

EL00-009

EL00-009

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DOCKET NO.

In the Matter of

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

Public Utilities Commission of the State of South Dakota

DATE

MEMORANDA

5/10/00 Filed and Docketed;
 5/13/00 Reply Filings;
 5/19/00 Revised first page of Petition; Revised Exhibits C + D, spreadsheet;
 5/27/00 Stipulation to Consolidate Dockets;
 5/31/00 Order for and Notice of Hearing;
 5/31/00 Revised Petition of NWPS;
 5/31/00 Revised Tariff Pages;
 5/31/00 Transcript of Hearing held 5/15/00;
 5/31/00 Order of Fact and Opinion of Law; Notice of Entry of Order;
 5/31/00 Docket closed

EL00-009



Alan D. Dietrich
Vice President - Legal Administration
Telephone: (605) 978-2907
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125 S. Dakota Avenue
Suite 1100
Sioux Falls, SD 57104-6403
Telephone: 605-978-2436
Facsimile: 605-978-2410
Internet: www.northwestern.com

March 17, 2000

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

RECEIVED

MAR 20 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: Petition of NorthWestern Public Service relating to Coyote Coal Arbitration Damage Award

Dear Mr. Bullard:

Enclosed for filing are an original and ten copies of a Petition of NorthWestern Public Service related to a damage award that it received from an arbitration proceeding involving the Coyote I Generating Station near Beulah, North Dakota.

Sincerely yours,

Alan D. Dietrich
Vice President - Legal Administration

CC: Thomas Hitchcock
Richard Green
Rusty Molstad
Cameron Hoseck
Todd Guerrero
Donald Ball
Douglas Schulz

MAR 20 2000

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

In the Matter of NorthWestern Public
Service's Proposed Plan for Adjustment
Clause Treatment of Coyote Coal
Agreement Arbitration Damage Award

Docket No. EL00-_____

PETITION OF NORTHWESTERN PUBLIC SERVICE

I. INTRODUCTION

NorthWestern Public Service ("NorthWestern"), a division of NorthWestern Corporation, is pleased to submit this Petition for approval of a proposed plan to credit \$682,996.65 to its retail electric customers in the State of South Dakota. The plan is based on the results of an arbitration proceeding (the "Arbitration Case") involving a contract for the sale and delivery of lignite coal, pursuant to a long-term contract, the Coyote Plant Coal Agreement, dated January 1, 1978 (the "Coal Agreement"), to the Coyote I Generating Station near Beulah, North Dakota ("Coyote"). In the Arbitration Case, NorthWestern and two other owners of Coyote, Otter Tail Power Company ("Otter Tail"), and the Northern Municipal Power Agency (through its agent and representative Minnkota Power Cooperative, Inc., "Minnkota") challenged certain contract provisions of the Coal Agreement with Knife River Coal Mining Company ("Knife River"). This filing is being made pursuant to South Dakota Codified Laws, the Administrative Rules of the State of South Dakota, and NorthWestern's tariff schedules previously approved by the South Dakota Public Utilities Commission (the "Commission").

In this Petition, NorthWestern will provide background information on the results of the Arbitration Case conducted pursuant to the arbitration provisions of the Coal Agreement and will present a proposed plan for Commission approval that would credit the net proceeds from a favorable result (an award of damages and post-judgment interest) in that proceeding. While a Confidentiality Agreement among the parties to the Arbitration Case, approved by the three-

person arbitration panel handling that matter (the "Panel"), prohibits NorthWestern from disclosing details of the Arbitration Case (other than "as required by law"), NorthWestern can provide details on the results of the Panel's decision and NorthWestern's proposed plan to implement that decision to provide the benefits to NorthWestern's electric customers.

NorthWestern's proposed 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.

II. GENERAL FILING INFORMATION

Pursuant to ARSD 20:10:01:02:03, the names, addresses, and phone numbers for the contact persons for NorthWestern in this matter are:

Russell C. Molstad, Jr.
NorthWestern Public Service
600 Market Street West
Huron, SD 57350-1500
Phone (605) 353-7504
Fax (605) 353-7519

Thomas P. Hitchcock
NorthWestern Energy Corporation
33 Third Street SE
Huron, SD 57350-1605
Phone (605) 353-8235
Fax (605) 353-8216

Alan D. Dietrich
NorthWestern Corporation
125 South Dakota Avenue
Sioux Falls, SD 57104-6403
Phone (605) 978-2907
Fax (605) 978-2840

Richard J. Green
NorthWestern Public Service
600 Market Street West
Huron, SD 57350-1500
Phone (605) 353-7461
Fax (605) 353-7479

III. COYOTE ARBITRATION CASE RESULTS

As a result of the recent final decision of the Panel, NorthWestern has received a number of benefits for its electric customers. Those benefits include:

- (A) Effective with the implementation of the Arbitration Decision, the price of lignite coal delivered to Coyote by Knife River was reduced from \$11.23 per ton to \$10.20 per ton. This savings was included in NorthWestern's quarterly

adjustment clause filings with the Commission (Section 3, various Revised Tariff Sheets No. 33a). Based on this savings of approximately \$1.00 per ton, and assuming an estimated purchase at Coyote of 250,000 tons per year for NorthWestern's 10% ownership share of Coyote, the successful re-pricing of coal will produce an annual savings for NorthWestern's retail and wholesale electric customers of approximately \$250,000 or \$4,000,000 over the remaining 16-year term of the Coal Agreement.

(B) Revisions to other contract provisions were approved and have been implemented to the Coal Agreement which will provide stronger control of price changes and more competitive generation at Coyote, as compared to other coal-fired generating plants, enabling NorthWestern to continue to serve its customers with low-cost electricity and to assist NorthWestern in its sale of surplus power through wholesale transactions, further benefiting retail customers from better utilization of Coyote.

(C) The Panel's decision in the Arbitration Case included, among other findings, a ruling that the damages should be awarded for charges for coal by Knife River during the period of the Arbitration Case in excess of the price of comparable coal mines in North Dakota. A comparison of the charged prices and comparable prices determined by the Panel is included in Exhibit A to this Petition.

NorthWestern received an award of damages of \$815,993 plus interest of \$42,380 paid by Knife River from the date of the Arbitration Decision related to such difference in coal prices. The damages were calculated based upon the Coyote owners' share of fuel expense at the plant during the months for which the award was based (no part of the Panel's damage award was related to Montana-Dakota

Utilities Co.'s ["MDU's"] portion of those purchases.) This Petition presents NorthWestern's proposed plan for treatment of its share of the damage award.

IV. NORTHWESTERN'S PROPOSED PLAN FOR CREDITING TO CUSTOMERS THE DAMAGES AND INTEREST AWARDED IN THE ARBITRATION CASE.

NorthWestern provided a significant investment of its resources through the efforts of its executives and other employees participating in the strategy sessions among the three Coyote owners, expert witnesses, and attorneys; the attempts at negotiations with Knife River related to these issues; a North Dakota court proceeding that was stayed pending the Arbitration Case but which was utilized to implement the Panel's decision; and the Arbitration Case itself.

NorthWestern undertook those efforts in an attempt to bring the benefits of lower fuel costs and resulting lower charges for electricity to its customers. NorthWestern's customers have benefited greatly from the efforts involved in the Arbitration Case and related steps and proceedings in ongoing price reductions and Coal Agreement provision changes [III(A) and (B)], and under NorthWestern's proposed plan, the customers will realize a further significant benefit from their portion of the damages and interest NorthWestern has received.

To calculate the appropriate benefit, which it proposes in this plan to credit through its adjustment clause, to its retail customers, NorthWestern has determined the portion of the fuel use attributable to Federal Energy Regulatory Commission ("FERC") jurisdictional sales (NPS' FERC WS-1 rate) and retail sales for each month for which damages were awarded. Using those calculations (detailed on Exhibit B to this Petition), NorthWestern has calculated the benefit as follows: (i) determine the damages and interest obtained from Knife River, (ii) add interest for the time NorthWestern has had these payments until the proposed inclusion of the sums in the adjustment mechanism on April 30, 2000, (iii) subtract NorthWestern's costs in securing the Panel's decision (details of these costs are shown on Exhibit C to this Petition), and (iv) the resulting amount is the net benefit to be provided to NorthWestern retail and wholesale electric

customers (the "Net Benefit"). The calculations related to this formula are shown in Exhibit D to this Petition. NorthWestern notes that the costs it has included in item (iii) above of this formula represent solely out-of-pocket costs of expert witnesses, attorneys, American Arbitration Association fees and costs (including the fees of the Panel members), and incidental travel expenses for NorthWestern executives to attend the meetings and proceedings related to the Arbitration Case. The costs do not include any allocation or assignment of costs for the time of NorthWestern's executives and other employees.

NorthWestern proposes treating the Net Benefit as a "variance in actual qualified costs incurred and costs recovered," which under NorthWestern's adjustment clause are assessed a "carrying charge based upon the overall rate of return allowed by the Commission in the Company's last general rate filing" and "amortized into rates over the last twelve months of the subsequent thirteen month period," NorthWestern South Dakota Electric Rate Schedule, Section 3, 1st Revised Sheet No. 33.1, Paragraph (5).

As noted above, NorthWestern's customers have already received the benefit of the price reduction ordered by the Panel in the Arbitration Case. NorthWestern used its adjustment clause to automatically pass those savings along "in direct relation to changes in . . . delivered costs of fuel," (SDCL 49-34A-25). NorthWestern's customers will also benefit over the life of the Coal Agreement from the other language changes approved during the Arbitration Case, which will help keep the costs of fuel at Coyote more competitive with other comparable generating plants.

While the treatment of the ongoing price reduction is specifically addressed by statute (SDCL 49-34A-25 speaks to "automatic adjustment of charges for public utility service in direct relation to changes in . . . the delivered costs of fuel used in generation of electricity") and in NorthWestern's adjustment clause tariff, the treatment of an arbitration damage award is not. The Panel's damage award that NorthWestern and the other Coyote owners participating in the

Arbitration Case were able to achieve is extraordinary in nature and not related to ongoing costs of fuel, but to past performance under the Coal Agreement.

The instant situation is not discussed in SDCL 49-34A-25, in administrative rules adopted by the Commission, or in the tariff sheets of NorthWestern filed with and approved by the Commission. All of these governing imperatives contain language that deals with the periodic adjustment of rate schedules for current changes in the cost of fuel. They do not specify how a large refund or damage award should be treated by NorthWestern. NorthWestern proposes, in light of the lack of specific authority on this subject, that the Commission issue an order authorizing NorthWestern to use its adjustment clause and that clause's 12-month crediting mechanism, to credit to its retail electric customers (all of whom are subject to the jurisdiction of the Commission) the retail portion of the damage award and interest on such award (after subtracting their share of the costs incurred by NorthWestern in achieving that result).

Commission adoption of NorthWestern's proposed plan will allow NorthWestern's electric customers to benefit from the efforts successfully undertaken by NorthWestern, Otter Tail, and Minnkota. Those customers will benefit from the current price reduction, other Coal Agreement provision changes, and the damages received (together with interest on the funds provided by Knife River - both the interest paid by Knife River and interest paid by NorthWestern for any time period such funds are held by it).

