level.

23 But as far as are there other opportunities
24 for -- for normalization that may cut in the opposite
25 direction? Yeah. There's always that possibility in any

1 rate case.

2 In fact, in nearly all the rate cases that I do
3 for myself, you know, that's one of the analyses I
4 perform is essentially the same thing that was shown on
5 Table 1 of page 16 of my testimony.

6 I usually ask the utility for five years worth
7 of detailed O&M expenses by account, and I do a variance
8 analysis to identify abnormalities in the test year. And
9 that's part of any rate case review.

10 CHAIRMAN NELSON: Thank you. I appreciate
11 knowing that.

12 Let me visit just a minute about Staff's memo
13 comment on weather normalization. Now if I'm
14 understanding this correctly, BHP did a weather
15 normalization adjustment and came up with a reduction
16 figure of 644,000. And Staff did their analysis and only
17 came up with a reduction of 264,000.

18 Would we have been better off if Staff had not
19 done that analysis?

20 THE WITNESS: No. That's just the opposite.
21 The company reduced its test year revenues by 644,000 in
22 their adjustment. We reduced it by -- or the Staff
23 reduced it by only 264,000. So the test year -- the
24 going forward, the pro forma revenues under Staff's
25 revenue requirement analysis, showed a higher revenue

1 at existing rates, therefore, a lower revenue
2 deficiency.

3 CHAIRMAN NELSON: Thank you. I see where my
4 thinking was in error on that, and I appreciate your
5 pointing that out.

6 I think the only other question I've got, and
7 this goes back to one of Mr. Moratzka's last questions
8 dealing with page 19 of your testimony where we've got
9 this acknowledged error, would you agree that it would be
10 difficult for a Commissioner to approve a settlement that
11 has a known error?

12 THE WITNESS: Yeah. I could see where it places
13 the Commission in an awkward position. And I can also
14 state that had the Staff been aware of this error during
15 settlement negotiations, it would have been corrected.

16 CHAIRMAN NELSON: Thank you.

17 No further questions.

18 MR. SMITH: Commissioner Fiegen.

19 COMMISSIONER FIEGEN: Mr. Peterson, one
20 question on your direct testimony that you provided for
21 January 15, I believe it was filed.

22 On page 17 of 30 you talk about incentive
23 compensation. And the Commission Staff ever since I've
24 seen them work on rate cases and what I get to see anyway
25 is they've been pretty hard on performance based on

1 financial and they have taken that always out of
2 incentive compensation and they continue to do it again.

3 But in your testimony I can't quite tell. Could
4 you kind of rephrase it for me because it kind of looks
5 like you agree with Mr. Kollen on some of the
6 characteristics that he has put in his direct testimony.

7 THE WITNESS: Yes. And I think your assessment
8 or understanding of my testimony is probably correct.

9 The Staff raised issues with the incentive
10 compensation plan the company had and the payments made
11 under the plan.

12 But in the end through these settlement
13 discussions we agreed to exclude the 666,000 related
14 specifically to financial performance. And this is the
15 way that the issue has been treated for Black Hills on
16 prior settlements and for all other utilities in the
17 state on prior settlements.

18 But yeah. I have concerns about every utility's
19 incentive compensation plan, not just Black Hills.

20 COMMISSIONER FIEGEN: Hello.

21 I have a different mic. I now have Ms. Cremer's
22 mic., and it's a little tricky to run over here.

23 I still don't understand your testimony, though,
24 on your concerns that you have with incentive pay. And
25 you've agreed with the Staff Settlement, yet you still

1 have some concerns, and I don't -- I just can't quite
2 understand it.

3 I've read it a couple of times, and I'm still
4 not getting what you're trying to let me know.

5 THE WITNESS: Well, I'll try to say it again.
6 I'm very critical of many incentive compensation plans.
7 And I will say that Black Hills' incentive compensation
8 plan is much different than most or many other
9 utilities.

10 Most utilities I have seen have financial
11 triggers in their incentive compensation plan. Those
12 financial triggers work to -- the employees are only
13 compensated if corporate financial goals are met first.
14 In other words, if the stockholders get paid first, and
15 if the workers achieve their performance or safety or
16 customer satisfaction goal, then they'll get their
17 incentive compensation if certain corporate financial
18 targets are met.

19 Black Hills doesn't have those triggers in their
20 plan. If customer safety goals are met, the employees
21 eligible will receive their incentive compensation
22 regardless of the company's earnings, even if they have
23 negative earnings.

24 So I applaud Black Hills for having a plan like
25 that. But there are things like service, supplemental

1 and executive retirement programs that grant additional
2 incentive compensation to a very few people that are --
3 that are -- by definition, exceed the plans that abide to
4 the general body of eligible employees. I'm critical of
5 those types of plans.

6 So I have a lot of questions and concerns about
7 incentive compensation plans, but in the end the
8 trade-offs in the negotiations involving this issue and
9 other issues, that Staff felt it best to go back to the
10 way that we've treated incentive compensation for all of
11 the utilities and for this utility in prior settlements
12 and include just those related specifically to achieving
13 financial performance goals.

14 COMMISSIONER FIEGEN: Thank you, Mr. Peterson.
15 Now I understand that you were talking about the utility
16 history in general.

17 Thank you.

18 MR. SMITH: Additional Commissioner questions.

19 CHAIRMAN NELSON: Commissioner Nelson again. I
20 want to follow up on that. And you talked about -- I'm
21 focused on the figure that -- I'm not sure if it's
22 confidential or not, but the figure we talked about
23 yesterday dealing with restrictive stock.

24 You just mentioned a trade-off. What did the
25 company trade off to get that?

1 THE WITNESS: Well, I think there were a number
2 of trade-offs. We didn't -- like I say, we don't know
3 exactly what induced Black Hills to accept any of these
4 adjustments that the Staff proposes but we do know that
5 we got a two-year rate moratorium and we got what we
6 believe is a reasonable award on return on equity.

7 We think we have a fair apportionment of the
8 increases to the rate classes. You know, I think there
9 are a number of benefits to not only residential
10 customers but to the Industrial customers also.

11 CHAIRMAN NELSON: Thank you. But I've got to
12 just ask a couple of other questions on a couple other
13 issues.

14 Yesterday we spent some time talking about the
15 FutureTrack program.

16 Do you believe the settlement legitimately
17 covers the Industrial Interveners' concerns with that
18 program?

19 THE WITNESS: Yes. I think it should. The
20 Staff did not accept the FutureTrack program the company
21 proposed.

22 What we did agree to in place of that is to
23 reflect the actual cost of employees actually hired. Not
24 to a target level of employees that they haven't hired or
25 intend to hire at some point in the future but to reflect

1 the actual cost of employees that have actually been
2 hired.

