

MONTANA-DAKOTA

UTILITIES CO.
A Division of MDU Resources Group, Inc.

400 North Fourth Street
Bismarck, ND 58501
(701) 222-7900

February 9, 2000

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

RECEIVED
FEB 10 2000
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: Waiver of FCA Rate 58
Docket No. EL00-_____

Montana-Dakota Utilities Co. (Montana-Dakota), a Division of MDU Resources Group, Inc., herewith seeks Commission approval of a waiver of Fuel Clause Rate 58. The waiver is requested to allow the pass-through, in the fuel cost adjustment (FCA), of arbitration costs that have resulted in savings to retail customers. The arbitration costs relate to the recently completed Coyote coal contract arbitration between three of the Coyote Station owners and Knife River Coal Mining Company (Knife River).

An arbitration decision between Knife River and the other three owners of the Coyote Station was confirmed by the North Dakota South Central District Court on January 5, 2000. Although Montana-Dakota was not a party to the arbitration, Montana-Dakota's retail electric customers will receive the same benefit as if Montana-Dakota had been a party to the arbitration. Knife River, in accordance with the arbitration decision, will remit the proper dollar amounts to Montana-Dakota for pass-through to Montana-Dakota's retail customers.

Montana-Dakota has paid approximately \$412,000 in arbitration costs related to its retail operations to date. These costs were billed by the Coyote operator for Montana-Dakota's 25% ownership of the Coyote Station. Montana-Dakota believes it proper to net the incurred costs of the arbitration against the savings in fuel costs produced by the arbitration. Absent the costly arbitration proceeding, such savings would not have materialized, i.e., there is a direct cause and effect. Granting the waivers sought herein to recover the arbitration costs through the FCA will be in the public interest. The customers are directly benefited by the pass-through of a net benefit of \$2,746,000 and the ongoing coal price reduction described below. Montana-Dakota and its shareholders' interests are upheld through the ability to recover the incurred costs of obtaining the benefits for retail customers. Absent the inclusion of arbitration costs in the FCA process, Montana-Dakota and its shareholders would be unfairly penalized and retail electric customers would receive a benefit while escaping the incurred cost of providing that benefit.

The total net benefit applicable to Montana-Dakota's retail electric customers is \$2,746,000. Attachment A shows the calculation of the net benefit. There is an amount related to the Heskett Station as the Heskett coal prices are tied to the Coyote coal agreement. Montana-Dakota proposes to include the \$2,746,000 net benefit in the first fuel adjustment filing following the issuance of an order granting the waiver sought herein. The approximate amount of the net benefit applicable to South Dakota electric retail customers is \$185,000.

In addition to the immediate benefit described above, current fuel costs already reflect the price reduction dictated by the arbitration agreement and that price reduction will provide future fuel cost savings to retail customers of about \$519,000 per year for the Coyote agreement. This represents a net present value savings of \$4.7 million over the remaining life of the Coyote coal agreement.

Please refer all inquiries regarding this filing to:

Mr. Donald R. Ball
Director of Regulatory Affairs
Montana-Dakota Utilities Co.
400 North Fourth Street
Bismarck, ND 58501

Also, please send copies of all written inquiries, correspondence and pleadings to:

Mr. Douglas W. Schulz
Senior Attorney
Montana-Dakota Utilities Co.
400 North Fourth Street
Bismarck, ND 58501

The original and ten (10) copies of this Letter of Transmittal has been provided to the South Dakota Public Utilities Commission in accordance with ARSD 20:10:13.27.

Montana-Dakota respectfully requests that this filing be accepted as being in full compliance with the filing requirements of this Commission.

Please acknowledge receipt by stamping or initialing the duplicate copy of this letter attached hereto and returning the same in the enclosed self-addressed, stamped envelope.

Sincerely,



Donald R. Ball
Director of Regulatory Affairs

Attachments

cc: D. Ball
D. Schulz

Montana-Dakota Utilities Co.
Net Benefit Amounts \$(000)

<u>DESCRIPTION</u>	<u>AMOUNT</u>
Coyote Station	\$1,842
Heskett Station	<u>1,316</u>
Total	\$3,158
<u>Adjustments</u>	
Arbitration Costs-Retail Portion	<u>(\$412)</u>
Total Net Benefit to Retail Customers	<u>\$2,746</u>

South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of February 10, 2000 through February 16, 2000

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact
Delaine Kolbo within five business days of this filing.
Phone: 605-773-3705 Fax: 605-773-3809

CONSUMER COMPLAINTS

CT00-036 In the Matter of the Complaint filed by Fred Prah on behalf of Windows, Inc., DeSmet, South Dakota, against Inacom Communications, Inc. and U S WEST Communications, Inc. Regarding Unauthorized Switching of Services.

On February 10, 2000, the Commission received a complaint regarding unauthorized switching of service against Inacom Corp. and U S WEST. Windows, Inc. discovered that their phone service had been switched from 6 phone lines with hunting capabilities to the U S WEST Centrex 21 system on December 2, 1999. The complainant alleges Inacom obtained their signature to "verify that US West was the phone carrier for Windows, Inc." not to authorize a change in their telephone service. The complainant is requesting "to see this practice ended by taking away the licenses of the companies misrepresenting themselves in this manner and to prosecute persons representing these companies."

Staff Analyst: Heather Forney
Staff Attorney: Karen Cremer
Date Docketed: 02/10/00
Intervention Date: NA

CT00-037 In the Matter of the Complaint filed by Cheryl Plucker, Chancellor, South Dakota, against MCI WorldCom Regarding Unauthorized Switching of Services.

On February 11, 2000, the Commission received a complaint from Cheryl Plucker, Chancellor South Dakota, against MCI regarding unauthorized switching of services. The complainant alleges that her long distance provider was switched to MCI without her authorization.

Staff Analyst: Keith Senger
Staff Attorney: Karen Cremer
Date Docketed: 02/14/2000
Intervention Date: N/A

EL00-003 In the Matter of the Filing by Montana-Dakota Utilities Co. for Approval of Waiver of Fuel Clause Rate 58 to Include Arbitration Costs.

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., petitions the South Dakota Public Utilities Commission for a waiver of Fuel Clause Rate 58. The waiver is

requested to allow the pass-through, in the fuel cost adjustment, of arbitration costs that have resulted in savings to retail customers.

Staff Analyst: Michele Farris
Staff Attorney: Camron Hoseck
Date Docketed: 02/10/00
Intervention Date: 03/03/00

EL00-004 In the Matter of the Filing by Northern States Power Company for Confirmation of Angus C. Anson Combustion Turbine Facility.

Northern States Power Company seeks confirmation from the South Dakota Public Utilities Commission that proposed improvements to the Angus C. Anson Combustion Turbine facility continues to meet the conditions upon which the permit, as ordered in Docket Number EL91-001 signed on May 18, 1993, was issued.

Staff Analyst: Michele Farris
Staff Attorney: Camron Hoseck
Date Docketed: 02/15/00
Intervention Date: 03/03/00

GE00-001 In the Matter of the Filing by NorthWestern Public Service Company for Approval of Revised Bill Format.

Application by NorthWestern Public Service to revise customer bill text and associated sample form tariffs, to add notice on bills of the change and request for waiver of 30 day notice of change to the public.

Staff Analyst: Dave Jacobson
Staff Attorney: Karen Cremer
Date Docketed: 02/10/00
Intervention Deadline: NA

NG00-001 In the Matter of the Application of South Dakota Intrastate Pipeline Company to Recover Additional Costs.

On February 15, 2000, the Public Utilities Commission received a petition from South Dakota Intrastate Pipeline Company (SDIPC) seeking an amendment to its rate schedule to provide for an increase in its transportation charged to its only customer, Montana-Dakota Utilities Company. SDIPC proposes to make the change in its rate effective as of April 1, 2000.

Staff Analyst: Heather Forney
Staff Attorney: Karen Cremer
Date Docketed: 02/15/00
Intervention Date: 03/03/00

TC00-012 In the Matter of the Filing by U S WEST Communications, Inc. for Approval of Revisions to its Exchange and Network Services Tariff.

On February 10, 2000, U S WEST Communications, Inc. (U S WEST) filed an application for approval of revisions to its exchange and network services tariff. The purpose of the filing is to clarify the meaning of a fully assisted operator call and a partially assisted operator call. Rates will not be increased by this filing.

Staff Analyst: Heather Forney
Staff Attorney: Camron Hoseck
Date Docketed: 02/10/00
Intervention Date: 03/03/00

TC00-013 In the Matter of the Application of Adelpia Business Solutions Operations, Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.

Adelpia Business Solutions Operations, Inc. is seeking a Certificate of Authority to provide resold and facilities-based local exchange telecommunication services in South Dakota. Adelpia does not intend to provide service in the territories of rural telecommunication companies.

Staff Analyst: Keith Senger
Staff Attorney: Camron Hoseck
Date Docketed: 02/10/00
Intervention Date: 03/3/00

TC00-014 In the Matter of the Application of Comm South Companies, Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.

Comm South Companies, Inc. seeks to provide resold basic local exchange telecommunication services in areas of South Dakota currently served by U S WEST Communications and any other relevant incumbent facilities-based LEC or other authorized local exchange carrier, excluding service areas of rural telephone companies. A majority of the applicant's customers are residential consumers who are unable to obtain local telecommunication services from other local exchange carriers due to credit problems or prior disconnection. Services will include local calling, access to 911 emergency and 800 number services to residential customers on a prepaid basis. Applicant does not permit its customers of its local service to access usage-based services, such as direct-dial long distance calls, collect calls, operator-assisted calls and third-number billed calls.

Staff Analyst: Keith Senger
Staff Attorney: Camron Hoseck
Date Docketed: 02/10/00
Intervention Date: 03/03/00

TC00-015 In the Matter of the Application of Shared Communications Services, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Shared Communications Services, Inc. (Shared) seeks a Certificate of Authority to provide resold interexchange telecommunications services. Shared intends to offer interLATA and intraLATA switched message toll service, 800, calling card, directory assistance and operator services throughout South Dakota.

Staff Analyst: Heather Forney
Staff Attorney: Camron Hoseck
Date Docketed: 02/14/00
Intervention Date: 03/03/00

TC00-016 In the Matter of the Application of TeleDistance, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Qwest Communications Corporation, LCI International Telecom Corp., Phoenix Network, Inc. and TeleDistance, Inc., all wholly-owned, indirect subsidiaries of Qwest Communications International Inc. (the "Parties") filed a request for a Certificate of Authority for TeleDistance, Inc. to provide resold and facilities-based interexchange telecommunications services throughout South Dakota. TeleDistance, Inc. intends to offer retail and wholesale switched interLATA (and in certain instances intraLATA) long distance services (including direct dialed 1+ service and toll free service), retail and wholesale private line services, frame relay/ATM/IP transmission services, prepaid calling card services and operator services. The Parties also request that the Commission grant a waiver of Administrative Rules of South Dakota Chapter 20:10:34:02.01, governing unauthorized changes in carriers.

Staff Analyst: Michele Farris
Staff Attorney: Camron Hoseck
Date Docketed: 02/14/00
Intervention Date: 03/03/00

TC00-017 In the Matter of the Application of Pathnet, Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.

Pathnet, Inc. is seeking a Certificate of Authority to provide resold and facilities-based local exchange telecommunication services in South Dakota. Pathnet intends to provide point to point private line and data services. They do not plan to provide basic local dial tone services to end-users.

Staff Analyst: Keith Senger
Staff Attorney: Camron Hoseck
Date Docketed: 02/15/00
Intervention Date: 03/3/00

TC00-018 In the Matter of the Application of Pathnet, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Pathnet, Inc. is seeking a Certificate of Authority to provide resold and facilities-based interexchange telecommunication services in South Dakota. Pathnet intends to provide point to point private line and data services.

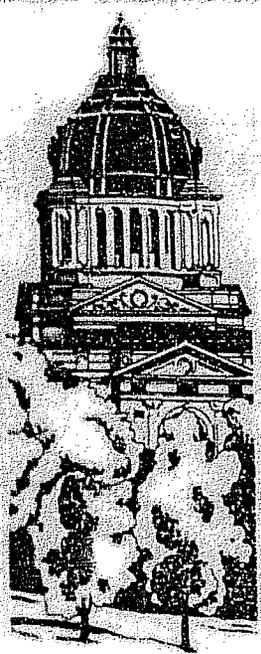
Staff Analyst: Keith Senger

Staff Attorney: Camron Hoseck

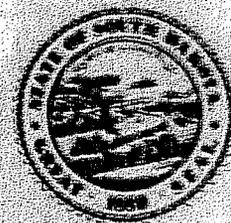
Date Docketed: 02/16/00

Intervention Date: 03/03/00

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South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

April 24, 2000

Mr. Todd J. Guerrero
Associate General Counsel
Otter Tail Power Company
P. O. Box 496
Fergus Falls, MN 56538-0496

Mr. Douglas W. Schulz
Senior Attorney
Montana-Dakota Utilities Co
400 North Fourth Street
Bismarck, ND 58501

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FAX (605)773-3809

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Warehouse Division
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FAX (605)773-3225

Consumer Hotline
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Internet Website
www.state.sd.us/puc/

♦
Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Laska Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

Harlan Best
Martin C. Bertmann
Sue Cichos
Karen E. Cremer
Terry Emerson
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Marlette Fischbach
Heather K. Forney
Shirleen Fugitt
Mary Giddings
Lewis Hammond
Leni Healy
Mary Healy
Camron Hoseck
Lisa Hull
Dave Jacobson
Jennifer Kirk
Bob Knadle
Delaine Kolbo
Charlene Lund
Gregory A. Rislov
Keith Senger
Rosalyn Ailts Wiest
♦

Mr. Alan D. Dietrich
Vice President - Legal Administration
NorthWestern Public Service
125 S. Dakota Avenue, Suite 1100
Sioux Falls, SD 57104-6403

Re: Dockets EL00-002, EL00-003, EL00-009
Fuel Adjustment Clause, Coyote Coal Arbitration

Gentlemen:

As a follow-up to our phone conversation of last week, transmitted please find a Stipulation to Consolidate Dockets.