It is appropriate that NorthWestern be reimbursed for the costs that it advanced in support of the efforts to realize fuel cost savings for its customers. NorthWestern's customers benefit from lower costs of energy from Coyote. NorthWestern believes that it has a responsibility to provide just and reasonable rates, and its executives' efforts to do take steps to insure such result are part of its cost of service and its obligations as a public utility. However, when extraordinary steps are taken to institute legal proceedings to challenge a producer in a long and complex matter, such as the Arbitration Case, the out-of-pocket costs related to such effort should be an

off-set to the recovery achieved. Failure to allow such reimbursement will have a chilling effect on such efforts by other public utilities in South Dakota, to the ultimate detriment of utility customers.

Although, as mentioned above, there are no statutes, rules or tariffs that directly address the treatment of a damage award related to costs at a generating plant, NorthWestern submits that the situation here is analogous to the Commission's participating in a proceeding (such as an interstate natural gas pipeline rate case) at the Federal Energy Regulatory Commission which results in a refund to a jurisdictional public utility. Under SDCL 49-34A-72, the Commission is entitled to reimbursement for its litigation expenses, including "reasonable attorney's fees, expert witness fees, and all other associated costs." In this Petition, NorthWestern is asking for precisely that result, reimbursement for its out-of-pocket attorney's fees, expert witness fees, and other associated costs (the American Arbitration Association fees, fees of the Panel members, and specific travel costs of executives of NorthWestern participating in the Arbitration Case).

NorthWestern urges the Commission to order the use of its adjustment clause to credit the damage award and interest, utilizing the formula provided above (including recognition of costs involved in realizing the award), as the fairest, most reasonable approach to deal with this extraordinary result. The plan is also consistent with the intent of SDCL 49-34A-25, which was enacted to provide for the adjustment of charges to customers to reflect changes in the cost of the components of service to them, including changes in the cost of fuel used to generate electricity.

V. CONCLUSION

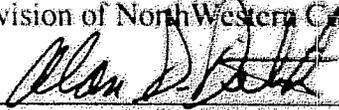
For the reasons outlined in this Petition, NorthWestern requests that the Commission enter its order adopting the plan for Arbitration Case damage and interest crediting to NorthWestern's retail electric customers through NorthWestern's adjustment clause presented in this Petition and directing NorthWestern to file a revised tariff schedule, Section 3, Sheet 33(a) to implement that decision.

Dated this 17th day of March, 2000.

**RESPECTFULLY SUBMITTED,
NORTHWESTERN PUBLIC SERVICE.**

a division of NorthWestern Corporation

By: _____


Alan D. Dietrich
Russell C. Molstad, Jr.
Attorneys for NorthWestern Public Service

CERTIFICATE OF SERVICE

An original and ten copies of this Petition were mailed this day to William Bullard, Executive Director, SD Public Utilities Commission, 500 East Capitol Ave., Pierre, SD 57501, and a copy of this Petition was mailed to each of the following:

Mr. Cameron Hoseck
Assistant Attorney General
SD Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

Mr. Todd J. Guerrero
Associate General Counsel
Otter Tail Power Company
215 S. Cascade St.
Fergus Falls, MN 56538

Mr. Donald R. Ball
Director of Regulatory Affairs
Montana-Dakota Utilities Co.
400 N. 4th St.
Bismarck, ND 58501

Mr. Douglas W. Schulz
Senior Attorney
Montana-Dakota Utilities Co.
400 N. 4th St.
Bismarck, ND 58501

Dated this 17th day of March, 2000.

NorthWestern Public Service

By: _____


Its Attorney

ARBITRATION PANEL DECISION
COAL PRICE
(per ton at 45,000 tons per week)

<u>Time Period</u>	<u>Delivered Cost</u>	<u>Panel Determined Cost</u>
4Q96	\$11.53	\$9.83
1997	11.61	9.83
1998	11.48	10.20
1Q99	11.23	10.20

ALLOCATION OF DAMAGE AWARD

EXHIBIT B

Period	Damage Award	S. Dakota		S. Dakota Total Mwh Sales	Allocation of Damage Award	
		WS-1 Mwh Sales	Retail Mwh Sales		S. Dakota WS-1 Sales	S. Dakota Retail Sales
Sep-96	\$ 11,438.00	195	61,188	61,383	\$ 36.94	\$ 11,621.66
Oct-96	\$ 28,308.00	299	77,744	78,043	\$ 108.45	\$ 28,189.55
Nov-96	\$ 36,789.00	480	83,178	83,658	\$ 211.08	\$ 36,577.92
Dec-96	\$ 27,563.00	1,352	95,013	96,365	\$ 365.71	\$ 27,176.29
Jan-97	\$ 34,092.00	1,654	115,059	116,713	\$ 480.14	\$ 33,608.86
Feb-97	\$ 32,678.00	1,697	102,152	103,849	\$ 533.99	\$ 32,144.01
Mar-97	\$ 38,951.00	1,282	86,580	87,862	\$ 568.24	\$ 38,382.76
Apr-97	\$ -	1,199	82,135	83,334	\$ -	\$ -
May-97	\$ -	824	83,975	84,799	\$ -	\$ -
Jun-97	\$ 14,792.00	492	81,532	82,024	\$ 98.73	\$ 14,703.27
Jul-97	\$ 28,567.00	574	96,974	97,548	\$ 168.10	\$ 28,398.90
Aug-97	\$ 29,414.00	720	109,801	110,521	\$ 191.62	\$ 29,222.38
Sep-97	\$ 30,302.00	680	96,637	97,317	\$ 211.73	\$ 30,090.27
Oct-97	\$ 33,761.00	573	82,108	82,681	\$ 233.97	\$ 33,527.03
Nov-97	\$ 36,899.00	591	85,869	86,460	\$ 252.22	\$ 36,646.78
Dec-97	\$ 42,751.00	949	91,370	92,319	\$ 439.46	\$ 42,311.54
Jan-98	\$ 38,137.00	1,046	103,542	104,588	\$ 381.41	\$ 37,755.59
Feb-98	\$ 28,044.00	1,135	94,245	95,380	\$ 333.72	\$ 27,710.28
Mar-98	\$ 29,106.00	726	90,198	90,924	\$ 232.46	\$ 28,873.54
Apr-98	\$ 32,314.00	828	88,960	89,788	\$ 297.99	\$ 32,016.01
May-98	\$ 34,390.00	554	81,611	82,165	\$ 201.88	\$ 34,188.12
Jun-98	\$ 30,827.00	440	85,415	85,856	\$ 157.99	\$ 30,669.01
Jul-98	\$ 21,583.00	453	106,973	107,426	\$ 91.01	\$ 21,481.99
Aug-98	\$ 22,593.00	679	108,189	108,868	\$ 140.91	\$ 22,452.09
Sep-98	\$ 8,621.00	597	107,595	108,192	\$ 47.57	\$ 8,573.43
Oct-98	\$ 26,660.00	485	83,156	83,641	\$ 154.59	\$ 26,505.41
Nov-98	\$ 24,667.00	461	84,903	85,364	\$ 103.21	\$ 24,563.79
Dec-98	\$ 24,028.00	721	88,638	89,359	\$ 193.87	\$ 23,834.13
Jan-99	\$ 27,409.00	975	112,583	113,556	\$ 235.33	\$ 27,173.67
Feb-99	\$ 19,048.00	1,201	90,284	91,485	\$ 250.06	\$ 18,797.94
Mar-99	\$ 22,261.00	731	69,651	70,382	\$ 231.21	\$ 22,039.79
Totals	\$ 815,993.00	24,593	2,827,258	2,851,851	\$ 7,027.03	\$ 808,965.97
	100.0000%				0.8612%	99.1388%

Note 1 - September 13 thru 30, 1996 Only

Note 2 - March 1 thru 26, 1999 Only

**COYOTE COAL ARBITRATION CASE
NORTHWESTERN'S COSTS**

Attorney Fees	
Donelan, Cleary, Wood & Maser, P.C.	\$134,755.89
Vogel, Kelly, Knutson, Weir, Bye & Hunke, Ltd.	8,886.34
Expert Witness Fees	
L. E. Peabody & Associates, Inc.	38,753.95
Price Waterhouse	8,975.15
Energy Ventures Analysis, Inc.	6,561.14
W. Craig Kuhl, CPA	6,058.12
American Arbitration Association Fees	11,947.07
NorthWestern Travel Expenses	<u>12,420.07</u>
Total Costs	\$228,357.73

NorthWestern's share of the total common costs (attorney fees, expert witness fees and AAA fees) was calculated based on its 10% ownership share of Coyote. During the pendency of the arbitration proceeding, NorthWestern actually contributed 13.3% representing its share of the 75% interest Coyote of NorthWestern, Otter Tail and Mankota because MDU was not participating in that proceeding. After the proceeding was concluded, MDU paid to the other owners its share of the arbitration case expenses (a reimbursement of \$70,775.13 to NorthWestern).

**COYOTE COAL ARBITRATION DAMAGE AWARD
CALCULATION OF PROPOSED CREDIT FOR
NORTHWESTERN RETAIL ELECTRIC CUSTOMERS**

<u>Item</u>		<u>Total</u>	<u>Wholesale</u>	<u>Retail</u>
Damage Award		\$815,993.00	\$ 7,027.03	\$808,965.97
Plus Knife River Interest	+	<u>42,380.00</u>	<u>364.98</u>	<u>42,015.02</u>
Total Received	=	858,373.00	7,392.01	850,980.99
Plus NorthWestern Interest (through 4/30/00)	+	<u>58,914.14</u>	<u>507.37</u>	<u>58,406.77</u>
Total Funds Available	=	917,287.14	7,899.38	909,387.76
Less Out-of-Pocket Costs	-	<u>228,357.73</u>	<u>1,966.62</u>	<u>226,391.11</u>
Total Net Funds	=	688,929.41	5,932.76	\$682,996.65
				To be Credited to Retail Customers Through Adjustment Clause

South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of March 16, 2000 through March 22, 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

CT00-048 In the Matter of the Complaint filed by Bobbie Burnham, Sioux Falls, South Dakota, against McLeodUSA Telecommunications Services, Inc. Regarding a Delay in the Installation of Services.

The complainant alleges that her phone service was ordered on 01/04/00 and not connected after two months due to delays caused by home address errors, U S WEST switch upgrades and phone box repairs inside and outside of the house. She feels that two months is unacceptable and that McLeodUSA's failure to follow through with scheduled dates of installation has caused emotional distress and she is requesting to be credited and awarded for inconvenience and stress.

Staff Analyst: Charlene Lund
Staff Attorney: Karen Cremer
Dated Docketed: 03/17/00
Intervention Deadline: NA

CT00-049 In the Matter of the Complaint filed by Kathleen Godfrey, Sioux Falls, South Dakota, against AT&T Communications of the Midwest, Inc. Regarding Unauthorized Switching of Services.

The Complainant alleges that after disconnecting service from AT&T, her service was switched back to AT&T without authorization twice. The Complainant requests that the PUC "will take up this issue and prosecute AT&T for their unprofessional and illegal activities."

Staff Analyst: Leni Healy
Staff Attorney: Karen Cremer
Date Docketed: 03/22/00
Intervention Deadline: NA

CT00-050 In the Matter of the Complaint filed by Gary R. and Victoria A. Witcher, Watertown, South Dakota, against U S WEST Communications, Inc. and AT&T Communications of the Midwest, Inc. Regarding Failure to Switch Services and Unauthorized Charges.