3 And in addition we also insisted that the cost
4 of those employees be split between operating expenses
5 and capitalize that, activities, so that today's
6 ratepayers aren't excessively burdened with costs that
7 appropriately should have been capitalized.

8 That too is a difference between the Settlement
9 position and the workforce plan as filed.

10 CHAIRMAN NELSON: No further questions.

11 MR. SMITH: Commissioner Fiegen.

12 COMMISSIONER FIEGEN: So this is really our last
13 opportunity to ask about the Settlement document also?
14 Because I have questions a little bit about the
15 Settlement, but I better start asking; right?

16 Okay. So, Mr. Peterson, you're still on.

17 THE WITNESS: Okay.

18 COMMISSIONER FIEGEN: We certainly appreciate
19 the Settlement and especially the two-year moratorium.
20 But I'm just about wondering -- and, of course, I'm a --
21 I'm just wondering, Black Hills for the past several
22 years has been in an expansion mode of generation. So
23 their rates have been certainly -- and they're expensive.
24 Has certainly been different than the utilities across
25 the state that aren't building generation.

1 But they stated yesterday that they are kind of
2 done with expansion of generation. So a two-year
3 moratorium shouldn't be as hard as it was a few years ago
4 when they were in the expansion mode, and the Settlement
5 could have even extended that two-year moratorium because
6 of the generation expansion being done.

7 Would you agree with that, Mr. Peterson, that
8 that could have been looked at?

9 THE WITNESS: I will say that it certainly was
10 looked at. But generation expansion isn't the only
11 expansion that a utility has to deal with.

12 More and more people are requiring greater and
13 greater reliability of the distribution system, and
14 that's causing many utilities, including Black Hills
15 Power, to upgrade its distribution facilities.

16 And the trade-offs for a longer moratorium
17 probably would have meant a much greater rate increase to
18 make sure that the rate awards would cover necessary
19 distribution expansion projects.

20 So it's not just the ability to ask for a
21 two-year versus three-year, four-year moratorium. Each
22 one of those years comes at a different cost. And I
23 can virtually guarantee that you wouldn't have the
24 6.9 percent -- or 6.9 million dollar revenue increase if
25 there was a three or four-year rate moratorium.

1 COMMISSIONER FIEGEN: Thank you.

2 MR. SMITH: Any additional Commissioner
3 questions?

4 Or, Greg, do you have any?

5 Okay. I'm going to give them the -- I give them
6 another opportunity, Karen, after Commissioner questions.

7 So, Mr. Magnuson, anything?

8 MR. MAGNUSON: Thank you. I have no further
9 questions.

10 Thanks.

11 MR. SMITH: Okay. Mr. Moratzka?

12 MR. MORATZKA: No further questions.

13 Thank you.

14 MR. SMITH: Ms. Collier?

15 MS. COLLIER: No further questions.

16 Thank you.

17 MR. SMITH: Okay. And Staff?

18 MS. CREMER: Staff does not have anything.

19 Thank you.

20 MR. SMITH: Okay. I guess, Mr. Peterson, you
21 may step down. All right. Thank you.

22 (The witness is excused.)

23 MR. SMITH: Is that it for Staff's case?

24 Correct?

25 MS. CREMER: Yes. Except Commissioner Nelson

1 has expressed a great deal of interest in calling
2 Mr. Paulson as a witness, but I'll leave that up to him.

3 COMMISSIONER FIEGEN: I think that would be
4 fun.

5 CHAIRMAN NELSON: I think we could probably get
6 a majority of the Commissioners to join me on that. But
7 I will pass.

8 COMMISSIONER FIEGEN: We can swear him in.

9 MR. SMITH: Okay. I think at this time let's
10 take a break, and then we'll go back to your redirect --
11 or your rebuttal. Excuse me. And then once you're done,
12 we're done.

13 Why don't we get back about 10 to 10:00 or so.
14 Does that sound okay? Do you want to go all the way to
15 10?

16 MR. MAGNUSON: If we could, please.

17 MR. SMITH: All right.

18 (A short recess is taken)

19 MR. SMITH: Black Hills Power, please proceed
20 with your rebuttal.

21 MR. MAGNUSON: Thank you, Mr. Smith. With the
22 Commission's approval, I would like to cover two
23 procedural matters before we do our rebuttal case.

24 MR. SMITH: Sure.

25 MR. MAGNUSON: Thank you. The first is one to

1 correct a typographical error. I'm looking at Joint
2 Exhibit 5, which is the Interim Refund Plan.

3 Third paragraph, third line, it says "For the
4 test year ending September 30, 2014." That is a
5 typographical error. That should be corrected to read
6 "test year ending September 30, 2013."

7 MR. SMITH: Okay.

8 MR. MAGNUSON: And I have not had a chance to
9 visit with all of the parties, but I assume that will be
10 acceptable since it's merely just a typographical
11 matter.

12 MR. SMITH: Any objection?

13 MR. MORATZKA: No objection. Thank you.

14 MS. COLLIER: No objection.

15 MS. CREMER: No objection.

16 MR. SMITH: Okay. And are you going to submit a
17 replacement page so we can put it on the --

18 MR. MAGNUSON: We will. Because of our
19 difficulties of getting everything printed it and
20 everything, may be just a couple of days.

21 MR. SMITH: Oh, I don't mean now. Just at some
22 point so we can get it on the website.

23 MR. MAGNUSON: Yes. We will submit corrected
24 Joint Exhibit 5.

25 MR. SMITH: Okay.

1 MR. MAGNUSON: Thank you. The second matter --
2 again, I'm anticipating that there won't be any
3 problems -- we do not have Kyle White's nonconfidential
4 version of his testimony marked as an exhibit. It has
5 been prefiled in that form so everybody has a copy, but
6 we have not marked it as an exhibit. So we would like to
7 mark that as an exhibit.

8 We would propose that Exhibit 78 be Kyle White's
9 nonconfidential version of his rebuttal testimony.

10 MR. SMITH: Okay. I would assume there's no
11 objection because the confidential version's already been
12 admitted.

13 MR. MORATZKA: That's correct. No objection.
14 And you said 78?

15 MR. MAGNUSON: That's correct, Drew.

16 MR. MORATZKA: Thank you.

17 MR. SMITH: Ms. Collier, I'm assuming no
18 objection.

19 MS. COLLIER: No objection.

20 MS. CREMER: No objection.

21 MR. SMITH: Okay. Well, please proceed,
22 Black Hills.

23 MS. KOENIG: Black Hills Power calls Kyle White.

24 DIRECT EXAMINATION

25

1 BY MS. KOENIG:

2 Q. Mr. White, do you recall the line of questioning
3 that took place yesterday regarding the number of rate
4 cases Black Hills Power has filed in the last 10 or so
5 years?