Please note that a hearing time of Monday, May 15, has been obtained at 10:00 A.M. A notice of hearing should be forthcoming. This will be conducted in a hearing format and Staff intends to call Michele Farris as its witness.

If the Stipulation is drawn to your satisfaction, send me an original of the signature page with your signature on it. I will then attach all signature pages to the document to be filed and provide a complete copy to you.

Thank you.

Very truly yours,

Camron Hoseck
Staff Attorney

CH:dk
Enc.

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

IN THE MATTER OF THE PETITION OF OTTER)
TAIL POWER COMPANY FOR APPROVAL OF) **STIPULATION TO**
A DEPARTURE FROM ITS FUEL CLAUSE) **CONSOLIDATE DOCKETS**
ADJUSTMENT) **EL00-002**

IN THE MATTER OF THE FILING BY)
MONTANA-DAKOTA UTILITIES CO. FOR)
APPROVAL OF WAIVER OF FUEL CLAUSE) **EL00-003**
RATE 58 TO INCLUDE ARBITRATION COSTS)

IN THE MATTER OF THE PETITION OF)
NORTHWESTERN PUBLIC SERVICE FOR)
APPROVAL OF PLAN TO UTILIZE ITS) **EL00-009**
ADJUSTMENT CLAUSE TO CREDIT)
CUSTOMERS FOR ARBITRATION AWARD)
LESS COSTS)

The Staff of the South Dakota Public Utilities Commission and the electric utility companies captioned on this document stipulate that these three dockets may be consolidated inasmuch as there are common questions of law and fact.

By stipulating to this consolidation, it is understood and agreed that the consolidation is for the purpose of a hearing and no electric utility company, by agreeing to this consolidation, shall forfeit any rights it may have to present its case, examine and cross-examine witnesses, present arguments and authority unique to its case or otherwise act on its own behalf.

Dated this _____ day of April, 2000.

Todd J. Guerrero
Associate General Counsel
Otter Tail Power Company

Douglas W. Schulz
Senior Attorney
Montana-Dakota Utilities Co.

Alan D. Dietrich
Vice President - Legal Administration
NorthWestern Public Service

Camron Hoseck
Staff Attorney
South Dakota Public Utilities Commission

South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



April 27, 2000

Mr. Todd J. Guerrero
Associate General Counsel
Otter Tail Power Company
P. O. Box 496
Fergus Falls, MN 56538-0496

Mr. Douglas W. Schulz
Senior Attorney
Montana-Dakota Utilities Co
400 North Fourth Street
Bismarck, ND 58501

Mr. Alan D. Dietrich
Vice President - Legal Administration
NorthWestern Public Service
125 S. Dakota Avenue, Suite 1100
Sioux Falls, SD 57104-6403

Re: Dockets EL00-002, EL00-003, EL00-009
Fuel Adjustment Clause, Coyote Coal Arbitration

Gentlemen:

Enclosed for your files you will each find a copy of the Stipulation to Consolidate Dockets with reference to the above captioned matter.

Very truly yours,

Camron Hoseck
Staff Attorney

CH:dk
Enc.

Capitol Office
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Mary Healy
Camron Hoseck
Lisa Hull
Dave Jacobson
Jennifer Kirk
Bob Knadle
Delaine Kolbo
Charlene Lund
Gregory A. Rislov
Keith Senger
Rolayne Ailts Wiest

APR 27 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF OTTER TAIL POWER COMPANY FOR APPROVAL OF A DEPARTURE FROM ITS FUEL CLAUSE ADJUSTMENT)

STIPULATION TO CONSOLIDATE DOCKETS

EL00-002

IN THE MATTER OF THE FILING BY MONTANA-DAKOTA UTILITIES CO. FOR APPROVAL OF WAIVER OF FUEL CLAUSE RATE 58 TO INCLUDE ARBITRATION COSTS)

EL00-003

IN THE MATTER OF THE PETITION OF NORTHWESTERN PUBLIC SERVICE FOR APPROVAL OF PLAN TO UTILIZE ITS ADJUSTMENT CLAUSE TO CREDIT CUSTOMERS FOR ARBITRATION AWARD LESS COSTS)

EL00-009

The Staff of the South Dakota Public Utilities Commission and the electric utility companies captioned on this document stipulate that these three dockets may be consolidated inasmuch as there are common questions of law and fact.

By stipulating to this consolidation, it is understood and agreed that the consolidation is for the purpose of a hearing and no electric utility company, by agreeing to this consolidation, shall forfeit any rights it may have to present its case, examine and cross-examine witnesses, present arguments and authority unique to its case or otherwise act on its own behalf.

Dated this 24th day of April, 2000.

[Signature]
Todd J. Guerrero
Associate General Counsel
Otter Tail Power Company

Douglas W. Schulz
Senior Attorney
Montana-Dakota Utilities Co.

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

IN THE MATTER OF THE PETITION OF OTTER) TAIL POWER COMPANY FOR APPROVAL OF) A DEPARTURE FROM ITS FUEL CLAUSE) ADJUSTMENT))	STIPULATION TO CONSOLIDATE DOCKETS EL00-002
IN THE MATTER OF THE FILING BY) MONTANA-DAKOTA UTILITIES CO. FOR) APPROVAL OF WAIVER OF FUEL CLAUSE) RATE 58 TO INCLUDE ARBITRATION COSTS))	EL00-003
IN THE MATTER OF THE PETITION OF) NORTHWESTERN PUBLIC SERVICE FOR) APPROVAL OF PLAN TO UTILIZE ITS) ADJUSTMENT CLAUSE TO CREDIT) CUSTOMERS FOR ARBITRATION AWARD) LESS COSTS))	EL00-009

The Staff of the South Dakota Public Utilities Commission and the electric utility companies captioned on this document stipulate that these three dockets may be consolidated inasmuch as there are common questions of law and fact.

By stipulating to this consolidation, it is understood and agreed that the consolidation is for the purpose of a hearing and no electric utility company, by agreeing to this consolidation, shall forfeit any rights it may have to present its case, examine and cross-examine witnesses, present arguments and authority unique to its case or otherwise act on its own behalf.

Dated this 25th day of April, 2000.

Todd J. Guerrero
Associate General Counsel
Otter Tail Power Company



Douglas W. Schulz
Senior Attorney
Montana-Dakota Utilities Co.



Alan D. Dietrich
Vice President - Legal Administration
NorthWestern Public Service division of
Northwestern Corporation



Camron Hoseck
Staff Attorney
South Dakota Public Utilities Commission

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

IN THE MATTER OF THE PETITION OF OTTER) TAIL POWER COMPANY FOR APPROVAL OF) A DEPARTURE FROM ITS FUEL CLAUSE) ADJUSTMENT)	ORDER FOR AND NOTICE OF HEARING EL00-002
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IN THE MATTER OF THE FILING BY) MONTANA-DAKOTA UTILITIES CO. FOR) APPROVAL OF WAIVER OF FUEL CLAUSE) RATE 58 TO INCLUDE ARBITRATION COSTS)	EL00-003
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IN THE MATTER OF THE PETITION OF) NORTHWESTERN PUBLIC SERVICE FOR) APPROVAL OF PLAN TO UTILIZE ITS) ADJUSTMENT CLAUSE TO CREDIT) CUSTOMERS FOR ARBITRATION AWARD) LESS COSTS)	EL00-009
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On January 27, 2000, the Public Utilities Commission (Commission) received a petition from Otter Tail Power Company (Otter Tail) for permission to depart from the specific wording of its Fuel Adjustment Clause to allow the pass-through of litigation expenses that have resulted in ratepayer savings. An intervention deadline of February 18, 2000, was set by the Commission. No petitions to intervene were filed.

On February 10, 2000, the Commission received a petition from Montana-Dakota Utilities Co. (MDU) for approval of a waiver of Fuel Clause Rate 58. The petition stated that "[t]he waiver is requested to allow the pass-through, in the fuel cost adjustment (FCA), of arbitration costs that have resulted in savings to retail customers." An intervention deadline of March 3, 2000, was set by the Commission. No petitions to intervene were filed.

On March 20, 2000, the Commission received a petition from NorthWestern Public Service (NWPS) for approval of its proposed plan to credit \$682,996.65 to its South Dakota retail electric customers. The credit is due to an arbitration proceeding involving a lignite coal contract. The petition stated that the "plan would utilize its adjustment clause to credit to its retail electric customers (all of whom it serves in South Dakota) the retail portion of the arbitration damage award and interest, less its costs related to its efforts in receiving not only the damage award, but also ongoing coal price reduction and other favorable Coal Agreement provision changes." An intervention deadline of April 7, 2000, was set by the Commission. No petitions to intervene were filed.

On April 27, 2000, the Commission received a Stipulation to Consolidate Dockets. The stipulation stated that Otter Tail, MDU, NWPS, and Commission Staff had agreed to consolidate the dockets due to common questions of law and fact.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 49-34A-2, 49-34A-3, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-10, 49-34A-11, 49-34A-13, 49-34A-19.2, 49-34A-25, 49-34A-26, and 49-34A-27.

The Commission approves the consolidation of the dockets. A hearing shall be held on May 15, 2000, beginning at 10:00 o'clock A.M., CDT, in Room 412, State Capitol Building, 500 E. Capitol Pierre, South Dakota. All persons testifying will be subject to cross-examination by the parties.

The issue at the hearing is whether the Commission shall approve, in whole or in part, the petitions filed by Otter Tail, NWPS, and MDU.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Commission shall determine whether to approve, in whole or in part, the petitions filed by Otter Tail, NWPS, and MDU. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that consolidation of the above listed dockets for purposes of the hearing is granted; and it is

FURTHER ORDERED, that a consolidated hearing shall be held at the time and place specified above on the issue of whether the Commission shall approve, in whole or in part, the petitions filed by Otter Tail, NWPS, and MDU.

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

Dated at Pierre, South Dakota, this 4th day of May, 2000.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Melanie Kolbo</u>
Date:	<u>5/4/00</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

RECEIVED

JUN 08 2000

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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IN THE MATTER OF THE PETITION OF OTTER
TAIL POWER COMPANY FOR APPROVAL OF
A DEPARTURE FROM ITS FUEL CLAUSE ADJUSTMENT

EL00-002

IN THE MATTER OF THE FILING BY
MONTANA-DAKOTA UTILITIES CO. FOR
APPROVAL OF WAIVER OF FUEL CLAUSE
RATE 58 TO INCLUDE ARBITRATION COSTS

EL00-003

IN THE MATTER OF THE PETITION OF
NORTHWESTERN PUBLIC SERVICE FOR
APPROVAL OF PLAN TO UTILIZE ITS
ADJUSTMENT CLAUSE TO CREDIT
CUSTOMERS FOR ARBITRATION AWARD
LESS COSTS

EL00-009

ORIGINAL

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Transcript of Proceedings
May 15, 2000

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BEFORE THE PUBLIC UTILITIES COMMISSION,
JIM BURG, CHAIRMAN
PAM NELSON, VICE CHAIR
LASKA SCHOENFELDER, COMMISSIONER

COMMISSION STAFF
Rolayne Ailts Wiest
Greg Rislov
William Bullard Jr.