The complainants indicate that they cancelled their long distance services with AT&T for two phone lines on 09/24/99 and they received a bill from AT&T in February, 2000. The

complainants are alleging that either U S WEST failed to order the cancellation or AT&T mishandled the request to cancel the account. If U S WEST was at fault, the complainants are requesting an apology; if AT&T is at fault, the complainants are requesting that this be treated as slamming, since it is services against their authorization.

Staff Analyst: Charlene Lund
Staff Attorney: Camron Hoseck
Date Docketed: 03/22/00
Intervention Deadline: NA

ELECTRIC

EL00-009 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.

Northwestern Public Service Company petitions the South Dakota Public Utilities Commission for approval to utilize its Fuel Adjustment Clause to pass-through arbitration costs that have resulted in savings to retail customers.

Staff Analyst: Michele Farris
Staff Attorney: Camron Hoseck
Date Docketed: 03/20/00
Intervention Deadline: 04/07/00

TELECOMMUNICATIONS

TC00-057 In the Matter of the Application of Volunteer & Information Center for the Assignment of the N11 Dialing Code of 211 to Provide Free Information and Referrals to Community Service Organizations.

The Volunteer & Information Center (VIC) has filed an application for the assignment of the 211 dialing code to VIC's HELPLine. HELPLine is a 24-hour information/crisis telephone line that provides the general public with access to community resources. VIC proposes that this service would be available for the following Sioux Falls center office codes: 241, 321, 322, 330, 331, 332, 333, 334, 335, 336, 338, 339, 351, 357, 359, 360, 361, 362, 366, 367, 370, 371, 373, 430, 444, 575, 929, 940, 978, 988.

Staff Analyst: Keith Senger
Staff Attorney: Karen Cremer
Date Docketed: 03/16/00
Intervention Deadline: 04/07/00

TC00-058 In the Matter of the Filing for Approval of an Interconnection Agreement between U S WEST Communications, Inc. and Integra Telecom of South Dakota, Inc.

An interconnection agreement between Integra Telecom of South Dakota, Inc. and U S WEST Communications, Inc. has been filed with the Commission for approval pursuant to 46 U.S.C. Section 252(e). The agreement purports to adopt, in its entirety, a previously negotiated and approved JATO Communications Corp. interconnection agreement which was approved by the Commission on December 8, 1999, Docket No. TC99-103.

Staff Attorney: Camron Hoseck
Date Docketed: 03/17/00
Intervention Deadline: 04/07/00

**You may receive this listing and other PUC publications via our website or via internet e-mail.
You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc/>**

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Internet: www.northwestern.com

April 11, 2000

Mr. William Bullard, Executive Director
SD Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

RECEIVED

APR 13 2000

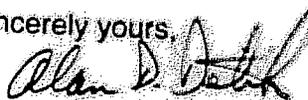
**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Re: Petition of NorthWestern Public Service relating to Coyote Coal Arbitration Damage Award

Dear Mr. Bullard:

Enclosed for filing are an original and ten copies of revised Exhibits C and D to the Petition of NorthWestern Public Service in the above matter. Upon further investigation of our records relating to the costs of the Coyote coal arbitration case, the costs itemized in Exhibit C, and summarized in Exhibit D, were found to be slightly in error. I am also enclosing a spreadsheet that lists such costs, monthly, and will be providing workpapers to support the numbers on that spreadsheet to the Commission Staff Analysts investigating this matter. Finally, I am enclosing an original and ten copies of a revised first page for the Petition (wherein the proposed credit number, now corrected, was stated.)

Sincerely yours,



Alan D. Dietrich
Vice President - Legal Administration

**COYOTE COAL ARBITRATION CASE
NORTHWESTERN'S COSTS**

Attorney Fees

Donelan, Cleary, Wood & Maser, P.C. \$118,585.42

Vogel, Kelly, Knutson, Weir, Bye & Hunke, Ltd. 8,861.12

Expert Witness Fees

L. E. Peabody & Associates, Inc. 47,749.04

Price Waterhouse 18,281.16

Energy Ventures Analysis, Inc. 13,056.27

W. Craig Kuhl, CPA 6,058.12

American Arbitration Association Fees 11,940.43

NorthWestern Travel Expenses 13,218.22

Total Costs **\$237,749.78**

NorthWestern's share of the total common costs (attorney fees, expert witness fees and AAA fees) was calculated based on its 10% ownership share of Coyote. During the pendency of the arbitration proceeding, NorthWestern actually contributed 13.3% representing its share of the 75% interest Coyote of NorthWestern, Otter Tail and Minnkota because MDU was not participating in that proceeding. After the proceeding was concluded, MDU paid to the other owners its share of the arbitration case expenses (a reimbursement of \$70,775.13 to NorthWestern).

**COYOTE COAL ARBITRATION DAMAGE AWARD
CALCULATION OF PROPOSED CREDIT FOR
NORTHWESTERN RETAIL ELECTRIC CUSTOMERS**

<u>Item</u>	<u>Total</u>	<u>Wholesale</u>	<u>Retail</u>
Damage Award	\$815,993.00	\$ 7,027.03	\$808,965.97
Plus Knife River Interest +	<u>42,380.00</u>	<u>364.98</u>	<u>42,015.02</u>
Total Received =	858,373.00	7,392.01	850,980.99
Plus North Western Interest (through 4/30/00) +	<u>58,914.14</u>	<u>507.37</u>	<u>58,406.77</u>
Total Funds Available =	917,287.14	7,899.68	909,387.46
Less Out-of-Pocket Costs -	<u>237,749.79</u>	<u>2,047.50</u>	<u>235,702.28</u>
Total Net Funds =	679,537.35	5,852.18	\$673,685.18

To be Credited to
Retail Customers
Through Adjustment Clause

CONTINUATION

1

-

COYOTE COAL ARB. CASE
NORTHWESTERN'S COSTS

(REPRESENTS NORTHWESTERN'S 10% SHARE OF ARBITRATION COSTS
ACTUAL BILLINGS AT 13.3%, WITH LATER MDU REIMBURSEMENT OF 3.3%)

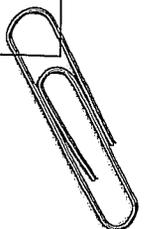
Date	Donelan, Cleary, Wood & Maser	Vogel, Kelly, Knutson, Weir, Bye & Hunke	Peabody	Price Waterhouse	Energy Ventures	Craig Kuhl	AAA fees	NorthWestern travel expenses	Total
								1261.76	
Sep-95									
Nov-95		1115.78							
Dec-95		686.15							
Jan-96		1338.07							
Feb-96	1,366.74								
Mar-96		743.98							
Apr-96	844.93								
May-96	23.94								
Jun-96	123.60								
Jul-96		386.79							1,390.00
Aug-96	989.69	1,033.07							848.00
Sep-96	3,075.44								
Oct-96		1,296.62							
Nov-96	3,822.32	700.00							
Dec-96	3,480.65	86.36	855.63	733.40	330.00				
Jan-97	3,606.86	110.18	958.07	1,264.80					
Feb-97	3,894.92	82.23	1,181.05	1,093.50	247.50				
Mar-97	2,535.30	509.23	1,125.72	1,656.60	490.00		1,500.00		2,098.06
Apr-97	3,738.22		571.17	130.62					
May-97	3,131.83	59.29		386.00	332.50				
Jun-97	1,591.33			1,087.10					
Jul-97		92.07							
Aug-97	3,755.41	70.83	796.74				500.00		
Sep-97	4,284.44		2,493.63	2,519.70					
Nov-97	1,303.87						1,000.00		
Dec-97	1,912.83				1,434.99				
Jan-98	1,941.66	48.90	321.74						
Mar-98	3,115.13		654.90						
Apr-98	2,932.35		1,094.11						
May-98	2,958.97		1,542.88	2,027.36	604.18				

Jul-98	4,028.36		2,176.39	715.00	1,339.26				
Aug-98	5,884.44		4,885.68	2,377.10					
Sep-98									
Oct-98	6,344.34		5,993.04	2,205.50	3,604.05			4,042.99	
Nov-98	11,455.09		5,897.07	1,049.70	2,099.32				
Jan-99	5,431.95		112.99		980.15	5,715.21			
Feb-99	249.69		74.64						
Mar-99			432.90						
Apr-99	190.76								
May-99	3,259.32		432.90					1,828.53	
Jun-99	6,516.71		4,666.67					486.00	
Jul-99	5,880.88		4,467.98			9,270.25			
Aug-99	6,297.54		4,310.36					1,262.88	
Sep-99	1,310.84								
Oct-99	411.37		328.55		855.29				
Nov-99	181.32								
Feb-00									
								-329.82	
Subtotal	111,873.04	8,359.55	45,046.26	17,246.38	12,317.24	5,715.21	11,940.43		
6% use tax	6,712.38	501.57	2,702.78	1,034.78	739.03	342.91		13,218.22	
Total	118,585.42	8,861.12	47,749.04	18,281.16	13,056.27	6,058.12	11,940.43	13,218.22	237,749.79

Continuation

2

of pages



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

**In the Matter of NorthWestern Public
Service's Proposed Plan for Adjustment
Clause Treatment of Coyote Coal
Agreement Arbitration Damage Award**

Docket No. EL00-_____

PETITION OF NORTHWESTERN PUBLIC SERVICE

I. INTRODUCTION

NorthWestern Public Service ("NorthWestern"), a division of NorthWestern Corporation, is pleased to submit this Petition for approval of a proposed plan to credit \$673,685.18 to its retail electric customers in the State of South Dakota. The plan is based on the results of an arbitration proceeding (the "Arbitration Case") involving a contract for the sale and delivery of lignite coal, pursuant to a long-term contract, the Coyote Plant Coal Agreement, dated January 1, 1978 (the "Coal Agreement"), to the Coyote I Generating Station near Beulah, North Dakota ("Coyote"). In the Arbitration Case, NorthWestern and two other owners of Coyote, Otter Tail Power Company ("Otter Tail"), and the Northern Municipal Power Agency (through its agent and representative Minnkota Power Cooperative, Inc., "Minnkota") challenged certain contract provisions of the Coal Agreement with Knife River Coal Mining Company ("Knife River"). This filing is being made pursuant to South Dakota Codified Laws, the Administrative Rules of the State of South Dakota, and NorthWestern's tariff schedules previously approved by the South Dakota Public Utilities Commission (the "Commission").

In this Petition, NorthWestern will provide background information on the results of the Arbitration Case conducted pursuant to the arbitration provisions of the Coal Agreement and will present a proposed plan for Commission approval that would credit the net proceeds from a favorable result (an award of damages and post-judgment interest) in that proceeding. While a Confidentiality Agreement among the parties to the Arbitration Case, approved by the three-



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

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.

Capitol Office
Telephone (605)773-3201
FAX (605)773-3869

Transportation/
Warehouse Division
Telephone (605)773-5280
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-877-1113

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

Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Laska Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

Hartan Best
Martin C. Bettmann
Sue Cichos
Karen E. Cremer
Terry Emerson
Michele M. Farris
Marlette Fischbach
Heather K. Forney
Shirleen Fugitt
Mary Giddings
Lewis Hammond
Lani Healy
Mary Healy
Camron Hoseck
Lisa Hull
Dave Jacobson
Jennifer Kirk
Bob Knadle
Delaine Kolbo
Charlene Lund
Gregory A. Rislov
Keith Senger
Kolayne Alts Wiest

**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.

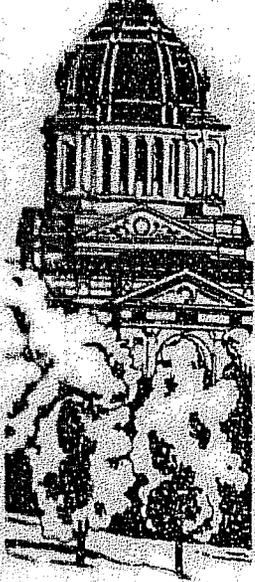
Dated this _____ day of April, 2000.