6 MR. MORATZKA: Just a procedural matter. Is
7 Mr. White under oath?

8 MS. KOENIG: Yes.

9 MR. SMITH: He is.

10 MR. MORATZKA: Thank you.

11 Q. In your 30 plus years with the company how many rate
12 cases has Black Hills Power filed with the Commission?

13 A. Five.

14 Q. In the 1995 rate case what was the primary driver
15 for that filing?

16 A. The primary driver for that filing was the
17 Neil Simpson 2 coal-fired power plant.

18 MR. SMITH: Is your mic. on?

19 THE WITNESS: It is. I'll move it closer.

20 Q. What was the primary driver for the 2006 Black Hills
21 Power rate case?

22 A. Well, after 11 years with no changes in the prices
23 that Black Hills Power's customers had paid, we found it
24 necessary to reinstate an energy cost adjustment or a
25 fuel and purchase power adjustment, and that was the

1 primary driver of the 2006 case.

2 Q. What was the primary driver for the 2009 rate case?

3 A. That was related to the Wygen III coal-fired power
4 plant.

5 Q. And the primary driver for the 2012 rate case?

6 A. Well, it was related actually to the primary driver
7 for this rate case, the Cheyenne Prairie Generating
8 Station, in that the company had participated in
9 developing legislation for a phase-in plan, and the
10 phase-in plan had a requirement of a parallel rate
11 case.

12 Q. Then, to reiterate, the primary driver for the
13 current rate case is what?

14 A. Is the Cheyenne Prairie Generating Station,
15 significant capital infrastructure investments, the
16 decommissioning of three coal-fired power plants, and the
17 storm Atlas cost recovery.

18 Q. Did Mr. Kollen indicate yesterday that there may be
19 a second error in the Settlement Agreement associated
20 with debt cost?

21 A. Yes. He did indicate that there may be a second
22 error in the Settlement, and I would like to address that
23 today.

24 Q. Do you agree with Mr. Kollen's opinion regarding the
25 debt cost?

1 A. No, I do not.

2 Q. Was this topic addressed in the rebuttal testimony
3 that was filed by Black Hills Power?

4 A. Yes. Mr. Thurber addressed it in his testimony.

5 MS. KOENIG: May I approach the witness?

6 MR. SMITH: You may.

7 (Exhibit BHP 79 is marked for identification)

8 Q. Mr. White, I've handed you a two-page document. Can
9 you identify this document?

10 A. Yes. It is Black Hills Power's Response to
11 South Dakota PUC Staff Request No. 2-57.

12 Q. Is the Bates No. on the bottom of that document
13 BHP-SD-008926?

14 A. Yes. And the second sheet is 27.

15 Q. And what is reflected in the second sheet?

16 A. The second sheet represents the pro forma debt
17 capital and related cost for Black Hills Power after it
18 issued the 85 million dollars of first mortgage bonds
19 last year.

20 Q. And was the second sheet provided as an attachment
21 to the response to Data Request 2-57?

22 A. Yes, it was.

23 MS. KOENIG: Black Hills Power moves to admit
24 Exhibit 79.

25 MR. SMITH: Is there an objection?

1 MR. MORATZKA: No objection.

2 MS. COLLIER: No objection.

3 MS. CREMER: No objection.

4 MR. SMITH: Okay. Black Hills 79 is admitted.

5 Q. Is the actual debt cost that was reflected in the
6 Settlement depicted on Attachment 2-57?

7 A. Yes. On line number 8, Column J the debt cost is
8 4.46 percent.

9 Q. Are you able to provide the Commission an
10 explanation for the disconnect between the debt cost and
11 the Settlement Agreement and what Mr. Kollen has
12 indicated that he believes the debt cost to be?

13 A. Yes. Initially the company expected that it may
14 utilize a public placement of the first mortgage bonds.
15 And that usually has an additional discount associated
16 with it, which increases the term interest cost -- or the
17 term cost of the debt.

18 In this case we were able to place it as a private
19 placement, and so there was no related discount. And so
20 your actual interest rate plus the cost of issuing is
21 what we're reflecting as the 4.46 percent.

22 Q. So just to be clear, in your opinion, is there an
23 error in the Settlement Agreement associated with debt
24 cost?

25 A. No, there is not.

1 Q. Did Black Hills Power make significant compromises
2 to reach the Settlement Agreement that is presently
3 before the Commission today?

4 A. Yes. We did.

5 Q. And could you provide just a general overview of
6 those compromises?

7 A. The company and Staff went through a thorough
8 examination of our business operations. We had the
9 opportunity to talk about things like return on equity,
10 capital structure, recovery of certain expenses, and we
11 did make significant compromises.

12 You're aware of what the return on equity is
13 confidentially in the Settlement. Last year the company
14 had settlements approved in Wyoming for Black Hills Power
15 at 9.9 percent return on equity with an actual capital
16 structure.

17 We also had Cheyenne Light gas and electric cases
18 both approved with 9.29 percent with an actual capital
19 structure. In a litigated decision in Colorado the
20 Commission authorized a 9.83 percent return on equity
21 with an actual capital structure.

22 MR. SMITH: Are you going down a confidential
23 path here?

24 THE WITNESS: I am not.

25 A. And, in addition, in each of those cases we had full

1 recovery of our incentive compensation as a recognized
2 necessary cost to attract, motivate, and retain
3 employees.

4 We also have compromised somewhat in the rate
5 design. The company would prefer to have higher costs
6 associated with customer charges. And so there are
7 customer benefits that are provided in the way Staff has
8 negotiated this case.

9 We've also compromised on certain known and
10 measurable adjustments. We have amortizations that, you
11 know, with the time value money don't have an impact
12 financially in the company, but there were numerous
13 changes and compromises that were made to reach that
14 Settlement.

15 And the Settlement recognizes that the company had
16 certain expectations in the amount that we filed for at
17 14.6 million dollars. We're actually compromised now
18 down to 6.89 million dollars. Plus we've agreed to live
19 with these rates for a two-year period of time.

20 In addition, the energy cost adjustments was
21 modified from what the company's initial application was
22 to ensure that customers still had a utility interested
23 in power marketing its profitability through that
24 guarantee of a million dollars each year.

25 Q. Is there anything else that you would like to

1 address today?

2 A. Yes. The Settlement is before you. You've had some
3 questions about the error both of myself, Mr. Thurber,
4 Mr. Peterson.