*Exhibits to
Transcript
in EL00-002*

Reported By Cheri McComsey Wittler, RPR

PRECISION REPORTING
L I M I T E D

I N D E X

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<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Dennis Bowman	9	19,24	24	--
Bernadeen Brutlag	30	--	48,53	--
Richard Green	58	74	70	--
Jeff Decker	76	82	--	--
Donald R. Ball	94	--	--	--
Michele Farris	105	--	--	--

<u>Rebuttal Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Dennis Bowman	56	--	--	--
Richard Green	88	--	92	--
Jeff Decker	126	--	--	--
Bernadeen Brutlag	130	--	--	--
Donald R. Ball	131	--	--	--
Michele Farris				

<u>Exhibit Nos.</u>	<u>M</u>	<u>Q</u>	<u>R</u>
1 - Otter Tail/Knife River Coal Contract Arbitration	4	33	33
2 - Decision from Minnesota PUC	4	44	44
3 - North Dakota Decision	4	44	44
4 - Original Petition	4	44	44
5 - Filing amending Original Petition	4	44	44
6 - List of Costs by Vendor	56	57	57
7 - Revised Petition	54	81	80
8 - Arbitrator's Decision	82	82	82
9 - Arbitrator's Decision	82	82	82

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CHAIRMAN BURG: Good morning. We'll begin the hearing for Docket EL00-002, EL00-003, and EL00-009 In The Matter Of The Petition Of Otter Tail Power Company For Approval Of A Departure From Its Fuel Clause Adjustment, In The Matter Of The Montana-Dakota Utilities Co. For Approval Of Waiver Of Fuel Clause Rates To Include Arbitration Costs, and In The Matter Of The Petition Of Northwestern Public Service For Approval Of Plan To Utilize Its Adjustment Clause To Credit Customers For Arbitration Award Less Costs.

The time is approximately 10:00 a.m., the date is May 15, 2,000, and the location of the hearing is Room 412, State Capitol, Pierre, South Dakota. I am Jim Burg, Commission Chairman. Commissioners Laska Schoenfelder and Pam Nelson are also present. I am presiding over the hearing.

This hearing was noticed pursuant to Commission's Order for and Notice of Hearing issued May 4, 2000. The issue at this hearing is whether the Commission shall approve in whole or part the Petitions filed by Otter Tail, Northwestern Public Service, and MDU.

All parties have the right to be present and

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MR. GERDES: I'm David Gerdes of May, Adam, Gerdes & Thompson, Pierre, South Dakota, appearing as counsel for Montana-Dakota Utilities Company.

MS. AILTS WIEST: Commission staff.

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

MS. AILTS WIEST: Any motions before we get started? Any parties wish to make any opening statements?

MR. GUERRERO: We're here this morning to seek recovery of certain litigation and arbitration costs involved when the partners of the Big Stone Power Plant litigated a coal contract with the Knife River Coal Company.

The basis of our request is a Petition that Otter Tail filed with the Commission dated January 26 of 2000. Otter Tail will present two witnesses for the Commission's consideration this morning.

The first is Mr. Dennis Bowman. Mr. Bowman is a manager in our power production area, and Mr. Bowman was involved in the underlying dispute. The second witness that Otter Tail will present is Ms. Bernadeen Brutlag. Ms. Brutlag is the manager

1 MS. AILTS WIEST: Okay. Mr. Hoseck,
2 do you have anything?

3 MR. HOSECK: No opening statement.

4 MS. AILTS WIEST: Procedurally then
5 what I was anticipating is that Otter Tail could
6 present its witnesses, NWPS could present any
7 witnesses, MDU would present its witness, and then
8 staff would follow up.

9 Would that be correct, Mr. Hoseck? You don't
10 want staff to come after each?

11 MR. HOSECK: No.

12 MS. AILTS WIEST: We'll get
13 started. Mr. Guerrero, you can call your first
14 witnesses.

15 MR. GUERRERO: Otter Tail would call
16 Mr. Dennis Bowman to the stand, please.

17 DENNIS BOWMAN,
18 called as a witness, being first duly sworn in the above
19 cause, testified under oath as follows:

20 DIRECT EXAMINATION

21 BY MR. GUERRERO:

22 Q Would you state your name and spell it, please.

23 A Dennis Bowman, B-O-W-M-A-N.

24 Q Please tell the Commission where you work.

25 A I work for Otter Tail Power Company in Fergus Falls.

1 auditing, accounting, transportation, data processing.

2 Q Could you give us a little bit of your educational
3 background, please.

4 A I have a B.A. in accounting, and I'm also a certified
5 management accountant.

6 Q Mr. Bowman, are you familiar with the facts underlying
7 the dispute between the Big Stone partners and the
8 Knife River Company?

9 A Yes, I am.

10 Q Please describe the Coyote Power Plant.

11 A The Coyote Plant is a sister plant to the one at
12 Big Stone City. It's about the same size. The
13 difference primarily is the Coyote Plant is a mine mouth
14 plant in North Dakota located adjacent to the
15 Knife River mine. It essentially marries the mine and
16 the plant or the life of the plant because of the
17 location.

18 MR. GUERRERO: Counsel, could we go
19 off the record for just a second, please.

20 MS. AILTS WIEST: Go ahead.

21 (Discussion off the record)

22 MR. GUERRERO: If I could make a
23 statement on the record, earlier I had indicated
24 that the underlying dispute involved the partners
25 of the Big Stone Power Plant. I should have

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dispute with the partners and the Knife River Coal Company?

A When the contract was signed an addendum was signed at the same time which essentially required that the pricing mechanism within the contract would result in prices that were comparable to similar mines developed at similar timeframes. It's the divergence from the pricing procedures compared to the comparable prices that became an issue.

Q So there's a provision in the contract, if I can paraphrase, Mr. Bowman, a provision of the contract which allows a pricing of that contract to be compared against similar pricing for similar mines?

A That's correct.

Q And the purpose of that comparison is what?

A It was a check on the actual pricing mechanism to make sure it didn't get out of line with what was happening in the industry.

Q Tell us a little bit about the arbitration process itself. How did that begin?

A The companies had been meeting for several years, a number of meetings attempting to negotiate something. There was very limited progress on that. Initially a suit was filed in North Dakota court. The Court Order was to take it to arbitration first.

1 through discovery. It was certainly a very formal
2 process.

3 Q Do you know how to spell Donelan, Cleary?

4 A D-O-N-E-L-A-N, C-L-E-A-R-Y.

5 Q You mentioned, Mr. Bowman, that the arbitration panel
6 did ultimately make a decision in this process. Can you
7 describe that decision?

8 A The initial decision in March of '99 adjusted prices
9 from the first quarter of -- from the fourth quarter of
10 '96 through the decision, established two prices for
11 that time frame. The final price, I think it's in some
12 of the filings, was \$10.20, approximately \$1 less than
13 the price we were charged at that time by Knife River.

14 The Order also requested that the parties
15 modify the pricing procedure within the contract to
16 something that would result in the \$10.20. There is
17 also a profit limitation section in the contract and
18 that was also requested to be modified.

19 We met with Knife River several times, did not
20 come to a mutual agreement on how those things should be
21 modified. It went back to the panel. The panel
22 essentially accepted Knife River's pricing procedure
23 modification and accepted the profit limitation
24 recommendations of the plant owners.

25 Q Thank you. One of the questions that the partners asked

1 you stated that the consolidation was for the
2 purposes of the hearing only.

3 I guess my question to the parties is this
4 witness has just gone through some of the
5 background material and so I'm just anticipating
6 writing orders and the question is can the
7 testimony from other witnesses be used in --

8 For example, can the testimony of Mr. Bowman
9 be used in decisions regarding NWPS and MDU, or are
10 all the witnesses going to separately go through
11 all the procedures so I have a complete record each
12 time?

13 MR. DIETRICH: On behalf of
14 Northwestern, we have no problem using the
15 testimony from Mr. Bowman as evidence in the
16 EL00-009. In fact, it may shorten the testimony
17 that we provide rather than repeat the same
18 procedural background.

19 MS. AILTS WIEST: Would that apply
20 to any of the witnesses or just Mr. Bowman's
21 testimony?

22 MR. DIETRICH: Certainly any of the
23 witnesses presenting evidence here.

24 MS. AILTS WIEST: Mr. Gerdes?

25 MR. GERDES: I would agree to that.

1 questions, Mr. Bowman.

2 CROSS-EXAMINATION

3 BY MR. HOSECK:

4 Q How many partners are there in the Coyote Plant?

5 A Four partners.

6 Q How many participated in the arbitration?

7 A Three.

8 Q Who did not participate in the arbitration?

9 A Montana-Dakota Utilities did not take an active part in
10 the arbitration case.

11 MR. HOSECK: Okay. Thank you.

12 MS. AILTS WIEST: Commissioners?

13 CHAIRMAN BURG: I have none.

14 COMMISSIONER NELSON: I have none.

15 MR. RISLOV: Mr. Bowman, you
16 referred to that contract as a life of mine
17 contract. Did you mean a life of plant contract?

18 THE WITNESS: Yes, I did.

19 MR. RISLOV: Thank you.

20 MS. AILTS WIEST: I had a question
21 about the Petition. You stated that you're also
22 asking our jurisdictions for similar treatment but
23 if the decision is inconsistent, the method to
24 allocate costs would be an E2 energy factor from
25 1998, cost of service, and I'm paraphrasing here.

1 was with respect to the arbitration decision. Did
2 the arbitrator itself allocate the cost of
3 litigation to the parties involved?

4 THE WITNESS: No, they did not.

5 MS. AILTS WIEST: How was that
6 determined?

7 THE WITNESS: Based on plant
8 ownership percentage.

9 MS. AILTS WIEST: So all the
10 costs -- it was a straight percentage based on the
11 percentages you gave at the beginning of your
12 testimony, for example, Otter Tail assumed
13 35 percent of total costs?

14 THE WITNESS: That's correct.

15 MS. AILTS WIEST: That would be for
16 the arbitration panel costs as well the attorneys
17 fees and expert witnesses?

18 THE WITNESS: That's correct.

19 MS. AILTS WIEST: And were all of
20 those costs common costs, the three that I just
21 mentioned?

22 THE WITNESS: Certainly the bulk of
23 them. There were other attorney fees that
24 Otter Tail had that were considered in-house
25 expenses. And I can't speak to the other

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MS. AILTS WIEST: Right. I

understand the point. I'm just trying to figure this out procedurally. And if this doesn't work out that we can't use other witness's testimony, then, I mean, the solution would be, of course, for your witness to go through all the facts on their side.

MR. GERDES: My only point is I think that's cured. If we do have some cross-examination -- and there's one question I would like to ask. But it would seem to me we should be entitled to cross-examine the witness.

CHAIRMAN BURG: Let me ask it this way. Not being an attorney, it appears to me theirs could be examination, not cross-examination, because they're taking them as a witness.

MS. AILTS WIEST: I'm not sure that was his point, that he was taking him as his own witness.

MR. GUERRERO: Counsel, I have no objection.

MS. AILTS WIEST: I guess it would be up to Otter Tail, if you had any problems with other parties asking questions of your witness even though they're not technically parties in your

1 the pricing procedure for Otter Tail maybe equates to
2 \$750,000 a year.

3 Q Why is it an estimate?

4 A We're not calculating what the old procedure would have
5 given us. Also the old procedure was not being followed
6 in that there were some arbitrary price reductions
7 granted by the coal supplier.

8 Q Is it also true that you don't know how much fuel you'll
9 use?

10 A That's correct.

11 MR. GUERRERO: No further
12 questions.

13 MS. AILTS WIEST: Any other
14 questions of this witness?

15 CHAIRMAN BURG: Maybe I have some
16 You indicated that the arbitrator recommended a
17 change in how it's calculated in the future. Is
18 that correct?

19 THE WITNESS: That's correct.

20 CHAIRMAN BURG: Is that to reflect
21 the fact that we got into this problem because it
22 may not have been adequately -- is it more
23 definitive, or just what was their
24 recommendations?

25 THE WITNESS: They established a

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THE WITNESS: During the arbitration procedure what each party considered comparable prices were forwarded, and the panel selected the comparable prices. They did not order comparable prices on a go-forward basis.

They ordered the changing of the pricing procedures so at least at the time of the order were on a comparable basis. Whether the revision of those pricing procedures, go-forward basis, will result in comparable, we'll learn that in the future.

MS. AILTS WIEST: When were the pricing procedures originally established?

THE WITNESS: Perhaps in 1978, '79

MS. AILTS WIEST: So actually there were pricing procedures in the original contract?

THE WITNESS: That's correct.

MS. AILTS WIEST: So it was more than the prices would just be comparable? There were actually procedures in place in the contract?

THE WITNESS: There are procedures. It's the addendum that was signed when the contract was signed that brought in the comparable issue.

MS. AILTS WIEST: But the pricing procedures were still in place, and the addendum

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in the future that's \$10.20?

THE WITNESS: I don't think we do.
If it does get out of line and we can't
renegotiate, then we'll have to see what kind of
action is taken from there.

COMMISSIONER NELSON: So you're
hoping you'll just be able to negotiate this
flexible number?

THE WITNESS: That's correct.

MR. RISLOV: If I could, did you say
the 42 and 30 represented multipliers; is that
correct?

THE WITNESS: That's correct. They
are multipliers applied to cover costs that are not
identified, to cover profit.

MR. RISLOV: So is there a name for
this multiplier?

THE WITNESS: It's called the price
component multiplier.

MR. RISLOV: And the basis for that
price component multiplier, I assume, is some type
of overhead, or it is designed to achieve some type
of overhead coverage; is that correct?

THE WITNESS: That's correct.

MR. RISLOV: Thank you.

1 Q Please briefly state your educational and professional
2 background.

3 A I hold a bachelor's degree in accounting from
4 Moorhead State University, and I am a certified public
5 accountant in Minnesota.