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

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Karen E. Cremer
Terry Emerson
Michele M. Farris
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
Rolayne Ailis Wiest

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.

RECEIVED

APR 27 2000

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 24th day of April, 2000.

Todd J. Guerrero

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
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)	ORDER FOR AND NOTICE
TAIL POWER COMPANY FOR APPROVAL OF)	OF HEARING
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)	EL00-009
CUSTOMERS FOR ARBITRATION AWARD)	
LESS COSTS)	

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>Helaine Kalbo</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

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

**In the Matter of NorthWestern Public
Service's Proposed Plan for Adjustment
Clause Treatment of Coyote Coal
Agreement Arbitration Damage Award**

Docket No. EL00-009

**REVISED PETITION OF
NORTHWESTERN PUBLIC SERVICE**

I. INTRODUCTION

NorthWestern Public Service ("NorthWestern"), a division of NorthWestern Corporation, is pleased to submit this Revised Petition for approval of a proposed plan to credit \$674,652.47 to its retail electric customers in the State of South Dakota. The Petition has been revised following discussions with the PUC Staff Analyst, Michele Farris, concerning the cost calculations in the exhibits attached to this Revised Petition.

The NorthWestern plan is based on the results of an arbitration proceeding (the "Arbitration Case") involving a contract for the sale and delivery of lignite coal, pursuant to a long-term contract, the Coyote Plant Coal Agreement, dated January 1, 1978 (the "Coal Agreement"), to the Coyote I Generating Station near Beulah, North Dakota ("Coyote"). In the Arbitration Case, NorthWestern and two other owners of Coyote, Otter Tail Power Company ("Otter Tail"), and the Northern Municipal Power Agency (through its agent and representative Minnkota Power Cooperative, Inc., "Minnkota") challenged certain contract provisions of the Coal Agreement with Knife River Coal Mining Company ("Knife River"). This filing is being made pursuant to South Dakota Codified Laws, the Administrative Rules of the State of South Dakota, and NorthWestern's tariff schedules previously approved by the South Dakota Public Utilities Commission (the "Commission").

In this Petition, NorthWestern will provide background information on the results of the Arbitration Case conducted pursuant to the arbitration provisions of the Coal Agreement and will present a proposed plan for Commission approval that would credit the net proceeds from a favorable result (an award of damages and post-judgment interest) in that proceeding. While a Confidentiality Agreement among the parties to the Arbitration Case, approved by the three-person arbitration panel handling that matter (the "Panel"), prohibits NorthWestern from disclosing details of the Arbitration Case (other than "as required by law"), NorthWestern can provide details on the results of the Panel's decision and NorthWestern's proposed plan to implement that decision to provide the benefits to NorthWestern's electric customers.

NorthWestern's proposed 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.

II. GENERAL FILING INFORMATION

Pursuant to ARSD 20:10:01:02:03, the names, addresses, and phone numbers for the contact persons for NorthWestern in this matter are:

Alan D. Dietrich
NorthWestern Corporation
125 South Dakota Avenue
Sioux Falls, SD 57104-6403
Phone (605) 978-2907
Fax (605) 978-2840

Thomas P. Hitchcock
NorthWestern Energy
33 Third Street SE
Huron, SD 57350-1605
Phone (605) 353-8235
Fax (605) 353-8216

Richard J. Green
NorthWestern Public Service
600 Market Street West
Huron, SD 57350-1500
Phone (605) 353-7461
Fax (605) 353-7479

Jeffrey Decker
NorthWestern Energy
33 Third Street SE
Huron, SD 57350-1605
Phone (605) 353-8315
Fax (605) 353-8216

III. COYOTE ARBITRATION CASE RESULTS

As a result of the recent final decision of the Panel, NorthWestern has received a number of benefits for its electric customers. Those benefits include:

- (A) Effective with the implementation of the Arbitration Decision, the price of lignite coal delivered to Coyote by Knife River was reduced from \$11.23 per ton to \$10.20 per ton. This savings was included in NorthWestern's quarterly adjustment clause filings with the Commission (Section 3, various Revised Tariff Sheets No. 33a). Based on this savings of approximately \$1.00 per ton, and assuming an estimated purchase at Coyote of 250,000 tons per year for NorthWestern's 10% ownership share of Coyote, the successful re-pricing of coal will produce an annual savings for NorthWestern's retail and wholesale electric customers of approximately \$250,000 or \$4,000,000 over the remaining 16-year term of the Coal Agreement.
- (B) Revisions to other contract provisions were approved and have been implemented to the Coal Agreement which will provide stronger control of price changes and more competitive generation at Coyote, as compared to other coal-fired generating plants, enabling NorthWestern to continue to serve its customers with low-cost electricity and to assist NorthWestern in its sale of surplus power through wholesale transactions, further benefiting retail customers from better utilization of Coyote.
- (C) The Panel's decision in the Arbitration Case included, among other findings, a ruling that the damages should be awarded for charges for coal by Knife River during the period of the Arbitration Case in excess of the price of comparable coal mines in North Dakota. A comparison of the charged prices and comparable prices determined by the Panel is included in Exhibit A to this Petition.

NorthWestern received an award of damages of \$815,993 plus interest of \$42,380 paid by Knife River from the date of the Arbitration Decision related to such difference in coal prices. The damages were calculated based upon the Coyote owners' share of fuel expense at the plant during the months for which the award was based (no part of the Panel's damage award was related to Montana-Dakota Utilities Co.'s ["MDU's"] portion of those purchases.) This Petition presents NorthWestern's proposed plan for treatment of its share of the damage award.

IV. NORTHWESTERN'S PROPOSED PLAN FOR CREDITING TO CUSTOMERS THE DAMAGES AND INTEREST AWARDED IN THE ARBITRATION CASE

NorthWestern provided a significant investment of its resources through the efforts of its executives and other employees participating in the strategy sessions among the three Coyote owners, expert witnesses, and attorneys; the attempts at negotiations with Knife River related to these issues; a North Dakota court proceeding that was stayed pending the Arbitration Case but which was utilized to implement the Panel's decision; and the Arbitration Case itself.

NorthWestern undertook those efforts in an attempt to bring the benefits of lower fuel costs and resulting lower charges for electricity to its customers. NorthWestern's customers have benefited greatly from the efforts involved in the Arbitration Case and related steps and proceedings in ongoing price reductions and Coal Agreement provision changes [III(A) and (B)], and under NorthWestern's proposed plan, the customers will realize a further significant benefit from their portion of the damages and interest NorthWestern has received.

To calculate the appropriate benefit, which it proposes in this plan to credit through its adjustment clause, to its retail customers, NorthWestern has determined the portion of the fuel use attributable to Federal Energy Regulatory Commission ("FERC") jurisdictional sales (NPS' FERC WS-1 rate) and retail sales for each month for which damages were awarded. Using those calculations (detailed on Exhibit B to this Petition), NorthWestern has calculated the benefit as

follows: (i) determine the damages and interest obtained from Knife River, (ii) add interest for the time NorthWestern has had these payments until the proposed inclusion of the sums in the adjustment mechanism on April 30, 2000, (iii) subtract NorthWestern's costs in securing the Panel's decision (details of these costs are shown on Exhibit C to this Petition), and (iv) the resulting amount is the net benefit to be provided to NorthWestern retail and wholesale electric customers (the "Net Benefit"). The calculations related to this formula are shown in Exhibit D to this Petition. NorthWestern notes that the costs it has included in item (iii) above of this formula represent solely out-of-pocket costs of expert witnesses, attorneys, American Arbitration Association fees and costs (including the fees of the Panel members), and incidental travel expenses for NorthWestern executives to attend the meetings and proceedings related to the Arbitration Case. The costs do not include any allocation or assignment of costs for the time of NorthWestern's executives and other employees.

NorthWestern proposes treating the Net Benefit as a "variance in actual qualified costs incurred and costs recovered," which under NorthWestern's adjustment clause are assessed a "carrying charge based upon the overall rate of return allowed by the Commission in the Company's last general rate filing" and "amortized into rates over the last twelve months of the subsequent thirteen month period," NorthWestern South Dakota Electric Rate Schedule, Section 3, 1st Revised Sheet No. 33.1, Paragraph (5).

As noted above, NorthWestern's customers have already received the benefit of the price reduction ordered by the Panel in the Arbitration Case. NorthWestern used its adjustment clause to automatically pass those savings along "in direct relation to changes in . . . delivered costs of fuel," (SDCL 49-34A-25). NorthWestern's customers will also benefit over the life of the Coal Agreement from the other language changes approved during the Arbitration Case, which will help keep the costs of fuel at Coyote more competitive with other comparable generating plants.

While the treatment of the ongoing price reduction is specifically addressed by statute (SDCL 49-34A-25 speaks to "automatic adjustment of charges for public utility service in direct relation to changes in . . . the delivered costs of fuel used in generation of electricity") and in NorthWestern's adjustment clause tariff, the treatment of an arbitration damage award is not. The Panel's damage award that NorthWestern and the other Coyote owners participating in the Arbitration Case were able to achieve is extraordinary in nature and not related to ongoing costs of fuel, but to past performance under the Coal Agreement.

The instant situation is not discussed in SDCL 49-34A-25, in administrative rules adopted by the Commission, or in the tariff sheets of NorthWestern filed with and approved by the Commission. All of these governing imperatives contain language that deals with the periodic adjustment of rate schedules for current changes in the cost of fuel. They do not specify how a large refund or damage award should be treated by NorthWestern. NorthWestern proposes, in light of the lack of specific authority on this subject, that the Commission issue an order authorizing NorthWestern to use its adjustment clause and that clause's 12-month crediting mechanism, to credit to its retail electric customers (all of whom are subject to the jurisdiction of the Commission) the retail portion of the damage award and interest on such award (after subtracting their share of the costs incurred by NorthWestern in achieving that result).

Commission adoption of NorthWestern's proposed plan will allow NorthWestern's electric customers to benefit from the efforts successfully undertaken by NorthWestern, Otter Tail, and Minnkota. Those customers will benefit from the current price reduction, other Coal Agreement provision changes, and the damages received (together with interest on the funds provided by Knife River - both the interest paid by Knife River and interest paid by NorthWestern for any time period such funds are held by it).

It is appropriate that NorthWestern be reimbursed for the costs that it advanced in support of the efforts to realize fuel cost savings for its customers. NorthWestern's customers benefit

from lower costs of energy from Coyote. NorthWestern believes that it has a responsibility to provide just and reasonable rates, and its executives' efforts to take steps to insure such result are part of its cost of service and its obligations as a public utility, however, when extraordinary steps are taken to institute legal proceedings to challenge a producer in a long and complex matter, such as the Arbitration Case, the out-of-pocket costs related to such effort should be an off-set to the recovery achieved. Failure to allow such reimbursement will have a chilling effect on such efforts by other public utilities in South Dakota, to the ultimate detriment of utility customers.