5 The company would be interested in understanding
6 more fully the Commission's potential concerns with
7 regard to that. We've stated that we used the best
8 available information at the time that we entered into
9 the Settlement. We've seen changes that have occurred
10 since the Settlement. There's always new information
11 like the Wyodak 1-M cost that we've talked about.

12 But if there's a hesitation by the Commission, the
13 company would like to be aware of what that hesitation
14 might be in approving the Settlement.

15 Q. Are you still -- is the company still fully
16 supportive of the Settlement Agreement that is presently
17 before the Commission for approval?

18 A. Yes, we are.

19 MS. KOENIG: At this time Mr. White's available
20 for questions.

21 MR. SMITH: Mr. Moratzka.

22 MR. MORATZKA: Could I have just 30 seconds?

23 MR. SMITH: Sure.

24 MR. MORATZKA: No further questions.

25 Thank you.

1 MR. SMITH: Ms. Collier?

2 MS. COLLIER: Thank you.

3 CROSS-EXAMINATION

4 BY MS. COLLIER:

5 Q. You were asked by your counsel about the primary
6 drivers for the five rate cases since 1995. And, as I
7 understand it, basically four out of those five are
8 directly related to the creation of various generating
9 power plants.

10 Is that correct?

11 A. That's correct. And it's actually five cases since
12 my career began in 1982.

13 Q. Yeah. So four out of the five -- because one of
14 them I believe you said was for an energy cost
15 adjustment?

16 A. That's correct.

17 Q. So the -- from 1995 until the decommissioning in
18 2013 BHP was primarily relying upon coal-fired plants for
19 a good portion of its power generation.

20 Is that accurate?

21 A. That's accurate.

22 Q. Would it also be accurate to say that the change
23 from coal to natural gas was in part motivated by federal
24 energy standards that were coming into play?

25 A. In part. And also in part by the nature of the load

1 that needed to be served.

2 Q. So does BHP have in place a plan for how they will
3 deal with future power generation if and when the current
4 power generation mode is no longer available or
5 acceptable?

6 A. Well, we're actually in a window where we have
7 adequate resources, and we believe we have access to the
8 power markets to make up any difference that may occur
9 for the next several years.

10 Our most recent integrated resource plan identified
11 a need for additional generation in the 2023-2024 time
12 frame. And so our expectation is that we now have
13 resources available to meet our customers' needs for the
14 next several years, absent no additional governmental
15 impositions that might cause that to change, and that we
16 actually have a relatively new generation fleet.

17 We believe other utilities will start to catch up
18 with us as they make changes in their generation fleet in
19 response to the governmental mandates and just the
20 general aging of the coal-fired power fleet and the
21 nuclear fleet in the United States.

22 So we believe we're near a period of time where
23 we'll have more rate stability. That doesn't mean that
24 our other costs don't go up and that we may not need to
25 be before this Commission again. But we've committed for

1 a couple of years to not come before the Commission with
2 a base rate increase.

3 MS. COLLIER: Thank you.

4 MR. SMITH: Staff.

5 MS. CREMER: Staff doesn't have any questions.

6 Thank you.

7 MR. SMITH: Commissioners.

8 Commissioner Fiegen.

9 COMMISSIONER FIEGEN: Just to clarify your
10 testimony once again, you started in 1982.

11 THE WITNESS: Yes.

12 COMMISSIONER FIEGEN: You talked about the
13 different rate cases that have been in front of the
14 Public Utilities Commission.

15 So if my math is right, are you telling me that
16 over the last 32 years there has been five rate cases in
17 front of the Commission?

18 THE WITNESS: Yes.

19 COMMISSIONER FIEGEN: Okay. Thank you. I just
20 wanted to clarify that because I couldn't quite tell
21 between '82 and '95.

22 Thank you.

23 MR. SMITH: Commissioner Hanson.

24 COMMISSIONER HANSON: I think I know the
25 answer -- I'm pretty sure I know the answer to this, but

1 I'm just curious.

2 Do you see any of the compromises at all that
3 you spoke to or that -- any of the others in any way
4 potentially affecting the residential rates?

5 THE WITNESS: Well, yes. We have a lower
6 revenue requirement which benefits all classes. We're
7 consistent with our allocation of the rate increase from
8 our application to the actual Settlement, and so the
9 residential class got a substantial benefit there.

10 The Commission Staff has had a very tight hold
11 on raising customer charges. You know, we're lucky to
12 get 50 cents a rate case, which means over my 30 years
13 that customer charge has not increased very much. And
14 those kinds of things have happened.

15 The residential customer also benefits from the
16 energy cost adjustment and the power marketing credit
17 guarantee that's provided for in that, along with some of
18 the sharing elements in that energy cost adjustment.

19 So yeah. I think there are significant benefits
20 that arise through a settlement that aren't available to
21 a Commission in just a straight litigated decision.

22 COMMISSIONER HANSON: Thank you.

23 MR. SMITH: Additional Commissioner questions?

24 Any follow-up to the Commissioner questions,
25 Mr. Moratzka?

1 MR. MORATZKA: None. Thank you.

2 MR. SMITH: Ms. Collier?

3 MS. COLLIER: None. Thank you.

4 MS. CREMER: Staff doesn't have any. Thank you.

5 MR. SMITH: Black Hills, do you have any
6 redirect?

7 MS. KOENIG: May we have a short break?

8 MR. SMITH: Sure. It's 21 after. How about
9 10:30?

10 MS. KOENIG: Sure. Thank you.

11 (A short recess is taken)

12 MR. SMITH: Black Hills, please proceed.

13 MS. KOENIG: Black Hills Power has no further
14 questions for Mr. White.

15 MR. SMITH: Okay. You may step down, Mr. White.

16 THE WITNESS: Thank you.

17 (The witness is excused.)

18 MR. SMITH: Call your next witness.

19 MR. MAGNUSON: The company, Black Hills Power,
20 has no more witnesses to call at this time.

21 We would rest.

22 MR. SMITH: Well, I think our evidentiary
23 portion of the hearing is at a conclusion.

24 At this point based on the decision we made at
25 the beginning, we'll turn to motions. And we have three

1 of them.

2 We have two Motions For Approval of Settlement
3 Stipulation, and we have the Motion of the Industrial
4 Interveners for a briefing schedule.

5 Commissioners, how do you want to handle --
6 which ones of those do you want to deal with?

7 I think one issue we need to know up front --
8 and I'm assuming I know the answer, but do you intend to
9 take this under advisement, or do you intend to take
10 action today?

11 CHAIRMAN NELSON: Normally I'm the guy who wants
12 to take action, but in this case I would take it under
13 advisement.

14 MR. SMITH: That appears to be a consensus of
15 the Commission.

16 My assumption then is that the two motions for
17 Settlement Stipulation approval will be delayed, action
18 on those, until a subsequent meeting of the Commission;
19 is that correct?