6 Q Ms. Brutlag, are you familiar with the facts underlying
7 this dispute?

8 A Yes, I am.

9 Q Okay. Ms. Brutlag, I want to ask you a couple of
10 questions about the fuel adjustment clause generally for
11 the record. Are you familiar with the Otter Tail Power
12 Company Fuel Adjustment Clause?

13 A Yes, I am.

14 Q Could you explain briefly how that works?

15 A Briefly, fuel clause adjustments were put in place so
16 that fuel and purchase power, which is a utilities
17 largest single expense -- so that changes in that
18 expense can be passed through to customers without
19 having to go in to change base rates.

20 Basically, what we do is compare in any given
21 period of time the total of purchase power and fuel
22 that's used for serving our retail customers, and we
23 calculate that and compare it with the amount that's in
24 our base rates in our last rate case.

25 The difference either plus or minus is then

1 filing and then we amended that filing because of later
2 adjustments that came to light and this is a summary of
3 those items.

4 Q Okay. Who prepared this document?

5 A I did.

6 Q Was it prepared by you in the regular course of your
7 employment?

8 A Yes, it was.

9 Q And is this a document that is similar in nature to
10 documents that are already part of this record?

11 A Yes, it is.

12 MR. GUERRERO: I will offer this as
13 Otter Tail Exhibit 1.

14 MS. AILTS WIEST: Do you have a copy
15 for the Commissioners?

16 MR. GUERRERO: Yes. I have passed
17 out a copy to all parties.

18 MS. AILTS WIEST: Okay. Is there
19 any objection?

20 MR. HOSECK: No objection.

21 MS. AILTS WIEST: If not, it will be
22 admitted.

23 Q Ms. Brutlag, I was wondering if you could just walk us
24 through this Exhibit 1 very briefly for the benefit of
25 the Commissioners.

1 of the output from the plant during that time was really
2 sold into the power pool. They weren't used for retail
3 customers.

4 So we then determined that line 7 is the
5 89 percent that had to do with serving our retail load.
6 So in all cases we adjusted both the arbitration cost
7 and the arbitration award to reflect that. And so on
8 line 9 what you see there is the arbitration award of
9 \$2.576 million. The arbitration costs would be \$884,341
10 for a net award of \$1,692,170.

11 And of that then I did have a footnote 3 just
12 to show an estimated portion of that award that would go
13 to each state. And you can see there that South Dakota
14 is about 7 percent.

15 Q Explain that footnote 3 just a little bit more, if you
16 could, in terms of allocations and how Otter Tail
17 allocates for the purposes of three jurisdictions.

18 A Okay. We develop allocation factors every year based on
19 demand, energy, and customer count. What this is based
20 on is actually 1998 allocation factors for one of the
21 energy factors -- there are actually two energy
22 factors -- but one of the energy factors which we would
23 use to allocate fuel in our cost of service since this
24 is related to fuel. These amounts were for 1998. They
25 change slightly each year.

1 coal during this period of time. And, in our view, it
2 is a cost of fuel and would be required to be passed
3 through the fuel clause aside from any order of the
4 Commission.

5 Q So the net award actually acts as a credit to rate
6 payers; correct?

7 A It will be a credit to rate payers, yes.

8 Q Ms. Brutlag, earlier you had heard testimony from
9 Mr. Bowman regarding the \$750,000 reduction.

10 A Yes.

11 Q Explain how that amount will affect rate payers.

12 A That amount is already affecting rate payers in that --
13 to the extent that our month-by-month cost of coal for
14 the Coyote Plant is lower than it was before this
15 effort. It results in a larger credit to customers
16 every month.

17 Our fuel clause has been negative ever since
18 our last rate case in the mid '80s. It is a credit to
19 the customers every month on their bill, and this just
20 means it will be a larger credit. That is already
21 taking effect today.

22 MR. GUERRERO: I don't have any
23 further questions. Thank you.

24 MS. AILTS WIEST: Mr. Dietrich?

25 MR. DIETRICH: No questions.

1 What we end up doing as a practical matter is
2 we put the total dollar amount of whatever
3 South Dakota would allow as a credit to the fuel
4 costs and as a double-check once it's all flowed
5 through we take a look at the dollar amount that
6 actually goes to South Dakota customers and it
7 should be this 7 percent factor.

8 And I have done some calculations to show that
9 it does work.

10 MS. AILTS WIEST: And then on the
11 Petition in one of your footnotes in Page 8 you
12 stated that you intended to wait until receiving
13 orders from each of the jurisdictions before making
14 any disposition of the award. Has that position
15 changed?

16 THE WITNESS: We would still like to
17 do that but Minnesota has already ruled.
18 North Dakota has had their informal hearing and
19 will not actually have it on their final agenda
20 until May 26. But we have a pretty good indication
21 of what it would be.

22 The reason we said that primarily was because
23 if we use that allocation factor, we want to have
24 all states being -- you know, so we'd be whole and
25 all the customers would be whole on the allocation

1 same. So we will be able to do it independently.
2 It really doesn't affect -- the other states really
3 don't have an effect on this.

4 MS. AILTS WIEST: How did Minnesota
5 rule? Can you explain that ruling?

6 THE WITNESS: Minnesota ruled that
7 the majority of the costs were recoverable. What
8 they attempted to do was determine how much dollar
9 amount of attorneys fees we had in base rates back
10 when we had our last rate case.

11 And they made an adjustment that basically
12 would recognize us as an extraordinary expense, but
13 that some dollar amount would be in base rates.

14 MS. AILTS WIEST: So they did
15 disallow some costs; is that correct?

16 THE WITNESS: That's correct.

17 MS. AILTS WIEST: Would those costs
18 be associated purely with in-house counsel?

19 THE WITNESS: They did not specify
20 which costs they were disallowing. They did it
21 more as a percentage, as a ratio.

22 MS. AILTS WIEST: What was that
23 based on?

24 THE WITNESS: Discussions with staff
25 and trying to come up with a way to simulate the

1 comfortable with how the Commission is viewing
2 this. But realistically we don't know their final
3 vote until after that hearing.

4 MS. AILTS WIEST: How do you think
5 they're going to rule?

6 THE WITNESS: Two of the
7 Commissioners stated quite clearly they supported
8 this, and the third one is still thinking about it.

9 MS. AILTS WIEST: Can we get a copy
10 of the Minnesota decision? Can you late file that
11 or file that?

12 MR. GUERRERO: Counsel, we are still
13 actually waiting for a written order, but I will
14 file that as soon as that decision is reached.

15 MS. AILTS WIEST: Why don't we
16 reserve Exhibit No. 2 for that. I don't know when
17 the Commission is going to make a decision, but
18 could we have a copy of the North Dakota decision
19 as soon as that is filed?

20 MR. GUERRERO: Exhibit No. 3.

21 MS. AILTS WIEST: Okay. Another
22 thing I was going to mention is I know you
23 referenced the application in the record, and I
24 just wanted to state that right now none of the
25 applications or the amendments, amended

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outside counsel? Could we get that into the record?

THE WITNESS: I think I have -- yes. I have a list of costs by vendor which we'd have to make copies of, but we can submit that.

MS. AILTS WIEST: Okay. On that would it be clear as to which were in-house and --

THE WITNESS: There is a relatively small dollar amount of \$33,196 that is Otter Tail Power labor. I don't know whether that's attorneys fees or some other labor of people that were involved in that case. By far the majority of the vendors on here are outside vendors, either attorneys or other consultants Mr. Bowman could discuss. I'm not familiar enough with who these various entities are.

MS. AILTS WIEST: Okay. We'll get copies made of that. Can we mark that as Exhibit 6? Besides the costs listed on that, what additional costs are you seeking to recover?

THE WITNESS: This is the total of the cost.

MS. AILTS WIEST: This is all the cost?

THE WITNESS: This shows the

1 share?

2 THE WITNESS: That's correct.

3 COMMISSIONER SCHOENFELDER: Thank
4 you.

5 MS. AILTS WIEST: It was not awarded
6 by the arbitrator, any of these expenses? The
7 companies just assigned them based upon the
8 percentage of sharing --

9 THE WITNESS: For the costs that
10 were shared, which is the majority of these, yes,
11 they are in line with your share of ownership of
12 the plant.

13 MS. AILTS WIEST: Are those
14 separated out, the costs that were shared and the
15 individual costs on there?

16 THE WITNESS: Not on this exhibit,
17 no.

18 MS. AILTS WIEST: Could Mr. Bowman
19 explain which are shared costs and which are not
20 shared costs?

21 THE WITNESS: I'm not sure. I don't
22 have those numbers in front of me. I don't know
23 exactly the split. Perhaps he does.

24 MS. AILTS WIEST: Do you have any
25 redirect, Mr. Guerrero?

1 hearing with witnesses and testimony?

2 A No, it did not. We had reached a settlement agreement
3 with them prior to coming before the Commission, and the
4 Commission ruled very quickly on it. In fact, I don't
5 remember if there were even any questions.

6 Q Commission Counsel also asked you about a \$33,000 labor
7 expense, I believe?

8 A Yes.

9 Q Is it your understanding that is also subject to some
10 negotiation or discussion with the Commission staff here
11 present?

12 A Yes. We've had some discussions with Commission staff
13 here on some of these specific costs that were internal
14 sorts of costs, particularly labor. And there was some
15 discussion about reaching an agreement for us not to
16 include certain of those costs.

17 MR. GUERRERO: I don't think I have
18 any further questions, Counsel. I would like the
19 opportunity to the extent it is necessary to keep
20 the record open to supplement this record with all
21 of the invoices that Otter Tail has incurred in
22 this matter, if it's necessary to do that in order
23 for Otter Tail to show extensively the costs that
24 it incurred in this matter.

25 MS. AILTS WIEST: Okay.

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MR. RISLOV: Do you have a document among the parties showing the assignment of shared costs? I would think there would be a memo sent to each company or an agreement reached for each company on a source document.

THE WITNESS: I don't have it. But, again, I wasn't there at the beginning of the lawsuit. Mr. Bowman was. Perhaps he can answer that.

MR. RISLOV: That may make all of these questions a little easier to deal with if there is a document assigning those shared and common costs.

THE WITNESS: Okay.

MR. RISLOV: I have a couple of other questions. To the extent the companies included these labor costs, has there been any showing that these costs are not the routine labor costs that would appear in cost service in a rate case setting?

Are these considered to be extraordinary costs? Is there a showing these are extraordinary costs?

THE WITNESS: Are you specifically talking about the labor costs?

1 is used within the cost of service to allocate fuel
2 and purchase power. And that's why that factor
3 seemed to be an appropriate factor to use.

4 MR. RISLOV: So if I apply the
5 percentages found in footnote 3 to the amounts
6 listed on line 9, I can generate the amount
7 Otter Tail is signing to each individual state they
8 serve.

9 THE WITNESS: That's correct.

10 MR. RISLOV: Thank you.

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

13 MR. GUERRERO: One or two follow-up
14 questions regarding your Exhibit 1.

15 REDIRECT EXAMINATION

16 BY MR. GUERRERO:

17 Q Ms. Brutlag, is it your understanding that that is
18 subject to some change depending on staff's testimony
19 and recommendation in this proceeding?

20 A Yes. The numbers may change slightly.

21 Q And the purposes of submitting and going through that
22 Exhibit 1 was to provide background information on
23 Otter Tail's cost it's incurred?

24 A Yes. That's right.

25 Q As well as how it proposed to allocate those costs?

1 MR. GUERRERO: Thank you.

2 Otter Tail would like to propose a stipulation that
3 it has reached with Mr. Hoseck and Ms. Farris
4 regarding certain costs that have been the subject
5 of some discussion this morning. The total amount
6 of the stipulation is \$139,635.

7 Those dollars represent essentially two
8 things. The first and the bulk of it, essentially
9 roughly \$103,000, represents costs that Otter Tail
10 incurred that the other partners in the
11 Coyote Plant did not incur. Those included
12 litigation costs, attorneys fees, primarily
13 attorneys fees for outside law firm, the Donelan,
14 Cleary Law Firm and one or two other law firms.
15 Essentially 33,000 of that also represents the
16 internal labor costs that Otter Tail originally
17 proposed as part of its January 26 petition.

18 So essentially what the stipulation is is that
19 Otter Tail is stipulating that \$139,000 essentially
20 comes off the top of its costs that it incurred to
21 obtain a benefit to rate payers of some
22 \$13 million.

23 That essentially reduces our costs that we're
24 seeking to pass through the Fuel Clause
25 Adjustment. And I believe staff will go through

1 used to accumulate costs associated with the
2 negotiations and arbitration of the coal contract.

3 Q Who prepared that document?

4 A It was proposed by someone within Otter Tail.

5 Q Not by you?

6 A No.

7 MS. AILTS WIEST: Is there any
8 objection to Exhibit 6?

9 MR. HOSECK: None.

10 MS. AILTS WIEST: If not, it's been
11 admitted. Mr. Bowman, I believe there was
12 mentioned labor costs of \$33,000. Based on that
13 stipulation that would no longer be a cost that
14 you're seeking to recover? You don't know the
15 answer to that?