Although, as mentioned above, there are no statutes, rules or tariffs that directly address the treatment of a damage award related to costs at a generating plant, NorthWestern submits that the situation here is analogous to the Commission's participating in a proceeding (such as an interstate natural gas pipeline rate case) at the Federal Energy Regulatory Commission which results in a refund to a jurisdictional public utility. Under SDCL 49-34A-72, the Commission is entitled to reimbursement for its litigation expenses, including "reasonable attorney's fees, expert witness fees, and all other associated costs." In this Petition, NorthWestern is asking for precisely that result, reimbursement for its out-of-pocket attorney's fees, expert witness fees, and other associated costs (the American Arbitration Association fees, fees of the Panel members, and specific travel costs of executives of NorthWestern participating in the Arbitration Case).

NorthWestern urges the Commission to order the use of its adjustment clause to credit the damage award and interest, utilizing the formula provided above (including recognition of costs involved in realizing the award), as the fairest, most reasonable approach to deal with this extraordinary result. The plan is also consistent with the intent of SDCL 49-34A-25, which was enacted to provide for the adjustment of charges to customers to reflect changes in the cost of the components of service to them, including changes in the cost of fuel used to generate electricity.

V. CONCLUSION

For the reasons outlined in this Petition, NorthWestern requests that the Commission enter its order adopting the plan for Arbitration Case damage and interest crediting to NorthWestern's retail electric customers through NorthWestern's adjustment clause presented in this Petition and directing NorthWestern to file a revised tariff schedule, Section 3, Sheet 33(a) to implement that decision.

Dated this 9th day of May, 2000.

RESPECTFULLY SUBMITTED,
NORTHWESTERN PUBLIC SERVICE,
a division of NorthWestern Corporation

By: Alan D. Dietrich
Alan D. Dietrich
Attorney for NorthWestern Public Service

CERTIFICATE OF SERVICE

An original and ten copies of this Petition were mailed this 9th day of May, 2000, to William Bullard, Executive Director, SD Public Utilities Commission, 500 East Capitol Ave., Pierre, SD 57501, and a copy of this Petition was mailed to each of the following:

Mr. Cameron Hoseck
Assistant Attorney General
SD Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

Mr. Todd J. Guerrero
Associate General Counsel
Otter Tail Power Company
215 S. Cascade St.
Fergus Falls, MN 56538

Mr. Donald R. Ball
Director of Regulatory Affairs
Montana-Dakota Utilities Co.
400 N. 4th St.
Bismarck, ND 58501

Mr. Douglas W. Schulz
Senior Attorney
Montana-Dakota Utilities Co.
400 N. 4th St.
Bismarck, ND 58501

Ms. Michele Farris, Staff Analyst
SD Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

NorthWestern Public Service
By: Alan D. Dietrich
Its Attorney

**ARBITRATION PANEL DECISION
COAL PRICE**
(per ton at 45,000 tons per week)

<u>Time Period</u>	<u>Delivered Cost</u>	<u>Panel Determined Cost</u>
4Q96	\$11.53	\$9.83
1997	11.61	9.83
1998	11.48	10.20
1Q99	11.23	10.20

ALLOCATION OF DAMAGE AWARD

EXHIBIT B

Period	Damage Award	S. Dakota WS-1 Mwh Sales	S. Dakota Retail Mwh Sales	S. Dakota Total Mwh Sales	Allocation of Damage Award	
					S. Dakota WS-1 Sales	S. Dakota Retail Sales
Sep-96	\$ 11,438.00	195	61,188	61,383	\$ 36.34	\$ 11,401.66
Oct-96	\$ 28,308.00	299	77,744	78,043	\$ 108.45	\$ 28,199.55
Nov-96	\$ 36,789.00	480	83,178	83,658	\$ 211.08	\$ 36,577.92
Dec-96	\$ 27,563.00	1,352	95,013	96,365	\$ 386.77	\$ 27,176.23
Jan-97	\$ 34,092.00	1,654	115,059	116,713	\$ 483.14	\$ 33,608.86
Feb-97	\$ 32,678.00	1,697	102,152	103,849	\$ 533.99	\$ 32,144.01
Mar-97	\$ 38,951.00	1,282	86,580	87,862	\$ 568.34	\$ 38,382.66
Apr-97	\$ -	1,199	82,135	83,334	\$ -	\$ -
May-97	\$ -	824	83,975	84,759	\$ -	\$ -
Jun-97	\$ 14,792.00	492	81,532	82,024	\$ 88.73	\$ 14,703.27
Jul-97	\$ 28,567.00	574	96,974	97,548	\$ 188.10	\$ 28,378.90
Aug-97	\$ 29,414.00	720	109,801	110,521	\$ 191.62	\$ 29,222.38
Sep-97	\$ 30,302.00	680	96,637	97,317	\$ 211.73	\$ 30,090.27
Oct-97	\$ 33,761.00	573	82,108	82,681	\$ 253.97	\$ 33,507.03
Nov-97	\$ 36,899.00	591	85,869	86,460	\$ 252.22	\$ 36,646.78
Dec-97	\$ 42,751.00	949	91,370	92,319	\$ 439.46	\$ 42,311.54
Jan-98	\$ 38,137.00	1,046	103,542	104,588	\$ 581.41	\$ 37,555.59
Feb-98	\$ 28,044.00	1,135	94,245	95,380	\$ 303.72	\$ 27,740.28
Mar-98	\$ 29,106.00	726	90,198	90,924	\$ 202.40	\$ 28,903.60
Apr-98	\$ 32,314.00	828	88,960	89,788	\$ 297.69	\$ 32,016.01
May-98	\$ 34,390.00	554	81,611	82,165	\$ 201.86	\$ 34,188.14
Jun-98	\$ 30,827.00	440	85,415	85,855	\$ 157.69	\$ 30,669.01
Jul-98	\$ 21,583.00	453	106,973	107,426	\$ 91.01	\$ 21,491.99
Aug-98	\$ 22,593.00	679	108,189	108,868	\$ 140.91	\$ 22,452.09
Sep-98	\$ 8,621.00	597	107,595	108,192	\$ 47.57	\$ 8,573.43
Oct-98	\$ 26,660.00	485	83,156	83,641	\$ 154.59	\$ 26,505.41
Nov-98	\$ 24,667.00	461	84,903	85,364	\$ 103.21	\$ 24,563.79
Dec-98	\$ 24,028.00	721	88,638	89,369	\$ 103.87	\$ 23,924.13
Jan-99	\$ 27,409.00	975	112,583	113,558	\$ 235.33	\$ 27,173.67
Feb-99	\$ 19,048.00	1,201	90,284	91,485	\$ 250.06	\$ 18,797.94
Mar-99	\$ 22,261.00	731	89,651	90,382	\$ 231.21	\$ 22,030.79
Totals	\$ 815,993.00	24,593	2,827,258	2,851,851	\$ 7,027.83	\$ 698,965.87
	100.0000%				0.8612%	96.1984%

Note 1 - September 13 thru 30, 1996 Only

Note 2 - March 1 thru 26, 1999 Only

**COYOTE COAL ARBITRATION CASE
NORTHWESTERN'S COSTS**

Attorney Fees	
Donelan, Cleary, Wood & Maser, P.C.	\$106,365.56
Vogel, Kelly, Knutson, Weir, Bye & Hunke, Ltd.	8,451.13
Expert Witness Fees	
L. E. Peabody & Associates, Inc.	53,984.21
Price Waterhouse	18,306.90
Energy Ventures Analysis, Inc.	15,449.52
W. Craig Kuhl, CPA	6,058.12
American Arbitration Association Fees	14,940.43
NorthWestern Travel Expenses	<u>13,218.22</u>
Total Costs	\$236,774.09

NorthWestern's share of the total common costs (attorney fees, expert witness fees and AAA fees) was calculated based on its 10% ownership share of Coyote. During the pendency of the arbitration proceeding, NorthWestern actually contributed 13.3% representing its share of the 75% interest Coyote of NorthWestern, Otter Tail and Minkota because MDU was not participating in that proceeding. After the proceeding was concluded, MDU paid to the other owners its share of the arbitration case expenses (a reimbursement of \$70,775.13 to NorthWestern).

**COYOTE COAL ARBITRATION DAMAGE AWARD
CALCULATION OF PROPOSED CREDIT FOR
NORTHWESTERN RETAIL ELECTRIC CUSTOMERS**

<u>Item</u>		<u>Total</u>	<u>Wholesale</u>	<u>Retail</u>
Damage Award		\$815,993.00	\$ 7,027.03	\$808,965.97
Plus Knife River Interest	+	<u>42,380.00</u>	<u>364.98</u>	<u>42,015.02</u>
Total Received	=	858,373.00	7,392.01	850,980.99
Plus North Western Interest (through 4/30/00)	+	<u>58,914.14</u>	<u>507.37</u>	<u>58,406.77</u>
Total Funds Available	=	917,287.14	7,899.68	909,387.46
Less Out-of-Pocket Costs	-	<u>236,774.09</u>	<u>2,039.10</u>	<u>234,734.99</u>
Total Net Funds	=	680,513.05	5,860.58	\$674,652.47
				To be Credited to Retail Customers Through Adjustment Clause



May 19, 2000

EL00-009

SEARCHED
SERIALIZED
INDEXED
FILED

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

RECEIVED

MAY 22 2000

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Dear Mr. Bullard:

Pursuant to Section No. 3, Sheet No. 33 f (5) of NorthWestern's Electric Tariff, enclosed herein are three (3) copies of 8th Revised Sheet No. 33b.

Sheet No. 33b reflect changes in the delivered cost of fuel related to the Knife River Coal Arbitration case, to be effective June 1, 2000.

This out of period filing is being made to reflect the savings related to the recent commission approval for NPS to pass back savings to customers related to the Knife River Coal cost negotiations. The NPS ownership share of the savings awarded is \$850,980.99 plus interest through 4/30/00 of \$58,406.47. NPS out-of-pocket costs related to receiving this award amounted to \$234,734.99. The net passback to NPS Retail customers is \$674,652.47. This net amount will be returned to customers in the 3 month period of June - August. Amounts over or under the \$674,652 due to volume variance in the 3 month period June - August will be recovered or returned in the 12 month period starting September 1, 2000. This will also be the date of our next filing of delivered cost of fuel, ad valorem taxes paid and delivered cost of energy. November 1, 2000 we will return to our normal quarter filing schedule for fuel, delivered cost of energy and ad valorem taxes paid.

The effect of Sheet No. 33b for a typical Rate 10 residential service customer using 750 Kwh per month would be a decrease in the cost from \$63.21 to \$61.53, about 2.7%.

Should you have any questions regarding the above changes, please advise.