20 CHAIRMAN NELSON: Correct.

21 MR. SMITH: Okay. So let's turn to a Motion for
22 a briefing schedule.

23 And I guess question one is does the Commission
24 want posthearing briefing?

25 My assumption is yes, but I -- go ahead and

1 comment.

2 CHAIRMAN NELSON: My response to that would be
3 yes. And if I might just be a little proactive, you
4 know, I read your Motion. I'm not sure that we can live
5 with the schedule, however. You know, we need to have a
6 decision by the end of March.

7 I am looking at a Commission meeting that is
8 already scheduled for March 17 that might be a great time
9 for us to deal with this issue, and so a schedule that
10 would accommodate that meeting would be something that I
11 would support.

12 COMMISSIONER FIEGEN: And, Mr. Chairman, when
13 you say "decision by the end of March" you also mean that
14 our Order has to be written and filed. Because,
15 otherwise, the interim rates -- we have some issues with
16 interim rates.

17 MR. SMITH: Our statutory deadline is March 31.
18 So it's one year after the -- so we've got to be -- the
19 decision has to be out by then.

20 So just thoughts of the parties on what you'd
21 like to see in terms of a briefing schedule.

22 MR. MORATZKA: Could we perhaps modify the
23 Motion and maybe toss that out for the parties'
24 discussion?

25 MR. SMITH: Sure.

1 MR. MORATZKA: I think what we'd be willing to
2 do in recognizing the time frame and wanting to be sure
3 the Commission has adequate time, that it may be
4 beneficial just to have one set of simultaneous briefs
5 exchanged and try to pencil the date out -- or the due
6 date, you know, somewhere in between three and four weeks
7 prior to the March 17 date if that would give the
8 Commission enough time to review the parties'
9 submissions.

10 And then, you know, since we're only doing one
11 brief, if the Commission wants to put a cap on pages, I
12 don't know, something like 40, or no cap, we're open to
13 suggestions. But that was our thought after thinking
14 about this a little further.

15 Thank you.

16 MR. SMITH: Black Hills.

17 MR. MAGNUSON: Two things.

18 First, I would -- I think, before we take our
19 position on the briefing, I would like to hear from
20 Staff.

21 But, second, the Settlement Stipulation provides
22 for rates to be implemented for services rendered on or
23 before March 1 of 2015. And so by virtue of any action
24 that it's going to be taking place after March 1, it's
25 not in compliance with what we have with the Settlement

1 Stipulation.

2 With that being said, I think that the record is
3 complete. I think you have a full and complete record
4 before you.

5 The other thing I note is that in order for the
6 company to implement rates they need a certain period of
7 time to modify the bills and to get those rates into
8 their system so that it can go out to the customers.

9 So I'm not sure that I'm offering any solutions,
10 but I'm identifying some potential problems.

11 So with that being said, before we take a
12 position on briefing, I think I would like to hear what
13 Staff has to say.

14 MR. SMITH: Karen.

15 MS. CREMER: And with that I will -- my issue or
16 one of my issues is whenever this is heard, if there is a
17 modification to the Settlement Stipulation that invokes
18 Roman Numeral 2, paragraph 2, which allows the parties to
19 walk away from the Settlement Agreement, which means we
20 then go to hearing on the full case.

21 And Staff has not filed its testimony. Our
22 litigation position is considerably different than what
23 you've heard, you know, through modified testimony.

24 So you would have to hold a hearing and get your
25 decision out by March 17. I don't think, frankly, that

1 we can wait until the 17th of March or really even much
2 late in February because we have to hold a hearing
3 possibly, which would be a week-long hearing.

4 So those are my thoughts.

5 MR. SMITH: Ms. Collier.

6 MS. COLLIER: I understand the points that have
7 been raised. And even though we have not participated a
8 great deal in filings, what I have heard today includes
9 two -- at least two legal issues that I think absolutely
10 require briefing because they are legal issues, and this
11 is a factual evidentiary hearing.

12 And it seems to me that without the briefing
13 based upon all the testimony that's been here today, that
14 not only -- of course, I understand the possibility of a
15 party walking away but also of setting the scene for if
16 anyone were to file an appeal, not having a particularly
17 well prepared case ready.

18 It just seems to me like it really needs to be
19 addressed. And if the Commission wanted to limit issues
20 or pages as a way of addressing some of those things,
21 that would be another option.

22 But I know that the other Interveners have a
23 large number of issues. I'm speaking mostly of concern
24 because of what I've heard relating to at least two legal
25 issues.

1 CHAIRMAN NELSON: I have two questions.

2 Did we get an answer as to when the transcript
3 would be ready?

4 (Discussion off the record)

5 CHAIRMAN NELSON: February 6 if I'm looking at
6 this correctly.

7 The second question, how much time does the
8 company need to change their billing system?

9 COMMISSIONER FIEGEN: May I ask General Counsel
10 a quick question on how he interprets the law?

11 So I know on siting cases we have to be done
12 within a year. But I remember an Xcel rate case that we
13 had a few years ago that our order was not out within
14 that year and it extended I think into August or
15 something and it should have been done June 30.

16 And I can't remember all the circumstances, but
17 then the interim rate that Xcel put on, they could have
18 kept that entire amount but they graciously gave it back
19 to the consumers.

20 Could you please explain that one year and how
21 that Xcel Energy rate case was a little bit different?

22 MR. SMITH: Well, I don't know that I can
23 exactly remember that, to tell you the truth.

24 But, again, things are different too, though,
25 when you're in a situation where you don't have a

1 contested case situation. I mean, that changes things.
2 And, you know, here it's a little bit different, you
3 know, when we're in a contested situation.

4 But I think -- I mean, I really think it's
5 critical that we meet at least the one-year deadline, and
6 that's March 31.

7 The filing was on March 31, if I recall; right?

8 MR. MAGNUSON: That's correct.

9 MR. SMITH: So, I mean, what we're dealing with
10 again is this March 1 effective date that's specified in
11 the Stipulation. And, you know, again --

12 COMMISSIONER FIEGEN: So my question is we
13 haven't met it every time, but it's just because it
14 wasn't contested and the utility just worked with us?
15 Or --

16 MR. SMITH: Right. I think in some cases -- you
17 know, there's -- I think there's flexibility in the date
18 that it will go into effect. And we have even had
19 situations where the company has gone ahead with its --
20 its implementation prior to when we've actually got the
21 actual written decision out.

22 But here in this case, you know, they've
23 specified a March 1 date. And our legal deadline is
24 March 31. And I definitely think we need to comply with
25 that in this case.