16 THE WITNESS: I don't.

17 MR. GUERRERO: Again, Counsel, I
18 believe that that was really a question that --
19 maybe Ms. Brutlag would be better to address that
20 question, but it was a stipulation that I'm not
21 sure testimony's necessary on that, stipulation
22 through counsel.

23 MS. AILTS WIEST: Well, does anybody
24 else have any questions?

25 CHAIRMAN BURG: Can that one

1 system operations.

2 Q Okay. What are then your areas of responsibilities?

3 A Among other things, the responsibility I have is
4 representing Northwestern in our efforts at the
5 joint-owned power plants including the Coyote facility.
6 I'm a member of the Coyote engineering and operating
7 committee. I have been for many years. So that's
8 included in my area of responsibility.

9 Q Okay. Have you also been a member of the team that was
10 set up at Northwestern to negotiate with Knife River
11 Coal Mining Company?

12 A Yes, I am, have been.

13 Q And actually you were a representative both with regard
14 to Big Stone and Coyote?

15 A That's correct.

16 Q So you're familiar with the negotiations, the
17 North Dakota court suit, and the arbitration process
18 that was followed?

19 A Yes, I am.

20 Q Okay. And you were present and heard Mr. Bowman testify
21 as to quite a bit of the background of those
22 proceedings, were you not?

23 A Yes.

24 Q And do you agree with his explanation of how those
25 proceedings were conducted?

1 A Yes, we did.

2 Q Okay. And that was through filings with our adjustment
3 clause?

4 A That's correct. The fuel cost as it changes, any
5 changes in the cost, of course, flow right directly
6 through the clause.

7 Q Okay. Northwestern files its adjustment clause
8 quarterly?

9 A I believe that's correct. I'm not that familiar with
10 that part of it.

11 Q Okay. And so the price of \$10.20 that was established
12 effective with the spring of 1999, was the price at that
13 period of time that would have been passed through our
14 adjustment clause?

15 A That's correct.

16 Q For Coyote?

17 A That's correct.

18 Q And they are quarterly adjustments, as I understand,
19 that Knife River makes to the price of coal under the
20 agreement?

21 A Yes. We receive each quarter an adjustment pricing
22 mechanism tabulation that all the owners receive which
23 indicates the price going forward for the next quarter.

24 Q Okay. All of Northwestern's electric customers are in
25 South Dakota, are they not?

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THE WITNESS: The effect at the time of the implementation I don't think was felt.

CHAIRMAN BURG: Since then.

THE WITNESS: Well, it led to the arbitration. It eventually led to this damage award. That's the major effect. As I think we have heard elsewhere, it may not be the same as what we've seen recently.

CHAIRMAN BURG: Did I understand the reason for that was to more closely reflect the total cost of coal as compared to other plants?

THE WITNESS: That's correct. The addendum contains language that indicates that the price of coal from this mine for the Coyote facility was to be lower than or at least comparable to other similar mines -- mining contracts that were formulated about the same period of time under similar conditions, primarily in the North Dakota area.

CHAIRMAN BURG: Were there any reductions since 1981 until now? Were there any reductions other than the one ordered in this arbitration?

THE WITNESS: Yes. Knife River Coal Mining Company did a voluntary reduction. I

1 stipulation. I was wondering if this was going to
2 hold true.

3 MR. DIETRICH: We will probably go
4 through the adjustment clause mechanism with the
5 next witness, Mr. Decker.

6 CHAIRMAN BURG: You're going to have
7 another witness. Okay.

8 COMMISSIONER SCHOENFELDER: But
9 you're the right witness to answer questions about
10 Exhibit C; is that right? That's your expenses?

11 THE WITNESS: That's correct.

12 COMMISSIONER SCHOENFELDER: I was
13 confused because I had three copies, one of which I
14 didn't look at previously. Do you have a
15 stipulation that's going to deal with these
16 exhibits, or do I ask questions about it?

17 MR. DIETRICH: We have continued to
18 work with staff with regard to the costs that are
19 in Exhibit C and the revised -- we have made a
20 revised filing which we have labeled here as
21 Exhibit 7 which is a Revised Petition which
22 contains all the information in the prior filings
23 along with revised exhibits and Exhibit C and D.

24 Exhibit C is actually the breakdown of the
25 costs for the various parties for whom costs were

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MR. DIETRICH: Yes. I think

Mr. Green may be able to answer a question with regard to the footnote.

COMMISSIONER SCHOENFELDER: Well, it just says first they paid -- I don't understand. I simply don't understand the footnote, actually contributed 13.3 percent representing its share of the 75 percent interest Coyote but obviously have 10 percent ownership.

Is that because of MDU being in and then out?

THE WITNESS: That's correct.

That's out and then in. That's correct.

COMMISSIONER SCHOENFELDER: That's what I wanted to know. Thank you.

MS. AILTS WIEST: Your Exhibit C does not contain any in-house attorneys expenses at all; correct?

THE WITNESS: No. That's correct.

MS. AILTS WIEST: Any other questions of this witness?

CHAIRMAN BURG: Probably an explanation I might want then. You don't include any in-house attorneys fees, but do you have some travel expenses?

THE WITNESS: That's correct.

1 interest less costs through the adjustment clause.
2 Our adjustment clause is set up under its terms as
3 a 12-month process where funds that are added to
4 that are distributed over a 12-month period.

5 As we've discussed with staff in the last few
6 days, we certainly could look -- or consistent with
7 the Commission Order, could use a different time
8 period if the Commission wanted to enter an order
9 that has the same time period of a crediting that
10 the other companies are suggesting. But our
11 adjustment clause by its terms provides for a
12 12-month pass-back.

13 MS. AILTS WIEST: So if the
14 Commission did decide on a different term than
15 12 months, at that point would there need to be
16 some sort of waiver of that tariff language then?

17 MR. DIETRICH: I think the
18 Commission could make a specific Order for the
19 crediting that could take into account any waiving
20 or modification of provisions on an extraordinary
21 basis for this particular proceeding.

22 MS. AILTS WIEST: So it would
23 possibly need some -- my point is you would still
24 be using that tariff, but it wouldn't be the
25 12 months. There would be some exception made to

1 would think.

2 Q Okay. In fact, the parties had requested that the price
3 adjustment mechanism get changed so that comparability
4 would be implemented; is that correct?

5 A That is correct. Unfortunately, that was not contained
6 in the final Order from the arbitration panel.

7 Q Okay. But we do have the Addendum in case we feel price
8 comparability is not there. And again at some point in
9 the future with the pricing provisions as modified the
10 parties could again institute a proceeding to challenge
11 the prices --

12 A That is correct. We will be studying the ongoing cost
13 comparability with other mines in North Dakota to judge
14 whether or not something else should be done in the
15 future.

16 Q Okay. As an overall result, is your company pleased
17 with the results the arbitration was able to bring?

18 A Yes, they were.

19 MR. DIETRICH: Thank you.

20 MS. AILTS WIEST: Speaking about the
21 arbitration, I assume there was a written decision.
22 is that correct, by the arbitrators?

23 THE WITNESS: Yes, there was.

24 MS. AILTS WIEST: Did they make any
25 findings with respect to whether the original, I

1 not apply the Addendum the way you felt it should
2 have been applied is what led to this procedure.

3 THE WITNESS: That's correct.

4 CHAIRMAN BURG: So what I've been a
5 little confused about, because I've heard of this
6 changing of factor a couple of times, was that
7 because they determined the factors applied in the
8 original Addendum were wrong, or were those factors
9 used to make the necessary adjustment for now?

10 THE WITNESS: The factors that were
11 changed at the time of the award were done to
12 result in the price of the methodology for what
13 they agreed to be a comparable price, the \$10.20 at
14 that time, and it was just a back calculation, if
15 you will, to get that result.

16 CHAIRMAN BURG: Would it be accurate
17 to say if they would have applied the Addendum
18 properly, there wouldn't need to be any factor
19 changes?

20 THE WITNESS: That's correct.

21 CHAIRMAN BURG: So if this works
22 going forward, the Addendum, it's not to have
23 another reason to sue or to change? The Addendum
24 is to actually set the price right and hopefully
25 you'll never need to do this again? Would that be

1 Q It was the partners' contention prior to the arbitration
2 that the price that Knife River was charging the
3 partners was not fair and reasonable; correct?

4 A That's correct.

5 Q And the arbitration panel adjusted the price and made a
6 ruling that the charge prior to the arbitration by
7 Knife River was not fair and reasonable?

8 A That's correct.

9 Q And the decision by the arbitration panel was meant to
10 ensure a fair and reasonable price for coal?

11 A That's correct. A comparable price at that time.

12 MR. GUERRERO: Thank you.

13 MS. AILTS WIEST: Any other
14 questions?

15 (No audible response)

16 MS. AILTS WIEST: If not, thank
17 you.

18 (Witness excused)

19 MS. AILTS WIEST: Mr. Dietrich.

20 MR. DIETRICH: Jeff Decker.

21 JEFF DECKER,

22 called as a witness, being first duly sworn in the above
23 cause, testified under oath as follows:

24 MR. DIETRICH: May I approach the
25 witness?

1 the costs incurred by the owners related to this case?

2 A Yes. That is right.

3 Q Okay. So the footnote that spoke to the 13.3 actually
4 dealt with billings during the period of time of the
5 case which has now be en reconciled to 10 percent?

6 A Yes. The final result was 10 percent.

7 Q Okay. Turning to Exhibit D which carries forward the
8 costs and also includes other information, what does
9 this particular exhibit portray?

10 A This portrays the final damage award plus interest and
11 in addition to that subtracting out the out-of-pocket
12 costs for Northwestern Public Service resulting in the
13 net refund to the customers both wholesale and retail.

14 Q Okay. Now the interest, there's a line on there that
15 says Plus Northwestern Interest Through April 30, 2000.
16 This was meant to add the cost or the calculation of the
17 interest for the time that Northwestern held the money
18 from the damage award in interest?

19 A That is correct.

20 Q All right. Until April 30, and then that interest would
21 continue to grow until its distributed?

22 A Until the money is passed back to the customer.

23 Q Okay. Do these cost numbers, as you've researched this,
24 accurately reflect the costs actually incurred by
25 Northwestern?

1 Q So it's based on the actual generation that Northwestern
2 did during the period of time that the damages were
3 calculated?

4 A Right.

5 Q Okay. And the allocation of the wholesale and retail
6 portions for Northwestern, how was that calculated?

7 A That was derived by the volumes used on wholesale versus
8 retail.

9 Q Okay. And that's shown on Exhibit B of our Petition; is
10 that correct?

11 A That is correct. And as you can see, retail ends up
12 with over 99 percent of this award.

13 Q Okay. And with regard to the wholesale portion, what is
14 Northwestern proposing to do there?

15 A I'm not sure. I would assume we would pass that back as
16 well as the retail.

17 Q But that would be under a tariff subject to the Federal
18 Energy Regulatory Commission?

19 A Okay. Correct.

20 Q Okay. There's no allocation of any internal labor force
21 for any of the cost calculations for Northwestern?

22 A That's right. There is none.

23 Q Okay. So essentially Northwestern is passing back the
24 damage award in interest less its out-of-pocket costs
25 complete?

1 convenience and clarification, we can make those
2 available. I have copies here today. I just don't
3 have enough of them at the moment.

4 MS. AILTS WIEST: There would be two
5 of those?

6 MR. GUERRERO: Two decisions.

7 MS. AILTS WIEST: Can we mark those
8 Exhibit 8 and 9?

9 MR. DIETRICH: I have no objection
10 to that information being presented to the
11 Commission pursuant to a Commission Order.
12 However, one of the reasons we've been fairly vague
13 in some of the information is there's a
14 Confidentiality Agreement which prohibits the
15 sharing of some of the detailed information from
16 that proceeding other than as required by law.

17 But if the Commission would order those
18 documents would be provided, then I think that
19 would be appropriate. I have the terms of the
20 Confidentiality Agreement that I can share with
21 Counsel today.

22 MR. GUERRERO: I'll adjust my offer
23 accordingly. That's correct. Mr. Dietrich is
24 correct.

25 MR. GERDES: I would think we would

1 Q It was made on the amount of fuel that's allocated to
2 each of the partners in the plant; correct?

3 A Yes.

4 Q It's a fairly complicated allocation. Would that be a
5 true statement?

6 A I'm not familiar with the details of that calculation.

7 Q Okay. The amount of coal burned by each of the partners
8 or that's allocated to each of the partners' native load
9 customers or retail customers may or may not be
10 different from it's actual ownership percentage;
11 correct?