Sincerely,

Jeff J. Decker

Jeff J. Decker

JJD/lak

Enclosures

SOUTH DAKOTA ELECTRIC RATE SCHEDULE

RECEIVED

**NORTHWESTERN PUBLIC SERVICE COMPANY
HURON
SOUTH DAKOTA**

Section No. 1
Sheet No. 308
MAY 22 2000

~~8th Revised~~
Canceling ~~7th Revised~~

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

ADJUSTMENT CLAUSE RATES (cont'd)

Ad Valorem Taxes Paid - Energy Charge

	Per KWH
	<u>Per Month</u>
Rate No. 10 - Residential Service	\$0.00578
Rate No. 11 - Residential Service with Space Heating	\$0.00578
Rate No. 14 - Residential Space Heating and Cooling	\$0.00578
Rate No. 15 - Residential Dual Fuel and Controlled Services	\$0.00578
Rate No. 16 - Interruptible Irrigation Service	\$0.00628
Rate No. 17 - Irrigation Service	\$0.00628
Rate No. 18 - Off Peak Irrigation Service	\$0.00628
Rate No. 21 - General Service	\$0.00628
Rate No. 23 - Commercial Water Heating	\$0.00628
Rate No. 24 - Commercial Space Heating and Cooling	\$0.00628
Rate No. 25 - All-Inclusive Commercial Service	\$0.00628
Rate No. 41 - Municipal Pumping Service	\$0.00531
Rate No. 70 - Controlled Off Peak Service	\$0.00443
Rate No. 19 - Reddy-Guard, Rate No. 56 - Street and Area Lighting	\$0.00586

Per KW
Per Month

Ad Valorem Taxes Paid - Demand Charge

Rate No. 33 - Commercial and Industrial Service	\$1.36
Rate No. 34 - Large Commercial and Industrial Service	\$1.36

Per KWH
Per Month

Delivered Cost of Fuel - All Energy Usage:

All Rate Schedules	\$0.00873 (R)
--------------------------	---------------

Date Filed: May 19, 2000

Service on or after
Effective Dates: June 1, 2000

Issued By: Mike Hanson
President - CEO

NORTHWESTERN PUBLIC SERVICE
COYOTE ARBITRATION CREDIT CALCULATION
MAY 19, 2000

EXHIBIT A

CREDIT PER KWH CALCULATION

COYOTE ARBITRATION CREDIT (NPS RETAIL SHARE)	\$674,652
ESTIMATED RETAIL KWH SALES JUNE TO AUGUST	299,303,942
CREDIT COST INCLUDED IN RATES	<u>\$0.00225</u>

<u>ESTIMATED SALES</u>	KWH	CREDIT RATE	
JUNE KWH SALES	83,443,291	\$0.00225	\$188,007
JULY KWH SALES	100,874,362	\$0.00225	\$227,378
AUGUST KWH SALES	114,986,289	\$0.00225	\$259,187

ESTIMATED DOLLARS TO BE RECOVERED	<u>\$674,652</u>
-----------------------------------	------------------

FUEL RATE AFFECT

MAY 1, 2000 FUEL RATE FILED	\$0.01098
LESS COYOTE CREDIT	<u>(\$0.00225)</u>

FUEL RATE IN AFFECT JUNE 1, 2000 - AUGUST 31, 2000	<u>\$0.00873</u>
--	------------------

RECEIVED

MAY 22 2000

SOUTH DAKOTA ELECTRIC RATE SCHEDULE

NORTHWESTERN PUBLIC SERVICE COMPANY
HURON
SOUTH DAKOTA

Section No. 3
Sheet SOUTH DAKOTA P
Cancelling 7th Revised Sheet UTILITIES COMM

ADJUSTMENT CLAUSE RATES (cont'd)

Ad Valorem Taxes Paid - Energy Charge

	<u>Per KWH</u> <u>Per Month</u>
Rate No. 10 - Residential Service	\$0.00578
Rate No. 11 - Residential Service with Space Heating	\$0.00578
Rate No. 14 - Residential Space Heating and Cooling	\$0.00578
Rate No. 15 - Residential Dual Fuel and Controlled Services	\$0.00578
Rate No. 16 - Interruptible Irrigation Service	\$0.00628
Rate No. 17 - Irrigation Service	\$0.00628
Rate No. 18 - Off Peak Irrigation Service	\$0.00628
Rate No. 21 - General Service	\$0.00628
Rate No. 23 - Commercial Water Heating	\$0.00628
Rate No. 24 - Commercial Space Heating and Cooling	\$0.00628
Rate No. 25 - All-Inclusive Commercial Service	\$0.00628
Rate No. 41 - Municipal Pumping Service	\$0.00531
Rate No. 70 - Controlled Off Peak Service	\$0.00443
Rate No. 19 - Reddy-Guard, Rate No. 56 - Street and Area Lighting	\$0.00586

Per KW
Per Month

Ad Valorem Taxes Paid - Demand Charge:

Rate No. 33 - Commercial and Industrial Service	\$1.36
Rate No. 34 - Large Commercial and Industrial Service	\$1.36

Per KWH
Per Month

Delivered Cost of Fuel - All Energy Usage:

All Rate Schedules	\$0.00873 (R)
--------------------------	---------------

Date Filed: May 19, 2000

Service on or after
Effective Date: June 1, 2000

Issued By: Mike Hanson
President - CEO

NORTHWESTERN PUBLIC SERVICE
COYOTE ARBITRATION CREDIT CALCULATION
MAY 19, 2000

EXHIBIT A

CREDIT PER KWH CALCULATION

COYOTE ARBITRATION CREDIT (NPS RETAIL SHARE)	\$674,652
ESTIMATED RETAIL KWH SALES JUNE TO AUGUST	<u>299,303,942</u>
CREDIT COST INCLUDED IN RATES	<u>\$0.00225</u>

ESTIMATED SALES

	KWH	CREDIT RATE	
JUNE KWH SALES	83,443,291	\$0.00225	\$188,087
JULY KWH SALES	100,874,362	\$0.00225	\$227,378
AUGUST KWH SALES	114,986,289	\$0.00225	\$259,187

ESTIMATED DOLLARS TO BE RECOVERED	<u>\$674,652</u>
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FUEL RATE AFFECT

MAY 1, 2000 FUEL RATE FILED	\$0.01098
LESS COYOTE CREDIT	<u>(\$0.00225)</u>

FUEL RATE IN AFFECT JUNE 1, 2000 - AUGUST 31, 2000	<u>\$0.00873</u>
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SOUTH DAKOTA ELECTRIC RATE SCHEDULE

**NORTHWESTERN PUBLIC SERVICE COMPANY
HURON
SOUTH DAKOTA**

Section No. 3
Sheet No. 33b
8th Revised
Canceling 7th Revised Sheet No. 33b

ADJUSTMENT CLAUSE RATES (cont'd)

Ad Valorem Taxes Paid - Energy Charge

	<u>Per KWH</u>
	<u>Per Month</u>
Rate No. 10 - Residential Service	\$0.00578
Rate No. 11 - Residential Service with Space Heating	\$0.00578
Rate No. 14 - Residential Space Heating and Cooling	\$0.00578
Rate No. 15 - Residential Dual Fuel and Controlled Services	\$0.00578
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Rate No. 25 - All-Inclusive Commercial Service	\$0.00628
Rate No. 41 - Municipal Pumping Service	\$0.00531
Rate No. 70 - Controlled Off Peak Service	\$0.00443
Rate No. 19 - Reddy-Guard, Rate No. 56 - Street and Area Lighting	\$0.00586

Per KW
Per Month

Ad Valorem Taxes Paid - Demand Charge:

Rate No. 33 - Commercial and Industrial Service	\$1.36
Rate No. 34 - Large Commercial and Industrial Service	\$1.36

Per KWH
Per Month

Delivered Cost of Fuel - All Energy Usage:

All Rate Schedules	\$0.00873 (R)
--------------------------	---------------

Date Filed: May 19, 2000

Service on or after
Effective Date: June 1, 2000

Issued By: Mike Hanson
President - CEO

NORTHWESTERN PUBLIC SERVICE
COYOTE ARBITRATION CREDIT CALCULATION
MAY 19, 2000

EXHIBIT A

CREDIT PER KWH CALCULATION

COYOTE ARBITRATION CREDIT (NPS RETAIL SHARE)
ESTIMATED RETAIL KWH SALES JUNE TO AUGUST
CREDIT COST INCLUDED IN RATES

\$674,652
299,303,942
\$0.00225

ESTIMATED SALES

JUNE KWH SALES

KWH

CREDIT

RATE

JULY KWH SALES

83,443,291

\$0.00225

\$188,087

AUGUST KWH SALES

100,874,362

\$0.00225

\$227,378

114,986,289

\$0.00225

\$259,187

ESTIMATED DOLLARS TO BE RECOVERED

\$674,652

FUEL RATE AFFECT

MAY 1, 2000 FUEL RATE FILED

LESS COYOTE CREDIT

\$0.01098

(\$0.00225)

FUEL RATE IN AFFECT JUNE 1, 2000 - AUGUST 31, 2000

\$0.00873

RECEIVED

THE PUBLIC UTILITIES COMMISSION

JUN 08 2000

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

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

=====

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

<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

INDEX (Continued)

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<u>Exhibit Nos.</u>	<u>M</u>	<u>Q</u>	<u>E</u>
10 - Filing with Commission dated 2-9-00	95	96	96
11 - Amended Attachment A	95	96	96
A - Filing Summary	4	110	110
B - Refund Calculation	4	117	110

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

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

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

25 All parties have the right to be present and

1 to be represented by an attorney. All persons so
2 testifying will be sworn in and subject to
3 cross-examination by the parties. Commission's
4 final decision may be appealed by the parties to
5 the State Circuit Court and the State Supreme
6 Court.

7 Rolayne Wiest will act as Commission counsel.
8 She may recommend rulings on procedural and
9 evidentiary matters. The Commission may overrule
10 its counsel's preliminary ruling throughout the
11 hearing. If not overruled, the preliminary ruling
12 becomes the final ruling.

13 At this time I'll turn it over to Rolayne.

14 MS. AILTS WIEST: First I'll take
15 appearances of parties. Otter Tail.

16 MR. GUERRERO: Good morning,
17 Mr. Chairman, Members of the Commission. My name
18 is Todd Guerrero. That's G-U-E-R-R-E-O. I'm
19 associate general counsel with Otter Tail Power
20 Company.

21 MS. AILTS WIEST: And NWPS.

22 MR. DIETRICH: Good morning. My
23 name is Alan Dietrich of Sioux Falls. I am
24 representing Northwestern Public Service.

25 MS. AILTS WIEST: MDU.

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

5 MS. AILTS WIEST: Commission staff.

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

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

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

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

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

1 of our regulatory department at Otter Tail, and
2 Ms. Brutlag was responsible for much of the fuel
3 clause filing and much of the work involved in the
4 data requests and in working with staff prior to
5 this morning's hearing.

6 As one housekeeping item, I would note that I
7 believe there will be a recommendation at the end
8 of this proceeding in which staff will recommend a
9 certain pass-through of costs, and that will be a
10 recommendation for the months of June, July, and
11 August.

12 In light of that, Otter Tail would need a
13 ruling from this Commission either today or
14 tomorrow in order for us to get the accounting in
15 place if that were to take place.

16 Other than that, Ms. Wiest, no further
17 statement.

18 MS. AILTS WIEST: Mr. Dietrich, do
19 you have anything you'd like to state?

20 MR. DIETRICH: I have no opening
21 statement. Thank you.

22 MS. AILTS WIEST: Mr. Gerdes?

23 MR. GERDES: Other than to inform
24 the Commission we have one witness, Don Ball. I
25 have nothing further to say at this time.

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 Minnesota.

2 Q What is your job description and responsibilities?

3 A I'm the manager of production services, responsible
4 primarily for fuel and freight for our steam plants.
5 I'm a company representative for our joint-owned
6 plants. I'm also responsible for hydro and internal
7 combustion generation.