1 Mr. Moratzka?

2 Oh --

3 CHAIRMAN NELSON: Can I get the answer to my
4 question?

5 MR. MAGNUSON: Thank you, Commissioner Nelson.

6 The response I got from my people is it has to
7 be implemented -- it has to be tested all before it can
8 be finally implemented. So approximately two to three
9 weeks, maybe as little as 10 days, but I believe that
10 would really be pushing it. I got a couple of different
11 opinions as I was sitting here.

12 CHAIRMAN NELSON: Well, the last thing we want
13 is for it to be implemented and then be incorrect and
14 that further confuses things.

15 MR. SMITH: Mr. Moratzka.

16 MR. MORATZKA: Just a quick point of
17 clarification.

18 Our understanding on the Order and Notice of
19 Hearing in this matter is that there were two issues
20 before the Commission. One, should the Proposed
21 Settlement be approved; and, two, as we're reading, if
22 not, then what rates, terms, and conditions shall the
23 Commission approve?

24 And our understanding would be then based on
25 everything that came in today and yesterday, the

1 Commission can either approve the Settlement or approve
2 the Settlement as modified. We don't need anymore
3 hearings, is our understanding.

4 MR. SMITH: Okay. Black Hills, do you have a
5 opinion on that?

6 MR. MAGNUSON: Well, the Settlement Stipulation
7 that's being requested for approval today includes the
8 provision that if there's any material modification of
9 that document by this Commission, that the parties have
10 the right to withdraw from that Settlement Stipulation.

11 Now what's the definition of material? We
12 wouldn't know that until we got some indication of what
13 that modification might be. But if it was material,
14 certainly the company or Staff could withdraw from that
15 Settlement Stipulation, which then means that it would go
16 to a fully litigated hearing.

17 Now with that being said, all of the evidence
18 that has come in today would stay in place. And so I'm
19 not saying that when I say fully litigated hearing there
20 probably wouldn't be a lot of additional evidence
21 necessary, but there would be some additional evidence
22 that would be necessary. Because just, as Karen Cremer
23 said, that their testimony on a fully litigated case is
24 going to be different than what they did here.

25 The same holds true for the company. Our

1 testimony would be different in a fully litigated case.

2 MR. SMITH: Thoughts, Commissioners, on what you
3 think. It's feasible?

4 COMMISSIONER FIEGEN: You know, I totally missed
5 that March 1 date in the things that I looked at. I just
6 overread it or assumed, made an assumption that it was
7 after March 31. Why would that be in a settlement, I
8 guess?

9 I guess maybe you don't have to answer that and
10 we're not at that point, but I just missed that.

11 MR. MAGNUSON: May I go ahead and address
12 Commissioner Fiegen's inquiry?

13 There's probably two main reasons why the
14 company is interested in getting a decision sooner
15 because of that March 1 date. Two reasons: Number one,
16 we have interim rates in place right now. The sooner the
17 actual final rates get implemented, the sooner we can
18 return money to the customers.

19 Second, the money that we're holding at the
20 present time has a carrying cost. We have to pay
21 interest back to those customers, and we'd prefer not to
22 have to pay anymore interest than has already been
23 accrued.

24 The other thing I might add, if I could, I don't
25 know what the Commission's schedule is, but there had

1 been discussion about briefing, that people want to get
2 the transcript. What I'm hearing is that a large portion
3 of the briefing is going to revolve around legal issues,
4 and I'm not sure necessarily the transcript is going to
5 be necessary for those particular legal issues.

6 So off the top of my head, I'm wondering about a
7 briefing deadline simultaneous briefs, no reply, of
8 February 11.

9 CHAIRMAN NELSON: If I might just inform, we
10 have a Commission meeting scheduled for the morning of
11 February 13.

12 I'm intrigued with your proposal. I might move
13 it up a day to the 10th instead of the 11th. But I'm
14 intrigued with your proposal, curious with what the other
15 Commissioners and parties believe.

16 MR. MORATZKA: While I understand and appreciate
17 the parties' concerns and the Commission's interest in
18 moving this matter along, I adamantly disagree with
19 counsel's statement that facts are irrelevant.

20 We have had extensive cross on this issue. And
21 so to say that the transcripts are unnecessary seems to
22 be a bit of a stretch.

23 And, you know, next Monday is the 2nd. The 6th
24 is a Friday. That leaves us less than a week and a half
25 to brief a case and get the transcript. Even if we're

1 only limited to the issue on -- the legal issue, there
2 are a number of adjustments that we've objected to that
3 relate to that interpretation.

4 And so fleshing -- you know, this isn't just a,
5 you know, write a memo on the meaning of the rule. It's
6 here's how the rule impacts the facts of this case.

7 I don't think the Commission should interpret
8 the ruling in a vacuum. And so I -- we're happy to move,
9 you know, the briefing, like I said, to late February,
10 but I don't understand bifurcating the issue or trying to
11 speed things along.

12 And to respond to the point about March 1, we
13 weren't party to the Settlement. It's really hard for us
14 to say why someone would choose an effective date for the
15 Settlement before the statutory time frame had arrived.
16 I don't understand.

17 But what I wondered if would be possible is the
18 effective date of the rates could stem backward to
19 March 1 and if the Settlement were approved so that we
20 weren't, I guess, feeling as though we had to reach an
21 answer to meet the terms of a Settlement that the
22 Interveners object to.

23 MR. SMITH: Black Hills, did you hear what he
24 had to say?

25 MR. MAGNUSON: Yes.

1 And perhaps Drew misunderstands me. I did not
2 say that the transcript was irrelevant, I think was his
3 phrase. The transcript is important.

4 But we certainly can begin preparing our briefs
5 on the legal issues well in advance of receipt of the
6 transcript.

7 The rates, as I understand them, subject to
8 correction, actually go back to October 1 of 2014,
9 whatever the final rates are. So that's what we're
10 looking at for refunds to customers. Yes. We are
11 concerned about the carrying costs for that.

12 I think generally speaking we would prefer to
13 see a decision by this Commission well before March 31
14 and respect the date of March 1, 2015, that was set forth
15 in the Settlement Stipulation.

16 MR. SMITH: I don't have my calendar here, my
17 work calendar. What do we have for available --

18 (A short recess is taken)

19 MR. SMITH: Since the evidentiary hearing is
20 over I am going to step down and turn the floor back over
21 to the Chairman.