12 A That is correct.

13 MR. GUERRERO: No further
14 questions. Thank you.

15 MS. AILTS WIEST: Mr. Hoseck?

16 MR. HOSECK: No questions.

17 CHAIRMAN BURG: I have a couple of
18 quick ones.

19 Do you know if all the companies allocated
20 expenses or calculated expenses the same as you
21 did?

22 THE WITNESS: I guess I'm not sure.

23 CHAIRMAN BURG: I'm not sure if
24 you'd have to know that, but if you did, I was just
25 asking you. Okay. And I think I had the other

1 Price Waterhouse, the total bill -- so if anyone
2 has a document that says this is a total bill from
3 Price Waterhouse and Northwestern's is \$18,000 and
4 Otter Tail's is a different number and MDU's is a
5 different number, do you have that document
6 available?

7 It's very important to me that I know what the
8 total number of one of these bills would be.

9 THE WITNESS: What I have is
10 individual invoices, and so I could go through --

11 COMMISSIONER SCHOENFELDER: Was that
12 individual invoice made out to Northwestern Public
13 Service as their proportion, or was it the total of
14 all four?

15 THE WITNESS: It was the total of
16 all four, and then I took 10 percent of that total
17 to come up with the numbers that are before you.

18 COMMISSIONER SCHOENFELDER: Is it
19 possible to see those, to produce those?

20 THE WITNESS: Yes. I believe we
21 can.

22 MR. DIETRICH: We have produced
23 those with staff.

24 COMMISSIONER SCHOENFELDER: Okay.
25 But I don't.

both?

THE WITNESS: I guess I understand fully why we would use usage to allocate the award. As far as using usage to allocate the percentage of expense, that may be a reasonable approach.

MS. AILTS WIEST: What was your percentage of usage?

THE WITNESS: That, I am not sure of. Possibly Witness Green would have that number.

MS. AILTS WIEST: And do you know the allocation of fees based on ownership, was that because of an agreement among a Complainant? Is that your understanding, or don't you know?

THE WITNESS: I don't know that.

MS. AILTS WIEST: You're not aware that the arbitrator set any of those damage wards -- I mean, allocation of cost?

THE WITNESS: No. I'm not familiar with that.

MS. AILTS WIEST: Mr. Dietrich, is there somebody that could answer that question for me?

MR. DIETRICH: Yeah. I think Mr. Green can.

than fuel ownership basis, fuel cost on usage basis. Because it can make a big difference in the cost to the owners if we did it some other way.

Q Okay. Based upon Northwestern's 10 percent ownership share, how is that share -- how is that compared to our percentage of the damages that we received?

A The usage of the plant during that period of time I don't have the exact number, but I would estimate it's somewhere above 10 percent, perhaps about 11 percent or so of the total usage during that period of time. So your share of the damages to our retail customers should represent something larger than ownership share.

Q Okay.

MR. DIETRICH: Does that --

MS. AILTS WIEST: Just a couple. Do you know then -- I guess your point is is that the 10 percent and 11 percent were fairly comparable percentages, usage and the amount?

THE WITNESS: Yeah.

MS. AILTS WIEST: Do you know if that's true for MDU and Otter Tail?

THE WITNESS: I'm not familiar with their exact numbers, no.

MS. AILTS WIEST: You're not. And you referenced -- was there ever any separate

CHAIRMAN BURG: Just one that may not be directly pertinent to the case. How does the fuel cost compare to the amount of power taken from the plant?

THE WITNESS: I guess I'm not sure --

CHAIRMAN BURG: Well, I first thought to me it would be allocated -- I can see where the damages would be allocated, I would say, compared to the power taken from the plant.

THE WITNESS: Yes. It's a little complicated, but, yes, basically the amount of power taken is directly correlated to the amount of fuel burned.

CHAIRMAN BURG: I was just curious if that was a direct correlation or not.

THE WITNESS: It is very close to direct. There is efficiency gains as the unit is loaded more heavily. A party who loads it heavier may get a little more efficiency out of the amount of fuel.

CHAIRMAN BURG: That's all. Thank you.

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

1 MS. AILTS WIEST: Thank you.

2 (Witness excused)

3 MS. AILTS WIEST: Do you have any
4 further witnesses, Mr. Dietrich?

5 MR. DIETRICH: No, I do not.

6 MS. AILTS WIEST: Mr. Guerrero, is
7 it possible to call one of your witnesses to state
8 what the percentage of usage was that you
9 received?

10 MR. GUERRERO: Sure.

11 MS. AILTS WIEST: Which witness
12 would that be?

13 MR. GUERRERO: That would most
14 likely be Mr. Bowman, if he knows the answer to
15 that question, Counsel.

16 Mr. Bowman, could you please take the stand.

17 (Mr. Bowman takes the stand)

18 MR. GUERRERO: You've already been
19 sworn.

20 MS. AILTS WIEST: Do you know that,
21 Mr. Bowman?

22 THE WITNESS: I don't know what the
23 exact percentage is. It is relatively close to the
24 ownership percentage.

25 MS. AILTS WIEST: Relatively close?

1 A My name is Donald R. Ball.

2 Q Where do you reside?

3 A I live in Bismarck, North Dakota.

4 Q What is your occupation?

5 A I'm employed by Montana-Dakota Utilities Company as the
6 director of regulatory affairs.

7 Q What's your educational background?

8 A I hold a B.S. Degree in business administration with an
9 accounting emphasis from Black Hills State University,
10 Spearfish, South Dakota.

11 (Exhibit 10 is marked for identification)

12 Q Mr. Ball, I'll show you what has been marked as
13 Exhibit 10 and ask you what that is.

14 A Exhibit 10 is our filing with this Commission dated
15 February 9, 2000.

16 (Exhibit 11 is marked for identification)

17 Q And then I'll show you Exhibit 11, and I'll ask you to
18 identify that.

19 A Exhibit 11 is an Amended Attachment A, which was
20 attached to our filing February 9. It reflected a
21 correction in the amount of arbitration costs that were
22 billed.

23 It was discovered that one of the invoices
24 rendered was in error, and this simply reflects the
25 corrected invoice received. And in addition on the

1 costs related to retail operations. These costs were
2 billed by the Coyote operator for Montana-Dakota's
3 25 percent ownership of the Coyote station. We believe
4 it is proper to net the incurred costs of this
5 arbitration against the savings in fuel costs.

6 We think that, you know, absent this costly
7 arbitration proceeding that the net savings would not
8 have materialized and that there is certainly a direct
9 cause and effect here. We believe that granting the
10 waiver that we've sought will be in the public's
11 interest.

12 First of all, the customers will benefit from
13 the pass-through of a rather substantial credit, and
14 they also benefit by the ongoing coal price reduction.
15 Montana-Dakota's and its shareholders' interests will be
16 upheld through the ability to recover the costs incurred
17 in obtaining those benefits for the retail customers.

18 The total net benefit applicable to our retail
19 electric customers is \$2,742,000. That figure is shown
20 on the Amended Attachment A, which I believe is
21 Exhibit 11. For Montana-Dakota there is also an amount
22 related to the Heskett Station. The Heskett Station
23 coal prices -- while under their own coal purchase
24 contract the prices that Heskett were tied to, the
25 prices at Coyote and, therefore, the arbitration result

1 MR. GERDES: No further questions.

2 MS. AILTS WIEST: Mr. Guerrero, any
3 questions?

4 MR. GUERRERO: None.

5 MS. AILTS WIEST: Mr. Dietrich?

6 MR. DIETRICH: No.

7 MS. AILTS WIEST: Mr. Hoseck?

8 MR. HOSECK: No.

9 MS. AILTS WIEST: Commissioners?

10 COMMISSIONER NELSON: I have one.

11 Why did you pay in protest?

12 THE WITNESS: Why did we pay in
13 protest? We were billed for the arbitration costs,
14 and because we had been dismissed from the
15 arbitration by the arbitration panel, we paid the
16 arbitration costs under protest.

17 If you look at the Coyote operating agreement,
18 if one of the owners does not pay, then that owner
19 could be subject to not being able to schedule its
20 capacity in energy from the unit. So in accordance
21 with the agreement, we paid under protest. That's
22 kind of a long answer to a short question.

23 COMMISSIONER NELSON: Well, everyone
24 else was thinking they were paying too much for
25 their product. Why weren't you concerned about

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CHAIRMAN BURG: That was going to be my question. It was not in your initial filing. That is an agreement that's been reached with staff?

THE WITNESS: That's right.

MS. AILTS WIEST: Any other questions?

I just had a couple. Damages were based on usage. What was your usage, or what was the percentages?

THE WITNESS: Well, approximately 25 percent.

MS. AILTS WIEST: Approximately 25.

THE WITNESS: As we've talked about here with other witnesses, fuel itself is allocated based upon the actual use by the various owners.

In looking at our particular situation, my analysis indicated that based on the fuel usage type, we were very close to our 25 percent ownership interest. I don't think it was more than 1 percent off either way.

MS. AILTS WIEST: And then I believe you were here when Otter Tail was testifying and you stated that the South Dakota portion on your Exhibit 11 Interconnected System Percentage of

1 you've seen about 22 percent of our use has been
2 for what we call pool sales. These are simply
3 opportunity sales in the pool.

4 I guess to the extent Coyote is up and
5 running, I think most of the owners will try to
6 schedule all of the power available to them.

7 CHAIRMAN BURG: Because what I was
8 getting at is if there's ever surplus generation
9 that's sold off, how is that allocation of the fuel
10 supply and also the sales -- and does that even
11 become a factor --

12 I mean, I can see two ways of doing it. One
13 is if you have excess capacity and can sell into
14 the grid, that you can do that and share the income
15 from it. Or the other one is individual companies
16 take their share, and then they would sell whatever
17 surplus there would be.

18 And I was wondering how that's handled,
19 whether that even becomes a factor in something
20 like this.

21 THE WITNESS: I'm pretty sure it's
22 the latter situation where each owner probably
23 schedules its own availability. In our case we own
24 25 percent so we will take our 25 percent
25 interest. We may be in a situation where we might

1 MS. AILTS WIEST: Any further
2 questions of this witness?

3 (No audible response)

4 MS. AILTS WIEST: If not, thank
5 you.

6 (Witness excused)

7 MS. AILTS WIEST: Do you have any
8 other witnesses?

9 MR. GERDES: We have no further
10 witnesses.

11 MS. AILTS WIEST: Mr. Hoseck?

12 MR. HOSECK: I would call
13 Michele Farris to the stand, please.

14 MICHELE FARRIS,
15 called as a witness, being first duly sworn in the above
16 cause, testified under oath as follows:

17 DIRECT EXAMINATION

18 BY MR. HOSECK:

19 Q Would you state your name for the record, please.

20 A Michele Farris.

21 Q And what is your job?

22 A I'm a utility analyst with the Public Utilities
23 Commission.

24 Q How long have you been there?

25 A Approximately a year and a half.

1 dockets attempt to accomplish.

2 A EL00-002 is a Petition from Otter Tail Power to be
3 allowed to net out their litigation expenses from the
4 refund and pass it through the Fuel Adjustment Clause.
5 EL00-003 was a Petition from Montana-Dakota Utilities to
6 also net out the litigation expenses and pass the refund
7 through the Fuel Adjustment Clause. And EL00-009 was
8 the Petition from Northwestern Public Service.

9 Q And did that have a similar objective?

10 A Yes, it did.

11 Q Would you just briefly describe the work that you did in
12 processing these dockets?

13 A Originally, 002 and 003, the Otter Tail and MDU dockets,
14 came in first. I reviewed those dockets and put a data
15 request together and sent it out asking questions and I
16 notified Northwestern Public Service of what I was
17 looking for in the docket prior to their filing and then
18 they filed their docket.

19 Q In addition to the formal data requests that you made,
20 did you have verbal conversations with representatives
21 of all three of these utilities in the process of
22 working on these dockets?

23 A Yes, I did.

24 Q And did you research the heating and cooling degree
25 days?

1 A Yes, it was.

2 Q Okay. I'm going to show you what has been marked as
3 Exhibit A. Would you identify that document for the
4 record, please.

5 A It's an Exhibit that I prepared that summarizes the
6 information contained in the three filings.

7 Q And this would be information that was furnished to you
8 through the processes of discovery and with the filings
9 from the three utilities that we're visiting about here
10 today; is that correct?

11 A That's correct.

12 Q I'm going to ask you to go through Exhibit A and explain
13 to the Commissioners what this document shows.

14 A Okay. The first line, the damage award, shows the
15 amount that each of the three companies received.
16 You'll see there's an asterisk that indicates it does
17 not include any of the interest. I left the interest
18 that is accruing now off to keep the exhibit the same.
19 Because the interest would be accruing as we wait. And
20 also you'll see that on Montana-Dakota Utilities its
21 asterisked to show it's the Coyote Plant as well as the
22 Heskett Station.

23 Then below that I show that on September 1 of
24 1999 is when Otter Tail Power and Northwestern Public
25 Service Company received their award, and on February 28

1 A MDU's damage award includes \$2,373,711 for the
2 Coyote Plant and an additional \$1,695,876 for the
3 Heskett Station. And, as Mr. Ball testified, they own
4 100 percent of the Heskett Station, and that facility
5 operates under the same coal contract.

6 Q Okay. And also in the MDU column there would you
7 reconcile the amounts under the category reimbursed from
8 MDU in the amount of litigation expense.