8 Q Tell me about what it means to be a representative for
9 the jointly owned plants.

10 A The operation of the jointly owned plants is under three
11 committees, a coordinating committee, engineering and
12 operating committee, and an audit committee. The
13 engineering and operating committee supervises the
14 operation of those plants, and I'm a member that
15 committee for Otter Tail Power.

16 Q Was one of those committees involved in the arbitration
17 that we'll talk a little bit about this morning?

18 A Some of the members were. The committee itself -- the
19 coordinating committee authorized the action. The
20 individuals that represent the companies in the
21 arbitration, some of them were on various committees.

22 Q How long have you been with Otter Tail?

23 A I've been there 34 years.

24 Q What other responsibilities have you held?

25 A I've been in division operations. I've been in internal

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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indicated it was the partners of the Coyote Power Plant.

Q Describe the contract between the partners and the Knife River Coal Company.

A The Coyote Coal Contract is essentially a life of mine. It's a 35-year contract, uses various indexed price components and some actual cost price components, quarterly price adjustments.

Q When did the contract begin?

A It began in '81 when the plant went on-line. It was signed prior to that, but delivery under the contract started in '81.

Q When is it set to expire?

A 35 years, which would get us to about 2016, I believe.

Q Okay. Who are the partners in the Coyote Power Plant?

A Okay. Otter Tail is the largest one with 35 percent. Minnkota Power Cooperative, representing Northern Municipal, owns 30 percent. Montana-Dakota Utilities owns 25, and Northwestern Public Service, 10 percent.

Q Do you know why essentially four utilities would own one power plant?

A None of these utilities are large enough to take that big of a bite at one time.

Q Mr. Bowman, could you please describe, to the extent that you know, the underlying issue in the contract

1 dispute with the partners and the Knife River Coal
2 Company?

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

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

14 A That's correct.

15 Q And the purpose of that comparison is what?

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

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

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

1 The arbitration case was then filed with the
2 American Arbitration Association. A three-panel
3 arbitration board was selected. We went through the
4 discovery process, arbitration hearings, and in March
5 '99 an Arbitration Order was issued.

6 Q Overall, how long was the process?

7 A It was about a two-year process through the arbitration.

8 Q Okay. Overall from the beginning to the end it would
9 have been how long?

10 A From the beginning of?

11 Q The court, the actual court process.

12 A That may be adding another year.

13 Q Okay. Who were the parties -- who did the partners get
14 involved on their behalf to help them in this process?

15 A The legal firm of Donelan, Cleary, Washington, D.C.,
16 coordinated our efforts. In addition to that,
17 Tom Crowley from L.E. Peabody was an expert witness,
18 Bob Sansom from Energy Ventures was an expert witness,
19 and Craig Kuhl with Price Waterhouse was an expert
20 witness for us.

21 Q In your opinion, did this arbitration proceeding proceed
22 much like any typical litigation that would have been in
23 court?

24 A I'm not real familiar with a court proceeding, but I
25 would think it would have been very similar. We went

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through discovery. It was certainly a very formal process.

Q Do you know how to spell Donelan, Cleary?

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

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

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

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

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

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

1 on the arbitration panel was that it adjust the prices
2 in the coal contract?

3 A That's correct.

4 Q Did the panel do that?

5 A The panel adjusted prices retroactively and approved a
6 pricing procedure going forward.

7 Q And did they adjust the prices up and down?

8 A Down.

9 Q Tell me a little bit about the retroactive aspect of the
10 pricing provisions, Mr. Bowman.

11 A The Arbitration Order established prices from the fourth
12 quarter of '96 through the decision period. And there
13 was two prices in there. The final one was \$10.20
14 compared to the \$11 plus number that we were currently
15 being charged.

16 We went back and recalculated the billings for
17 that time frame, and it resulted in a rebate or a refund
18 to the three owners of the plant of approximately
19 5.9 million dollars.

20 Q Would that have been a damage award?

21 A Yes.

22 MR. GUERRERO: I have no further
23 questions.

24 MS. AILTS WIEST: Before I ask for
25 any cross-examination, I know in your stipulation

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.

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your Honor, with this stipulation. I think if something is objectionable, I'll just speak up, but otherwise I'll agree to that.

MS. AILTS WIEST: Mr. Guerrero, do you have any problems with that?

MR. GUERRERO: That's correct. If something is objectionable, I'll note the objection on the record.

MR. HOSECK: I have no objection at all.

MS. AILTS WIEST: Then cross-examination. Mr. Dietrich, I guess the problem is is that I'm not sure you're entitled to cross-examination because you did not intervene in this case. So I would assume that the next person I would go to would be Mr. Hoseck.

Is that understanding wrong?

MR. DIETRICH: As much as I would like the opportunity to cross-examine Mr. Bowman, I think that's fine with us.

MS. AILTS WIEST: Does anybody have any problems with that?

(No audible response)

MS. AILTS WIEST: Mr. Hoseck.

MR. HOSECK: Just a couple of

questions, Mr. Bowman.

CROSS-EXAMINATION

BY MR. HOSECK:

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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

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Are you proposing that there be any kind of different allocation than what you're proposing here if any of the decisions, for example, in the other jurisdictions would not give you any cost recovery on this?

MR. GUERRERO: Counsel, could I interject? You may want to save that question for our next witness. That will be part of her testimony and her expertise.

MS. AILTS WIEST: Okay. And then with respect to the pricing procedure going forward, I believe you stated that the arbitrator adjusted prices retroactively and approved a pricing procedure going forward.

Does that mean actual prices were approved going forward or just a procedure for pricing?

THE WITNESS: Just the procedure -- the procedure has various components of actual and indexed costs. Those procedures were adjusted going forward.

MS. AILTS WIEST: How is Otter Tail seeking to refund the damages? Would that be a question for your next witness?

THE WITNESS: Yes.

MS. AILTS WIEST: My other question

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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companies, whether they had certain in-house costs that they absorbed themselves or not.

MS. AILTS WIEST: So your costs included both in-house and outside counsel costs, your attorneys fees?

THE WITNESS: Very little in-house. Some of it was outside attorney fees that strictly represented Otter Tail.

MS. AILTS WIEST: And is Otter Tail going to give the Commission a breakdown of these fees and costs?

MR. GUERRERO: That's correct, Counsel. In fact, those questions you may want to repeat to our next witness.

MS. AILTS WIEST: Okay. Do you have any redirect of this witness?

MR. GUERRERO: Yes, I do. Thank you.

MR. GERDES: Excuse me. Just a minute. Are you ruling that we have no opportunity to cross-examine? And I guess I'd make the point it's not a big deal right at this point, but it would be, I think, inconsistent with the agreement we just had that this witness's testimony would relate to all three proceedings.

1 MS. AILTS WIEST: Right. I
2 understand the point. I'm just trying to figure
3 this out procedurally. And if this doesn't work
4 out that we can't use other witness's testimony,
5 then, I mean, the solution would be, of course, for
6 your witness to go through all the facts on their
7 side.

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

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

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

20 MR. GUERRERO: Counsel, I have no
21 objection.

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

Case.

MR. GUERRERO: I have no objections.

MS. AILTS WIEST: Do you have any questions, Mr. Gerdes?

MR. GERDES: Just one.

CROSS-EXAMINATION

BY MR. GERDES:

Q You indicated that MDU did not participate in the arbitration. Did MDU, however, pay its billed share of the arbitration expenses?

A Yes, they did, under protest.

MS. AILTS WIEST: Any other questions? Any redirect, Mr. Guerrero?

MR. GUERRERO: Thank you, Counsel.

REDIRECT EXAMINATION

BY MR. GUERRERO:

Q Mr. Bowman, I believe Commission Counsel asked you a question about the reduction in prices on a forward going basis. Earlier you indicated that there was a price reduction that the arbitration panel awarded.

A That's correct.

Q Could you calculate that on a forward going basis, what that would be in terms of Otter Tail's cost for fuel at the Coyote Plant?

A The difference on a go-forward basis is that the change in

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

price of \$10.20 as of March '99. And the instructions were change the pricing procedures so they will yield a price of \$10.20. All of the components of the pricing remain the same, but some of the numbers within those components were changed.

CHAIRMAN BURG: Okay.

THE WITNESS: There was a price component multiplier, which used to be 42.00 percent, I believe, and was changed down into the neighborhood of 30 percent which lowered that price.

CHAIRMAN BURG: So, in other words, the original method of determining price is still in place?

THE WITNESS: It's still in place.

CHAIRMAN BURG: But they just ordered you change some of the factors --

THE WITNESS: Some of the factors or numbers within that was changed.

MR. ALLTS WIEST: So even though the language in the contract stated something that it would be comparable, the prices would be comparable, then subsequently you did come up with some sort of formula to determine that.

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

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

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

14 THE WITNESS: Perhaps in 1978, '79.

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

17 THE WITNESS: That's correct.

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

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

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

was just added to that?

THE WITNESS: That's correct.

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

COMMISSIONER NELSON: I have one. In other words, are you saying that you had a formula that you followed and basically you ended up tweaking that formula a little bit and you said to go to something percent versus now it's at 30 something?

THE WITNESS: That's one of the components of it, yes.

COMMISSIONER NELSON: Is that just an arbitrary figure, the 42, and 30 is also arbitrary or --

THE WITNESS: The 42 is part of the original contract. And we didn't get into how that was established during the arbitration. The new number was devised to yield \$10.20.

COMMISSIONER NELSON: How do we know \$10.20 is the right number in the future? I can see where it would be the appropriate number because you already know that it wasn't right working out before and you figured out what would provide for a comparable price. But how do I know

1 in the future that's \$10.20?

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

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

9 THE WITNESS: That's correct.

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

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

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

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

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

24 THE WITNESS: That's correct.

25 MR. RISLOV: Thank you.

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MS. AILTS WIEST: Any further questions of this witness? If not, thank you. You may call your next witness.

MR. GUERRERO: Thank you.
Otter Tail calls Ms. Bernadeen Brutlag.

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

DIRECT EXAMINATION

BY MR. GUERRERO:

Q State your name and spell it, please.

A Bernadeen Brutlag. The first named is spelled B-E-R-N-A-D-E-E-N. The last name, B-R-U-T-L-A-G.

Q Could you tell the Commission where you work and in what capacity?

A I work for Otter Tail Power in their general office in Fergus Falls. I am manager of regulatory services.

Q What are some of the responsibilities that the manager of regulatory services has?

A About two years ago we consolidated all of our regulatory activities into the department of regulatory services. It includes revenue requirements, regulatory compliance, rate design, rate administration, and just about any other regulatory questions that come along in the company.

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 passed through as an adjustment to the retail customers'
2 bills.

3 Q Thank you. You heard Mr. Bowman's earlier testimony,
4 did you not?

5 A Yes, I did.

6 Q Did you hear him indicate that the Coyote partners had
7 received a certain award from the arbitrators?

8 A Yes, I did.

9 Q Do you know what Otter Tail Power Company's award was or
10 share of that award?

11 A The share of the award was \$2,884,000.

12 Q Just briefly, what does that amount represent?

13 A It represents Otter Tail's share of the award, and that
14 share is in line with our ownership of the Coyote Plant.

15 Q Okay. Thank you. Ms. Brutlag, earlier I had given to
16 you an exhibit which is Otter Tail Power Company
17 Exhibit 1, which I have also given the original to the
18 court reporter.