22 CHAIRMAN NELSON: Gee, thanks, Mr. Smith.

23 I think, one piece of information that came to
24 light at least on this side of the table, Ms. Wittler
25 indicated she could probably have the transcript ready by

1 February 4.

2 With that, Commissioner Fiegen, do you want to
3 make a statement?

4 COMMISSIONER FIEGEN: Yes. I do have a
5 question.

6 CHAIRMAN NELSON: Certainly.

7 COMMISSIONER FIEGEN: I have a question of Staff
8 and Black Hills Power.

9 In your Settlement Agreement, which I did not
10 read this part of it, was the March 1 implementation
11 deadline -- or you were going to implement rates on
12 March 1.

13 Do you consider that a material change if we put
14 the Order out on March 31? Is that a material change in
15 your Settlement?

16 MR. MAGNUSON: Your first question whether or
17 not that is a material change, without taking a formal
18 position on that statement, we may not consider that a
19 material change.

20 However, with that being said, we've been
21 informed that typically we are allowed about 30 days to
22 test and implement billing rates. And so if that -- if
23 the decision gets pushed back to March 31, it will be
24 another 30 days before we can implement rates, and the
25 difference between the March 1 date and two months later

1 without taking any other costs into effect just because
2 carrying charge will probably be about \$40,000.

3 MR. SMITH: On implementation too, if -- I mean,
4 once the Commission has met and made its decision, even
5 though the Order will take a little time to get done,
6 would you not be able to begin your implementation once
7 you know what the decision is? Even though the Order
8 hasn't yet formally been issued.

9 MR. MAGNUSON: Thank you for that question.

10 If the Settlement were approved exactly as it is
11 set forth in the Settlement Stipulation and we received a
12 decision, an oral decision from this Commission, we would
13 immediately begin the process of switching over to those
14 new rates.

15 We would not necessarily wait for the written
16 Order for us to commence the process to get those rates
17 switched over. That would be contingent on approval of
18 the exact Settlement Stipulation as submitted.

19 If there are changes to that, then we have to
20 try and make any of those changes.

21 COMMISSIONER FIEGEN: So the answer to your
22 question would be if you implemented April 1 instead of
23 March 1, informally you're saying that that would not be
24 a material change. And so if we look at a Commission
25 meeting March 2 and give the Interveners ample time to

1 reply, that wouldn't be a material change.

2 MR. MAGNUSON: That's our informal or tentative
3 position at this point.

4 COMMISSIONER FIEGEN: Okay. Thank you.

5 And I'll make a comment whenever you want me to,
6 Mr. Chairman.

7 CHAIRMAN NELSON: Just our observation from this
8 side of the table. We know there was discussion among
9 the attorneys.

10 Anybody want to share anything that maybe
11 progressed?

12 MR. MORATZKA: I'll go ahead. I was trying to
13 move things forward by just tossing out a date. And I
14 understood that the transcripts would be ready February 6
15 so I thought 10 days, which would put it at February 16
16 would be doable. Then I realized that February 16 is
17 President's Day, and so I was suggesting to the parties
18 that perhaps February 17 would be a decent day for
19 simultaneous submission of briefs.

20 That was also on the assumption that that would
21 then give the Commission 30 days roughly to look at our
22 submissions at a March 17 hearing.

23 Now if the Commission's going to choose a
24 March 2 date, you know, I'm not sure if the Commission
25 feels comfortable with the February 17 exchange. I guess

1 I'd be all ears in listening.

2 CHAIRMAN NELSON: I want to just hold that
3 question. It's a valid question. I'm going to let
4 Ms. Cremer go, and then we'll come back to that.

5 MS. CREMER: Thank you.

6 This is Karen Cremer of Staff. And the problem
7 is that if on March 2 things were approved as filed, then
8 that will work.

9 If it's not approved as filed and it's a
10 material change and we all decide to go to hearing, that
11 becomes a real problem.

12 Now we can start writing our testimony now, I
13 guess, and get that ready to go so it can be filed, you
14 know, the middle of March. You can hold -- you know, if
15 you're going to hold your hearing the middle of March and
16 get a decision out.

17 But, again, that doesn't address the problem
18 that if you don't approve as filed. And I know
19 Mr. Moratzka has all sorts of argument as to why that's
20 not accurate, but I do disagree with him on that.

21 CHAIRMAN NELSON: Well, the fact of the matter
22 is we're in a box. And I'm not sure it's a box of
23 anybody's making but it's a reality and I don't know that
24 there's a perfect solution.

25 Let me go back to Mr. Moratzka's question. At

1 least from this Commissioner, if we were to deal with
2 this on March 2, February 17 would certainly be
3 acceptable to me.

4 And I'm seeing nods from fellow Commissioners.

5 That doesn't resolve Ms. Cremer's concern. But
6 I think it would be fair to say that, you know, if the
7 Settlement is not resolved on March 2, this thing blows
8 up anyway. I mean, it's going to be a slog. And that's
9 part of our job. And it's reality.

10 MR. MORENO: There is a solution. March 1 is a
11 Sunday. So wouldn't by operation of law the applicable
12 date be the next business day because March 1 is a
13 Sunday?

14 MR. MAGNUSON: Respectfully, no.

15 Rates are rates. They go by the day. It
16 doesn't go by the next official business day.

17 From the company's perspective, we would be
18 comfortable with the March 2 hearing date. And I respect
19 and agree with attorney Cremer's observations. But from
20 our standpoint, if this Commission were so inclined, we
21 would be okay with a March 2 hearing date. And then you
22 can work backwards from there on when you would like the
23 briefs.

24 MR. SMITH: Unless -- any thoughts?

25 COMMISSIONER HANSON: Any direction you take I

1 will support.

2 CHAIRMAN NELSON: Wow.

3 Okay. Cheri's nodding it's on the record. And
4 there was no expiration date on that statement.

5 COMMISSIONER FIEGEN: But I might appeal it.

6 COMMISSIONER HANSON: On this particular issue.

7 CHAIRMAN NELSON: Go ahead and ask your
8 question, and then I may ask for a moment of recess.

9 MR. RISLOV: The Settlement states that the
10 billings would be for service on and after. How many
11 days does that give you as compared to billings on and
12 after?

13 MR. WHITE: I'm not sure I know exactly how to
14 answer that question now that we have our advanced
15 metering infrastructure. And so we're billing
16 consistently throughout the month.

17 The rates become effective a certain date, and
18 the programming within the billing system will prorate
19 based upon that date. The refunds will be calculated
20 based upon whenever this starts.

21 And so when we agreed to the Settlement there
22 were two objectives, get lower rates for customers as
23 soon as possible and mitigate the 7 percent interest that
24 we pay on the over collection that's been happening since
25 October 1.

1 But it's only a couple of days difference
2 between the effective date and when the bills actually go
3 out.

4 CHAIRMAN NELSON: With that, I'm going to take a
5 five-minute recess.

6 Mr. Smith and Mr. Rislov, I'd like to see you in
7 the hallway.

8 (A short recess is taken)

9 CHAIRMAN NELSON: I'll call the meeting back to
10 order.

11 I move that we set a briefing schedule of
12 simultaneous briefs due on February 17 and that we take
13 up this matter in our regularly scheduled meeting on
14 March 2.

15 Discussion on the Motion.

16 If I might, Ms. Cremer, I'm very cognizant of
17 your concerns. Should the Settlement be rejected -- as I
18 said earlier, this thing's going to get messy
19 irregardless. If we were to reject it today, it's going
20 to get messy irregardless. And so I'm not sure that we
21 can fix that concern regardless of what we do.

22 In my mind, given the constraints that we've
23 got, this is the best that we can do. I appreciate the
24 company giving us a little bit of leeway on that March 1
25 deadline. That helps us greatly.

1 And I think we'll allow all parties their due
2 process if it were to thoroughly brief us on the issues
3 that they think we need to consider as we make this
4 decision.

5 Other comments on the Motion?

6 COMMISSIONER HANSON: Could I be off the record
7 for just a moment?

8 (Discussion off the record)

9 COMMISSIONER HANSON: I don't have anything to
10 add.

11 Thank you.

12 COMMISSIONER FIEGEN: Thank you, Mr. Chairman.

13 I do like your Motion. I want to make sure both
14 parties, all parties actually, have adequate time to
15 prepare. I mean, they've spent a lot of time on this
16 docket already.

17 And yes. You never know what a Commission will
18 decide, if they take the Settlement or not. And we are
19 in a situation where if we do not accept this Settlement
20 because of some issues that we've raised, we will have a
21 very, very busy March.

22 CHAIRMAN NELSON: This is a little bit out of
23 order, but I'm just going to quickly go around the room
24 to the attorneys.

25 Is there anything that you would dramatically

1 object to?

2 And I know your uncomforts, but is there
3 something that we absolutely need to know before we move
4 forward?

5 MR. MORATZKA: Not that I'm aware of.

6 Thank you very much.

7 CHAIRMAN NELSON: Mr. Magnuson?

8 MR. MAGNUSON: It's acceptable as proposed.

9 Thank you.

10 CHAIRMAN NELSON: Ms. Collier.

11 MS. COLLIER: I agree.

12 CHAIRMAN NELSON: Ms. Cremer.

13 MS. CREMER: Nothing from Staff.

14 CHAIRMAN NELSON: Thank you.

15 Any further discussion?

16 Seeing none, all those in favor will vote aye,
17 those opposed, nay.

18 Commissioner Hanson.

19 COMMISSIONER HANSON: Aye.

20 CHAIRMAN NELSON: Commissioner Fiegen.

21 COMMISSIONER FIEGEN: Fiegen votes aye.

22 CHAIRMAN NELSON: Nelson votes aye.

23 The Motion carries.

24 Is there anything else to be addressed for the
25 good of the order?

1 And the attorneys are in stunned silence.

2 Mr. Magnuson.

3 MR. MAGNUSON: Let's talk about the March 2.
4 That's an open meeting. I assume that's when you will
5 proceed with your deliberations?

6 CHAIRMAN NELSON: That's correct. That is a
7 meeting that is scheduled for 1:30 in the afternoon. We
8 may -- it will definitely be an afternoon meeting. We
9 may move it up to 1 o'clock to make sure we've got ample
10 time. But because it's a Monday, we typically go with an
11 afternoon type meeting.

12 And yes. I would anticipate that, barring
13 something unforeseen, that we would have our full
14 deliberation and a decision one way or the other that
15 day.

16 MR. MAGNUSON: Just looking forward, we
17 obviously have our full contingent of people here today.
18 We'll make a decision on who all comes, but I guess my
19 question is do you expect that you would be taking
20 testimony from any of our people that day? Or certainly
21 if you were going to take testimony, it would be from a
22 limited number, perhaps just one company
23 representative?

24 CHAIRMAN NELSON: Absolutely. I don't
25 anticipate that we would take testimony. At that point

1 we will have the briefs. We've got everything that we've
2 heard during these two days, and I would expect at that
3 point it will come down to any last-minute questions that
4 we may have of the attorneys.

5 And I'm going to look at my fellow Commissioners
6 to see if they disagree with that.

7 COMMISSIONER FIEGEN: And I would expect
8 Mr. White to be available. And if that's by phone or in
9 person. And then you would have access to all your
10 people that they could answer our questions, I would
11 assume.

12 So it doesn't mean that you have to be here in
13 person, but we just want to make sure that we have our
14 questions answered if needed.

15 MR. MAGNUSON: Very good. Thank you.

16 CHAIRMAN NELSON: And as far as Staff is
17 concerned, if Mr. Paulson's available in his suit coat
18 that day, that would be appropriate also.

19 MS. CREMER: I have a question then.

20 So if there's a decision on the 2nd and it
21 modifies the Settlement Stipulation, we have until the
22 3rd to say that's not material to the parties, or we have
23 until the -- is there a -- or, you know, is it just going
24 to be here it is -- I'm not sure what -- you know, do we
25 have an amount of time?

1 I think when it's been done in the past, and
2 someone can correct me, I think with Xcel possibly they
3 had three days or five days to decide if they thought
4 that was material or not. There will be some sort of
5 a --

6 CHAIRMAN NELSON: Yeah. I don't think we can
7 answer that today, other than I appreciate you raising
8 the question, and we'll be prepared to answer that at
9 that time. If that's necessary.

10 MS. CREMER: Okay. Thank you.

11 CHAIRMAN NELSON: Any other issues?

12 If not, I want to say to all of the attorneys
13 and everybody that's testified here today I greatly
14 appreciate the time and attention that you've given to
15 this matter. The decorum with which you have operated,
16 we appreciate that also. There were hard questions but
17 fair questions, and we appreciate that.

18 Is there a Motion?

19 COMMISSIONER HANSON: Mr. Chairman, I move to
20 adjourn.

21 CHAIRMAN NELSON: Move to adjourn.

22 All those in favor will vote aye. Those
23 opposed, nay.

24 Commissioner Hanson.

25 COMMISSIONER HANSON: Aye.

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CHAIRMAN NELSON: Commissioner Fiegen.
COMMISSIONER FIEGEN: Fiegen votes aye.
CHAIRMAN NELSON: Nelson votes aye.
We are adjourned.
(The hearing is adjourned at 11:25 a.m.)

(Staff Exhibit 2 is marked.)

(BHP Exhibit 78 is marked.)

1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY)

4

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

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 28th day of
11 January, 2015, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 4th day of
14 February, 2015.

15

16

17

18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter

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