9 A MDU paid to Otter Tail \$250,930. They paid to
10 Northwestern Public Service Company \$70,775. And they
11 paid to Northern Municipal Power Agency \$214,470.

12 Q In your dealing with these cases, what was your
13 understanding of Otter Tail Power's role in the
14 litigation generally?

15 A My understanding is that Otter Tail was the lead
16 company. There's one thing I would like to point out.
17 The difference on the numbers that you heard Mr. Ball
18 testify to are different than what I have here because
19 I -- I put them back up to the total award, not the
20 retail portion.

21 I wanted to show the three companies equally.
22 And his numbers were based on the 77.6 percent being
23 retail.

24 Q Is there anything further that you would like to explain
25 about this exhibit?

1 entered into between the staff and Otter Tail Power on
2 the record with regard to the removal some \$139,635.

3 Would you explain to the Commissioners the
4 origin of that figure? In other words, where did the
5 \$139,635 come from?

6 A When I was reviewing the three different files I noticed
7 that the numbers did not tie out and there was \$103,075
8 that Otter Tail was asking for in their litigation
9 expenses that was not shared by the other owners of the
10 company.

11 And Otter Tail has agreed to remove those
12 costs. There was approximately \$33,000 in Otter Tail
13 Power labor that is not included and approximately
14 \$3,300 of miscellaneous expenses for a total of 139.

15 Q Now is that \$139,635 factored into Exhibit B?

16 A Yes, it is. This exhibit was done under the knowledge
17 that Otter Tail was going to agree to remove those. So
18 if you look at Exhibit A under Otter Tail Power Company,
19 litigation expenses, the \$1,101,235, that would be the
20 difference between what they had filed and the 139,000.

21 Q Now are any of the litigation costs, as you have
22 adjusted them in Exhibit B and in these dockets, were
23 any of those recovered by these three utilities in any
24 rate cases?

25 A No. The last time any of these companies were in for a

1 should recover the amounts as shown in Exhibit B for
2 litigation costs through the Fuel Adjustment Clause?

3 A Yes.

4 Q What is that opinion?

5 A It's my opinion that this refund would not have occurred
6 had there not been the arbitration and the consumers
7 would not have seen the benefit without proceeding with
8 that.

9 Q Now you testified earlier that you had done some
10 research with regard to heating and cooling days. Why
11 did you do that research?

12 A I wanted to determine which months had the higher
13 heating and cooling usage.

14 Q And how did you do your research?

15 A I went out to the National Oceanic and Atmospheric
16 Administration website and pulled off a summary for the
17 State of South Dakota for each of those categories.

18 Q And what years did you look at this data for?

19 A For the cooling degree days I looked at 1994 through
20 1999.

21 Q And what did this research demonstrate with regard to
22 cooling days?

23 A In general it showed that June, July, and August are the
24 months with the highest cooling degree days.

25 Q Did you also look at the heating degree days?

1 three different utilities, as to their ability to
2 implement this adjustment?

3 A Yes.

4 Q And what is that difference?

5 A Otter Tail Power and Montana-Dakota Utilities do a
6 monthly calculation, and Northwestern Public Service
7 does theirs quarterly.

8 Q And as a part of the handling of these dockets did you
9 visit with representatives of these three utilities with
10 regard to this issue?

11 A Yes, I did.

12 Q And did you modify your opinion in any manner based on
13 those conversations that you had with those people?

14 A I'm not sure I understand your question.

15 Q In other words, have you modified your opinion as to
16 when would be the most desirable time to implement these
17 fuel adjustment changes as a result of conversations
18 with any of these individuals?

19 A Only to the extent that if a decision isn't made in time
20 for the June month, that we could go into September
21 based on the cool degree day information that I
22 received.

23 MR. HOSECK: Okay. I would offer

24 Exhibit B.

25 MS. AILTS WIEST: Any objection?

1 THE WITNESS: Because they received
2 their damage award after -- they received it in
3 February.

4 CHAIRMAN BURG: But shouldn't there
5 have been interest -- did it include all -- all
6 interest included in that month then? Because
7 shouldn't there have been interest calculated on
8 their since -- when did it start, '96, the same as
9 the others?

10 THE WITNESS: The way I understand
11 the interest was calculated is the Order was
12 entered into in March of '99 and I don't remember
13 who testified but they had to go back again on
14 another issue and it wasn't settled until August.

15 So Otter Tail and Northwestern should have
16 received their award at the end of March when the
17 decision was made, but they didn't get it until
18 September. So they received interest for that
19 period of time between March and August.

20 CHAIRMAN BURG: What about Montana?
21 They didn't have the same situation?

22 THE WITNESS: No. Because they
23 weren't a party to the arbitration to start with.

24 CHAIRMAN BURG: Okay. Are you
25 making a recommendation on the time period for the

1 wondering whether all customers will receive some
2 benefit or if there are some who are winter
3 peaking, for example, who don't use much in the
4 summer who will not get refunds if it wasn't done
5 in the summer. Or am I calculating that out
6 wrong?

7 THE WITNESS: I don't know if I can
8 answer that question. The industrial customers
9 should have a flat amount of usage with maybe a
10 slight increase during the summer months for the
11 space cooling. And other than that, I'm not sure
12 what the other customer usage is.

13 CHAIRMAN BURG: Okay. That's all I
14 have.

15 MS. AILTS WIEST: Any other
16 questions for the Commissioners?

17 MR. RISLOV: I have a question.
18 Could you contrast your refund method with the ones
19 the companies have laid out? Because, frankly, I'm
20 not so sure I understand any company has taken a
21 position on refund.

22 THE WITNESS: As part of a data
23 request, I received copies of how the money would
24 be refunded and I had requested a 12-month
25 calculation and then a three-month average and they

1 should be done on ownership.

2 MS. AILTS WIEST: And then I was
3 wondering with respect to MDU's 6.7 percent
4 allocation to South Dakota and I believe Otter Tail
5 came up with a 7 percent allocation, could you
6 compare the methods they used to come up with
7 those?

8 THE WITNESS: No. I can't.

9 MS. AILTS WIEST: But you didn't
10 have any problem with how they calculated those
11 two?

12 THE WITNESS: No, I didn't.

13 MS. AILTS WIEST: That's all I had.
14 Did you have any redirect?

15 MR. HOSECK: No redirect. No
16 further witnesses.

17 MS. AILTS WIEST: Thank you. Any
18 rebuttal witnesses?

19 MR. GUERRERO: No. Thank you.

20 CHAIRMAN BURG: I have one
21 question. Do we have any late filed, or has
22 everything been filed now?

23 MS. AILTS WIEST: We had requested
24 some additional documents.

25 CHAIRMAN BURG: That is going to be

1 cool their living space in the summer, and that may
2 be one group that you're talking about that may get
3 a smaller portion of the refund perhaps than
4 compared to what they paid in over approximately a
5 three-year period.

6 CHAIRMAN BURG: Another place where
7 I would see some mismatch would be irrigation, if
8 there's any irrigation, people that have
9 irrigation. They're only going to have it those
10 three months. So they're going to get a benefit
11 because it happens to be three months that they use
12 whereas the rest of year they wouldn't be using it
13 at all.

14 That's why even though I was initially
15 concerned about spreading it over too long a period
16 of time rather than get the money back to the
17 people, if we do it on a 12-month basis as
18 Northwestern does it, it's going to be applied
19 equally because you figure each year, you know, it
20 should be approximately the same.

21 I am concerned about people that pay because
22 they pay 12 months over the period of this
23 settlement, but they're only going to receive over
24 a three-month period.

25 MR. DIETRICH: If it would help shed

1 Now, granted, a number of the industrial
2 customers will -- they have average use over the
3 12 months, they're fine. But there are some select
4 groups, as you've discussed, that will not receive the
5 benefit they should and others that will get a benefit
6 that they didn't pay for to begin with because they did
7 not -- they're going to be receiving a benefit that they
8 didn't pay for due to the periods involved.

9 COMMISSIONER NELSON: I guess I
10 assumed, though, since the irrigators would have
11 been irrigating in the years they were overpaying
12 and the people who didn't have air conditioning
13 wouldn't have been paying so it would seem to me it
14 would kind of all even out. Why wouldn't it?

15 THE WITNESS: Because the irrigation
16 customer over the three-month period will be
17 receiving a full benefit in actuality they only
18 paid three-twelfths of.

19 COMMISSIONER NELSON: Wouldn't they
20 have paid three-twelfths of the years it was a
21 problem overcharging the coal?

22 THE WITNESS: They paid
23 three-twelfths but will be receiving three -- they
24 paid for it. They're receiving a refund 100
25 percent of the time we're giving it back if we use

1 year, whichever way you're looking at it.

2 THE WITNESS: So the average
3 residential customer, whether it's over a year or
4 three months, is not going to make any difference.
5 Those who don't have electric heat or air
6 conditioning, they're going to have an equal
7 amount.

8 Just on average I take the total refund amount
9 less the litigation costs and divide it by our
10 customer base. We're looking at roughly \$18 a
11 customer. Now it's going to be --

12 COMMISSIONER SCHOENFELDER: \$18
13 period, not per month?

14 THE WITNESS: Period. But that's
15 not based on usage. That's going to skew. The
16 residential customer number is going to be probably
17 much less than that. So that gives you a rough
18 idea.

19 COMMISSIONER SCHOENFELDER: Thank
20 you.

21 (Witness excused)

22 CHAIRMAN BURG: Comment from the
23 other two companies?

24 MR. GUERRERO: Otter Tail would call
25 Ms. Brutlag.

1 it gets to be a lot of work to spread it over that long
2 period of time.

3 Q Does Otter Tail have a preference, three months versus
4 12 months?

5 A We'd very much prefer three months because we can roll
6 it through the way we normally do our fuel clause, and
7 it should work pretty much automatically.

8 CHAIRMAN BURG: You do your --

9 MR. GUERRERO: I'm done. Thank you.

10 CHAIRMAN BURG: Do you do your fuel
11 clause on a monthly or quarterly basis?

12 THE WITNESS: We do it monthly, but
13 it's a three-month average so once it gets into a
14 particular month it takes three months for that
15 dollar amount to completely go back to the
16 customers.

17 CHAIRMAN BURG: Okay.

18 MS. AILTS WIEST: Any other
19 questions of this witness? Thank you.

20 (Witness excused)

21 DIRECT EXAMINATION

22 BY MR. GERDES:

23 Q Mr. Ball has a couple of comments.

24 A I guess from MDU's perspective, we would prefer the
25 three-month period rather than the 12-month period,

THE WITNESS: I don't see any customer group that we're going to exclude completely. Because this is not like natural gas. In the natural gas side of the business we actually have customers that cut out during the summer months. They use nothing.

Most people never shut their electricity off. They're still running their refrigerators. They're watching TV. They're doing all kinds of things.

CHAIRMAN BURG: But if you had somebody on electric heat who didn't have electricity.

THE WITNESS: Then their summer bill would be less than winter bill. But hopefully they're running fans.

MS. AILTS WIEST: Any other questions of this witness? If not, thank you.

(Witness excused)

MS. AILTS WIEST: Mr. Hoseck?

MR. HOSECK: I'd have a concluding motion if it's appropriate at this time. On behalf of staff, I would move the Commission to allow the litigation costs consistent with the staff's opinion and to do it through the Fuel Adjustment Clause and to do it in the time frame which is

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MS. AILTS WIEST: Any concluding statements, Mr. Guerrero?

MR. GUERRERO: Thank you, Counsel. Members of the Commission, I want to thank you on behalf of Otter Tail Power Company and also extend my thanks to staff. Throughout this time they have been nothing but diligent in their investigation of Otter Tail's Petition.

Briefly, just to clarify Otter Tail's position on the legal question of a waiver, we're not necessarily hung up on whether or not we need a waiver or not. We took the position that reading the rules strictly it appeared that litigation or arbitration costs could not be directly assignable to the cost of fuel. That was based on case law that we had read, most notably dealing with FERC cases.

We thought those cases provided guidance to the State Commissions as well since this Commission as well as the Minnesota and North Dakota Commission have adopted the Uniform System of Accounts. But to the extent that Mr. Hoseck believes that and your Counsel believes a waiver is not necessary, we would defer to that legal interpretation.

MS. AILTS WIEST: Could you do it for the months requested by staff, though, the June, July, and August months with a quarterly filing?

MR. DIETRICH: We'd have to do a special filing other than our normal quarterly filing to catch June because our quarter, I believe, was May, June, July.

MR. DECKER: May and August would be our filings.

MS. AILTS WIEST: You could do it, but you'd have to do a special filing?

MR. DIETRICH: We'd do a special calculation and filing, but we could certainly do so.

MS. AILTS WIEST: Okay. Thank you. Mr. Gerdes.

MR. GERDES: Not wanting to go over ground already plowed, we would just say that MDU would appreciate the Commission's consideration of its Petition and believe that staff has fairly reviewed it and ask that the Commission grant the Petition as suggested by staff.

MS. AILTS WIEST: Are you still seeking a waiver of Fuel Clause Rate 58?

1 beyond there. Was there?