19 Ms. Court Reporter has marked that as
20 Otter Tail Exhibit 1. Can you identify that document?

21 A Yes. I have a copy.

22 Q Could you tell us what it is?

23 A It's a summary of the award amount and the amount of
24 litigation costs that we are requesting. And it also
25 involves -- we made two filings. There was an original

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.

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A Certainly. Line 1 is the amounts that were included in our original filing, and that is the arbitration awarded 2.884 million, arbitration costs, which is \$1.240 million, for a net award that we would anticipate passing back to customers of 1.6 million.

At the time that we made the original filing we had received reimbursement from Montana-Dakota Utilities for their share of costs, but it was made under protest. And because we didn't know what the status of those dollars were, they didn't include them in the original filing.

As it became clearer that those dollars would probably, in fact, be retained by our company, we made an amended filing and adjusted the arbitration costs that we are requesting downward to give credit for that amount paid by MDU. And that's on line 3 there, \$250,930.

The other thing we did in our amended filing was when we owned power plant there are times when we don't need the total output of our share of that plant for our retail owed. And during this period of time which you see laid out in footnote 2 there from December of '96 to March of '99, which is the period of time when the arbitration award was based on, we went back through our records and determined that 11 percent

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.

Q Does Otter Tail have allocator factors on file with this Commission?

A We have an allocation manual on file with all three State Commissions that were approved in our last rate case. And that is a manual that describes how we are to develop the factors to get to this end point.

Each state -- all states have allowed us the same methodology. As I say, the result varies each year, but the methodology has been in place for a number of years.

Q Ms. Brutlag, I want to take you back up to line 1. The net award -- or, excuse me, back down to line 9, the net award. Can you explain what the net award signifies.

A The net award is the allocation award and subtracting out the arbitration costs which we're requesting permission from this Commission to recover through the fuel clause.

So there would be a net amount that would be passed back to customers basically as a credit to fuel and purchase power of the 1.6 million.

Q Is Otter Tail asking permission to pass the 1.6 to the fuel clause?

A Actually what we're asking permission to do is pass the 984,341 through the fuel clause. The award itself is directly related, as you heard earlier, to the cost of

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 MS. AILTS WIEST: Mr. Gerdes?

2 MR. GERDES: No questions.

3 MS. AILTS WIEST: Mr. Hoseck?

4 MR. HOSECK: No questions.

5 MS. AILTS WIEST: Commission?

6 CHAIRMAN BURG: I'm interested in
7 the one you have.

8 MS. AILTS WIEST: How are you
9 intending to flow this back through the fuel
10 clause? Over what time period?

11 THE WITNESS: There are a couple of
12 ways we could do it. When we did the original
13 filing we suggested using the allocation factor.
14 And I think at that time we were anticipating doing
15 it in a lump sum in one movement.

16 Realistically, what will probably happen is
17 whatever the net amount of the award that we are
18 allowed to take, we will use that in probably June,
19 if we have a determination soon enough. If not, it
20 would be July. We would reduce the amount of fuel
21 for that month.

22 Our total fuel costs were reduced by the
23 amount of the award. Since South Dakota has a
24 three-month average, the benefit would actually
25 flow back to customers for three months.

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

factor.

It appears that each state is doing things a little bit differently so I've also worked out a spreadsheet that will allow us to do it state by state, and they're not as dependent on the other states any longer.

A long answer to your question, but I believe we can do it and begin passing it back before all the states have ruled.

MS. AILTS WIEST: You stated not so dependent on the other states as before. My question is why would the allocation for South Dakota be any different depending on what other jurisdictions do?

THE WITNESS: I guess the other thing, it really isn't dependent on what the other states do. When we went into this we were already quite clear how we were really going to implement it when we got down to the dollars.

If all states had treated this identical, if we had gotten the same dollar amount in each state, it would have been much easier if we could have waited until they're all finished and treated it as one number.

It appears they're not treating it quite the

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

amount of attorneys fees that we had in our last rate case in Minnesota.

In discussions with them we were discussing the fact that each year we have probably as much in attorneys fees as we had in base rates aside from this but they were still feeling there was an amount that was in base rates and they created a rather complex spreadsheet that ratioed it down.

On a total amount basis they disallowed about 24 percent, I believe, of the total award.

MS. AILTS WIEST: And you reference North Dakota making a final decision May 26, but you seemed to imply you had an idea already of what that decision was going to be. Could you explain that?

THE WITNESS: Correct. In North Dakota they have a couple of steps involved. And the first one is an informal hearing where the Commission and staff has an opportunity to ask all the questions and get all of their questions answered. We've had that.

Normally after that proceeding we have a pretty good idea of how the Commission will vote so when it comes on their regular agenda on May 25 or 24, I don't remember the date now, we are fairly

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

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

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

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

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

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

MR. GUERRERO: Exhibit No. 3.

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

applications are actually in the record.

And in order to get the application in you can certainly mark it as an exhibit and put them in. Would you care to put those applications into the record?

MR. GUERRERO: Yes, I would. Thank you.

MS. AILTS WIEST: So let's mark your original Petition as Exhibit 4. And then if we could mark your filing received by us on March 28, 2000, which I believe amended to some extent your original Petition, that will be 5. Is there any objection to the Commission receiving Exhibits 2, 3, 4, 5?

If not, they have been offered and will be admitted.

MR. GUERRERO: Thank you.

COMMISSIONER SCHOENFELDER: Are you finished? I have a question.

MS. AILTS WIEST: I just have --

COMMISSIONER SCHOENFELDER: Go ahead and finish.

MS. AILTS WIEST: Do you have a breakdown then of the actual costs or the attorneys fees broken down between in-house counsel and

1 outside counsel? Could we get that into the
2 record?

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

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

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

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

21 THE WITNESS: This is the total of
22 the cost.

23 MS. AILTS WIEST: This is all the
24 cost?

25 THE WITNESS: This shows the

48
1 breakdown of the original -- this will total the
2 original filing costs that I mentioned without the
3 credit from MDU. And then it also shows the costs
4 incurred by year. It just happens to be on this
5 sheet of paper.

6 MS. AILTS WIEST: Thank you. I know
7 NWPS stated in theirs they were seeking recovery of
8 travel expenses for various officers and
9 directors. Were those included in the costs?

10 THE WITNESS: We have a relatively
11 small amount for \$14,974 for vehicles and/or the
12 plane.

13 MS. AILTS WIEST: Would that be
14 travel expenses related directly to directors and
15 officers attending hearings or meetings?

16 THE WITNESS: I guess I don't know.
17 Mr. Bowman could actually answer that question.

18 MS. AILTS WIEST: If Mr. Bowman
19 could be recalled and go through those numbers and
20 explain them in a little more detail.

21 COMMISSIONER SCHOENFELDER: You
22 asked my question. I wanted the breakdown, but I
23 also want to know on the record the breakdown on
24 there is Otter Tail Power's expenses only? It
25 doesn't include the total expense? It's year

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?

MR. GUERRERO: Yes, I do. Thank

you.

REDIRECT EXAMINATION

BY MR. GUERRERO:

Q Commission Counsel asked you about the Minnesota rulings, Ms. Brutlag. Could you explain a little bit about how that decision was reached in your negotiations with both Commission staff and with the Minnesota Department of Commerce?

A There were a number of discussions with Department of Commerce staff trying to establish an estimate of how many dollars of attorneys fees are base rates from our last rate case. And since there is no account that is specifically attorneys fees, it's difficult to determine what that was at the time that we had our last rate case.

So we went through a series of calculations, a series of estimates, to try to come up with a dollar amount. And then what the Department of Commerce analyst did roughly was to take a proportion and carry that proportion forward to today's -- what it did was allow the Commission today's to decide how much was in base rates and how much would be considered extraordinary.

Q Did the Minnesota matter go to a formal contested

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.

COMMISSIONER SCHOENFELDER: We have a couple down here.

MS. AILTS WIEST: Go ahead.

COMMISSIONER SCHOENFELDER: First of all, you should have an arbitration document that would have allocated those costs. Do you have that document, and could that be submitted to the Commission as an exhibit?

THE WITNESS: I don't have it. I'm not familiar with it.

COMMISSIONER SCHOENFELDER: It would have been a document that the arbitrator would have allocated the costs amongst all of you.

THE WITNESS: There's an arbitration award document, which I don't know if I've even seen the total. I've seen a summary of it.

MS. AILTS WIEST: I thought the arbitrator didn't allocate the cost.

THE WITNESS: I don't think the arbitrator really ruled on the costs themselves because it goes back to how the plant is owned.

MS. AILTS WIEST: Maybe Mr. Bowman could answer the question.

THE WITNESS: I think he would be closer to be able to answer that than I can.

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?

MR. RISLOV: Correct. I think you said 33,000.

THE WITNESS: The 33,000, correct. Probably not. It wasn't a question that had come up during discussions. And, to be honest, I'm not sure whose labor this is. Like I said, Mr. Bowman was involved in the case itself. He may be able to tell you whose labor this is and whether, in fact, it would be extraordinary. To the extent it is routine labor, it's correct it would be in a cost of service in our base rates probably.

MR. RISLOV: I'd like to go back for the next question on the original Petition Otter Tail Company filed in this docket, and I believe Rolayne referenced the footnote on Page 8.

THE WITNESS: Okay.

MR. RISLOV: There's a statement in there that states in this event Otter Tail suggests using the E2 energy factor. I don't know which event that's mentioning. Do you intend to use the E2 energy factor? Is that the factor you used for Exhibit 1 as to allocate cost?

THE WITNESS: That is the factor that was used for footnote 3 in Exhibit 1 that shows the percentages by state. And the E2 factor

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?

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A Correct.

Q The final decision, I believe, has been negotiated to some extent with staff?

A That's my understanding.

MR. GUERRERO: Thank you.

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

MR. GUERRERO: Just in terms of my motion to keep the record open.

MS. AILTS WIEST: Yes. We'll grant that motion to keep the record open. Thank you, Ms. Brutlag.

(Witness excused)

MS. AILTS WIEST: Could we recall Mr. Bowman?

MR. GUERRERO: Could I take one second?

MS. AILTS WIEST: Yes. Go ahead.

(Discussion off the record)

(Exhibit 7 is marked for identification)

MR. GUERRERO: I do have a stipulation, Counsel, that I can either offer now or after Mr. Bowman's recross.

MS. AILTS WIEST: You can offer it now.

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

that stipulation in a little bit more detail as part of their recommendation.

MS. AILTS WIEST: Those would be subtracted from the 1.2 million arbitration costs?

MR. GUERRERO: That's correct.

MR. HOSECK: And for the record, I would stipulate to that reduction, and it will be further explained through witness Farris's testimony.

MS. AILTS WIEST: Okay. Thank you. Mr. Bowman, I think you have before you Exhibit 6; is that correct?

THE WITNESS: I don't know what the number is. It's Otter Tail Power Company Knife River Coal Contract. It has a total cost -- (Exhibit 6 is marked for identification)

MR. GUERRERO: Counsel, I have just handed to Mr. Bowman, Otter Tail Power Company Exhibit No. 6. This is an exhibit that has not yet been copied so the only copy right now is with Mr. Bowman.

DIRECT EXAMINATION

BY MR. GUERRERO:

Mr. Bowman, briefly describe that document.

It's a breakdown of the costs in the work order that we

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