2 CHAIRMAN BURG: Do you have
3 Minnesota with you?

4 MR. GUERRERO: Chairman Burg, we
5 appeared in front of the Minnesota Commission on
6 May 4 of this month. They are required to issue a
7 written opinion within 20 days of their approval on
8 the bench.

9 They made a motion, and it was approved
10 unanimously. I expect a written decision in the
11 next few days, and I will forward that to counsel
12 and to the court reporter when I receive it.

13 But to the extent that we have a June
14 pass-through, our billing goes out as of the 17th
15 of this month so we would need a decision for a
16 June pass-through either today or tomorrow.

17 Otherwise, as Ms. Farris had indicated, we
18 would be looking at July, August, September.

19 CHAIRMAN BURG: So you could have a
20 staggered three-month? I thought you wanted to do
21 it in one quarter?

22 MR. GUERRERO: On a three-month
23 basis.

24 CHAIRMAN BURG: Just any three
25 months? It can be whatever three-month basis?

1 informed that those expenses had been taken out by
2 staff.

3 CHAIRMAN BURG: I'm asking should we
4 go ahead and withdraw the request for a late
5 filed? I think we need to do that if we're going
6 to make that a quicker decision, aren't we?

7 MS. AILTS WIEST: Right.

8 CHAIRMAN BURG: I have no objection
9 to not getting those.

10 COMMISSIONER SCHOENFELDER: They can
11 still file it after the decision is made for our
12 information.

13 CHAIRMAN BURG: But not base our
14 decision on it.

15 COMMISSIONER SCHOENFELDER: Well, I
16 wasn't going to base my decision on Minnesota
17 anyway.

18 CHAIRMAN BURG: I wasn't sure why we
19 were going to get it.

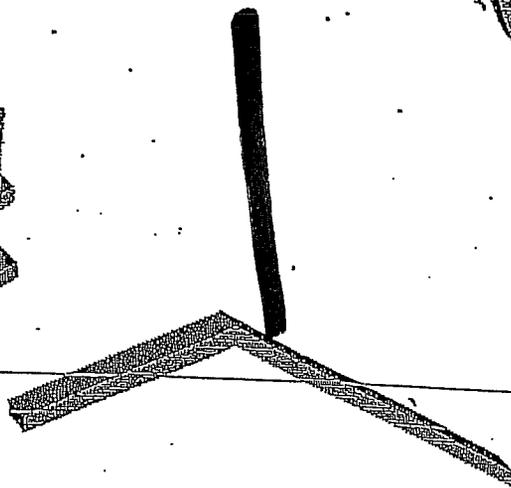
20 COMMISSIONER NELSON: Rolayne wants
21 to see it.

22 CHAIRMAN BURG: I think we're close
23 enough yet that we've got a hearing on Wednesday;
24 right?

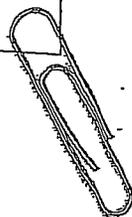
25 MS. AILTS WIEST: He said today or

CONTINUATION

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of pages



1 \$13,218.22.

2 Did you justify those travel expenses anyway?

3 THE WITNESS: I looked at the
4 invoices and it was coded to this case, time-coded.

5 COMMISSIONER SCHOENFELDER: Okay.
6 Were any of the expenses that you asked to be
7 disallowed from Otter Tail travel expenses?

8 THE WITNESS: No. Labor and
9 miscellaneous.

10 COMMISSIONER SCHOENFELDER: And
11 you're very comfortable -- because I don't see
12 travel expenses for any of the other two companies
13 and I do Northwestern.

14 THE WITNESS: Otter Tail also has
15 travel expenses.

16 COMMISSIONER SCHOENFELDER: I didn't
17 see it itemized. I don't remember the exhibit
18 number it was marked. It was the single sheet --
19 the vehicle/plane, 14,000?

20 THE WITNESS: Yes.

21 COMMISSIONER SCHOENFELDER: Because
22 I had missed that part of it. And I see
23 Northwestern's were itemized out separately.

24 THE WITNESS: MDU did not have any,
25 but the other two did.

1 clause and this is not a precedential decision and
2 I'm going to second Commissioner Burg's motion but
3 I want it to be very, very clear that this is a
4 one-time only thing from my perspective.

5 COMMISSIONER NELSON: I'd concur.

6 MS. AILTS WIEST: Mr. Hoseck?

7 MR. HOSECK: Point of

8 clarification. Does that include the interest?

9 CHAIRMAN BURG: Yes.

10 COMMISSIONER SCHOENFELDER: Because
11 the interest wasn't calculated on here, but there's
12 an indication that you were taking interest into
13 account.

14 MS. FARRIS: Right. It's just not
15 on the exhibit.

16 COMMISSIONER SCHOENFELDER: Thank
17 you.

18 MS. AILTS WIEST: Is there anything
19 else? Thank you.

20 (The hearing concluded at 2:50 p.m.)

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

IN THE MATTER OF THE FILING OF)	FINDINGS OF FACT AND
MONTANA-DAKOTA UTILITIES CO. FOR)	CONCLUSIONS OF LAW;
APPROVAL OF WAIVER OF FUEL CLAUSE)	NOTICE OF ENTRY OF
RATE 58 TO INCLUDE ARBITRATION COSTS)	ORDER
)	EL00-003

On February 10, 2000, the Public Utilities Commission (Commission) received a petition from Montana-Dakota Utilities Co. (MDU) for approval of a waiver of its Fuel Clause Rate 58. The petition stated that "[t]he waiver is requested to allow the pass-through, in the fuel cost adjustment (FCA), of arbitration costs that have resulted in savings to retail customers." An intervention deadline of March 3, 2000, was set by the Commission. No petitions to intervene were filed.

On January 27, 2000, the Commission received a petition from Otter Tail Power Company (Otter Tail) for permission to depart from the specific wording of its Fuel Adjustment Clause to allow the pass-through of litigation expenses that have resulted in ratepayer savings. Docket EL00-002. An intervention deadline of February 18, 2000, was set by the Commission. No petitions to intervene were filed.

On March 20, 2000, the Commission received a petition from NorthWestern Public Service (NWPS) for approval of its proposed plan to credit \$682,996.65 to its South Dakota retail electric customers. Docket EL00-009. The credit is due to an arbitration proceeding involving a lignite coal contract. The petition stated that the "plan would utilize its adjustment clause to credit to its retail electric customers (all of whom it serves in South Dakota) the retail portion of the arbitration damage award and interest, less its costs related to its efforts in receiving not only the damage award, but also ongoing coal price reduction and other favorable Coal Agreement provision changes." An intervention deadline of April 7, 2000, was set by the Commission. No petitions to intervene were filed.

On April 27, 2000, the Commission received a Stipulation to Consolidate Dockets EL00-002, EL00-003, and EL00-009. The stipulation stated that Otter Tail, MDU, NWPS, and Commission Staff had agreed to consolidate the dockets due to common questions of law and fact.

The Commission approved the consolidation of the dockets for purposes of the hearing. A hearing was held as scheduled on May 15, 2000, beginning at 10:00 o'clock A.M., CDT, in Room 412, State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The issue at the hearing was whether the Commission should approve, in whole or in part, the petitions filed by Otter Tail, MDU, and NWPS. With respect to MDU's petition, the Commission voted unanimously to approve Commission Staff's recommendation that allowed for the deduction of certain litigation expenses incurred during an arbitration proceeding. The arbitration decision lowered fuel costs retroactively, resulting in a refund being issued to MDU. The Commission also granted the tariff waiver as requested by MDU, and required MDU to issue the refund during the months of June, July, and August, 2000.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On February 10, 2000, the Commission received a petition from MDU for approval of a waiver of its Fuel Clause Rate 58. The petition stated that "[t]he waiver is requested to allow the pass-through, in the fuel cost adjustment (FCA), of arbitration costs that have resulted in savings to retail customers."

2. Otter Tail, NWPS, the Northern Municipal Power Agency, and MDU own the Coyote Power Plant. Tr. at 12. They entered into a 35-year contract with the Knife River Coal Company (Knife River) for delivery of coal. *Id.* MDU Resources is the parent company of Knife River. Tr. at 100. To determine the price of the coal, the contract uses various indexed price components, some actual cost price components, with quarterly price adjustments. *Id.* An addendum to the contract required that the pricing mechanism within the contract would result in prices that were comparable to similar mines developed at similar time frames. Tr. at 13.
3. The owners of the Coyote Power Plant, with the exception of MDU, disputed the prices charged by Knife River through an arbitration proceeding. Tr. at 14. MDU was named as an initial party in the arbitration but sought removal from the arbitration proceeding because MDU Resources owns Knife River and, thus, there was a possible conflict of interest. Tr. at 100. The initial arbitration decision in March of 1999, lowered the coal prices charged by Knife River, beginning the fourth quarter of 1996 up until the time of decision. Tr. at 15. The arbitration decision also requested that the parties modify the pricing procedure within the contract. *Id.* The parties were unable to come to an agreement so that issue went back to arbitration and the decision of the arbitration panel was to essentially accept Knife River's pricing procedure modification and to accept the profit limitation recommendations of the Coyote Power Plant owners. *Id.*
4. The prices were adjusted downward and the retroactive adjustment of the prices resulted in a refund to the owners. Tr. at 16. MDU's share of the award was \$4,069,587.00, which was reduced to \$3,158,000.00 to reflect the amount of the award associated with serving MDU's retail load. Exhibits 11, B. The costs of the arbitration were allocated to the owners based on each owner's plant ownership percentage. Tr. at 21. Even though it did not participate in the arbitration proceeding, MDU was assigned, and paid under protest, \$536,175.00, of which \$418,000.00 is related to its retail operations. Tr. at 96-97; Exhibit B. MDU's South Dakota retail customers' share of the award was around 6.7% of MDU's retail share. Exhibits 11, B. MDU requested that it be allowed to deduct its arbitration costs from its share of the refund and then pass the net amount to its customers through the fuel clause. Tr. at 96-97. MDU agreed to pay interest on the net amount at the rate of interest for a three-month treasury bill until the amount is flowed through the fuel clause. Tr. at 98.
5. MDU also estimated that, on a going-forward basis, the result of the arbitration decision would result in additional fuel cost savings to retail customers of around \$519,000.00 per year. Exhibit 10 at 2.
6. Michele Farris, utility analyst for the Commission, recommended that MDU be allowed to deduct its litigation expenses of \$536,175.00 from its total damage award of \$4,069,587.00. Exhibit B. This net damage award was further reduced by excluding wholesale sales, for a total refund of \$2,741,928.00. *Id.* The amount allocated to MDU's South Dakota customers was 6.7% which was based on its percentage of sales to its South Dakota electric retail customers. Tr. at 96; Exhibits 11, B. The total amount of the refund to MDU's South Dakota customers would be \$183,709.00, plus the interest earned on the refund. Exhibit B.
7. Ms. Farris also recommended that MDU issue the refund to customers through its fuel clause during the months of June, July, and August. Tr. at 116.
8. The Commission finds that Staff's recommendation is fair and reasonable and will allow MDU to deduct its litigation expenses from its total damage award of \$4,069,587.00. The Commission further finds that MDU shall refund an amount of \$183,709.00, plus interest earned up until the time of the refund, to its South Dakota customers during the months of June, July, and August, 2000. The Commission further grants to MDU a waiver from its Fuel Clause Rate 58 to allow the deduction of litigation expenses from the refund.
9. The Commission further finds that this allowance of the deduction of litigation expenses is not to be interpreted as allowing future litigation expenses to be recovered through the fuel clause. The

Commission's decision in this case is based on the facts of this case and any future recovery of litigation expenses must be approved by the Commission.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 49-34A-2, 49-34A-3, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-10, 49-34A-11, 49-34A-13, 49-34A-19.2, 49-34A-25, 49-34A-26, and 49-34A-27.
2. The Commission finds that Staff's recommendation is fair and reasonable and will allow MDU to deduct its litigation expenses from its total damage award of \$4,069,587.00. The Commission further finds that MDU shall refund an amount of \$183,709.00, plus interest earned up until the time of the refund, to its South Dakota customers during the months of June, July, and August, 2000. The Commission further grants to MDU a waiver from its Fuel Clause Rate 58 to allow the deduction of litigation expenses from the refund.
3. The Commission further finds that this allowance of the deduction of litigation expenses is not to be interpreted as allowing future litigation expenses to be recovered through the fuel clause. The Commission's decision in this case is based on the facts of this case and any future recovery of litigation expenses must be approved by the Commission.

It is therefore

ORDERED, that MDU may deduct its litigation expenses from its total damage award of \$4,069,587.00 and shall refund an amount of \$183,709.00, plus interest earned up until the time of the refund, to its South Dakota customers during the months of June, July, and August, 2000, and it is

FURTHER ORDERED, that MDU is granted a waiver from its Fuel Clause Rate 58 to allow the deduction of litigation expenses from the refund.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 28th day of June, 2000. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 28th day of June, 2000.

CERTIFICATE OF SERVICE

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

By: Melanie Kelbo

Date: 6/29/00

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner