

probably be answered by staff when they explain the stipulation?

MR. HOSECK: Staff will offer testimony in the exhibit that reconciles all of these, I believe.

CHAIRMAN BURG: Okay.

MS. AILTS WIEST: Does anyone have any questions of Mr. Bowman then? If not, thank you.

(Witness excused)

MS. AILTS WIEST: Do you have any further witnesses, Mr. Guerrero?

MR. GUERRERO: None, thank you.

MS. AILTS WIEST: Mr. Dietrich, you may call your witness.

MR. DIETRICH: Richard Green.

RICHARD GREEN,

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

DIRECT EXAMINATION

BY MR. DIETRICH:

Q Would you please state your name and position with Northwestern.

A My name is Richard Green. I work for Northwestern Public Service in the capacity of process leader of

system operations.

Q Okay. What are then your areas of responsibilities?

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

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

A Yes, I am, have been.

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

A That's correct.

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

A Yes, I am.

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

A Yes.

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

1 A Yes, I do.

2 Q Okay. There was some discussion about a contract  
3 addendum. Was this contract addendum the primary  
4 difference between the coal agreements at Big Stone and  
5 Coyote?

6 A Yes. That's correct. At the time the Coyote contract  
7 was being negotiated in the late '70s there was some  
8 concern that the pricing mechanism by itself would not  
9 provide adequate protection to the Coyote owners to  
10 maintain a competitive power plant in the future.

11 Therefore, the addendum was constructed and  
12 made part of the contract to provide for low cost coal  
13 competitive positioning of the plant in the future.

14 Q Okay. About how much coal is produced at Coyote on an  
15 annual basis for Northwestern?

16 A Northwestern Public Service consumes approximately  
17 between 200 and 250,000 tons per year of coal at the  
18 Coyote facility. That number is somewhat variable due  
19 to the fact the power plant on some years has major  
20 overhaul periods where it's not available so it isn't a  
21 constant number every year.

22 Q Okay. As a result of the arbitration proceeding which  
23 resulted in the decision in March of '99 as Mr. Bowman's  
24 testified, did Northwestern take steps to implement that  
25 decision and the immediate price reductions therefor?

1 A Yes, we did.

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

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

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

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

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

15 A That's correct.

16 Q For Coyote?

17 A That's correct.

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

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

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

Q That's correct.

Q So the only allocation that needed to be made for Northwestern would be the difference between retail tariff customers and wholesale tariff customers?

A That's correct. I think something in excess of 90 percent of our load to Coyote was to retail customers. Small balance was to what I'll refer to as non-wholesale customers.

Q And, therefore, all of the expenses -- or the refund amount and interest less cost would flow through to South Dakota customers?

A That is correct.

Q Okay.

MR. DIETRICH: I think that's all I have for this witness.

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

MR. GUERRERO: No questions.

MR. GERDES: No questions.

MS. AILTS WIEST: Mr. Hoseck?

MR. HOSECK: No questions.

CHAIRMAN BURG: I have a couple.

Q What has been the effect of that addendum that was put on the contract at the time of the implementation of the contract?

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

3 CHAIRMAN BURG: Since then.

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

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

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

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

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

at the beginning of 1988 of about a dollar per ton. He had attempted to negotiate even in those early days prices that were more comparable to other mines in the area and they voluntarily reduced the price by \$1 per ton.

CHAIRMAN BURG: But it was determined by the operators that was not enough?

THE WITNESS: That's correct.

CHAIRMAN BURG: Then you pulled in the language of the addendum to request even more?

THE WITNESS: That's correct.

CHAIRMAN BURG: And that led to the filing of the suit and then arbitration?

THE WITNESS: That's right.

CHAIRMAN BURG: Okay. And the other things that I have is in your testimony you indicate that you're going to use -- Northwestern to use the adjustment clause, and that there is a 12-month crediting mechanism; is that correct?

THE WITNESS: I believe that may be correct. I'm not sure.

CHAIRMAN BURG: I heard a different description for Open Tail and a talk about some

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

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

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

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

11 THE WITNESS: That's correct.

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

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

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

incurred. And then Exhibit D runs the sum of those costs through a calculation that adds the interest, subtracts the cost from the net recovery. So Mr. Decker will go through those numbers, but this Exhibit C does outline the various parties for which costs were incurred.

COMMISSIONER SCHOENFELDER: Well, but the difference is some of them went up, some of them went down from the original filing, and I want to know if I'm going to get an explanation of those.

MR. DIETRICH: Yes.

COMMISSIONER SCHOENFELDER: Then I want to know -- because I thought the Petition was Mr. Green's, but if that's what he's testifying to --

MR. DIETRICH: Well, we have two witnesses for Northwestern. Mr. Green was the party who was familiar with the facts of the negotiations, arbitration process. The cost data was actually put together in conjunction with counsel.

COMMISSIONER SCHOENFELDER: Okay. So the questions I have about the footnote on Exhibit C, I can save those for Mr. Decker too?

1 MR. DIETRICH: Yes. I think  
2 Mr. Green may be able to answer a question with  
3 regard to the footnote.

4 COMMISSIONER SCHOENFELDER: Well, it  
5 just says first they paid -- I don't understand. I  
6 simply don't understand the footnote, actually  
7 contributed 13.3 percent representing its share of  
8 the 75 percent interest Coyote but obviously have  
9 10 percent ownership.

10 Is that because of MDU being in and then out?

11 THE WITNESS: That's correct.

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

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

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

18 THE WITNESS: No. That's correct.

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

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

25 THE WITNESS: That's correct.

CHAIRMAN BURG: Those would be direct costs? Could that include some of attorney travel?

THE WITNESS: Yes, it would. But it was directly related to this arbitration case.

CHAIRMAN BURG: In other words, you had to fly to someplace.

THE WITNESS: That's correct.

MS. AILTS WIEST: Northwestern is not actually asking for any waivers of any tariffs; is that correct?

THE WITNESS: That's correct.

MS. AILTS WIEST: You believe that it's allowable under the tariff as long as the Commission has given its approval for that?

THE WITNESS: I believe that would be correct, yes.

MR. DIETRICH: I guess maybe it's a legal theory, but it's actually our position that our tariff doesn't speak to a situation of a damage award such as this as opposed to an ongoing change in fuel which we automatically were flowing through.

So what we're asking for is the use of our adjustment clause to credit the damage award,

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

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

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

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

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

1 that tariff. Would that be correct?

2 MR. DIETRICH: Yes. It would be  
3 slightly different than the terms of our tariff  
4 Mechanically we can do it whatever way the  
5 Commission feels is appropriate.

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

8 MR. DIETRICH: I just had a couple  
9 on redirect, if I could briefly.

10 REDIRECT EXAMINATION

11 BY MR. DIETRICH:

12 Q This proceeding that Northwestern and the other parties  
13 were involved in was a fairly long drawn-out proceeding?

14 A Yes. That's correct. In the early '90s we had the  
15 negotiating committee that I was a member of involved  
16 with this and then those negotiations were unsuccessful  
17 and we began the arbitration process which ultimately  
18 was filed in 1996 and then, of course, the final award  
19 was in 1999.

20 Q Okay. And a question was asked about the addendum. As  
21 a result of the final arbitration award, you did not  
22 have the ability to include comparability as an ongoing  
23 adjustment mechanism?

24 A That is correct. The Addendum remains, however, in  
25 force, and it can be used again in a similar fashion.

1 would think.

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

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

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

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

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

18 A Yes, they were.

19 MR. DIETRICH: Thank you.

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

23 THE WITNESS: Yes, there was.

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

1 think, pricing -- how you decided to come up with  
2 the original pricing, whether that was a good idea  
3 or not, or was it too vague? Do you remember?

4 THE WITNESS: They did not change  
5 any of the methodology except for some of the  
6 individual numerical factors.

7 MS. AILTS WIEST: So they did accept  
8 the actual methodology?

9 THE WITNESS: That's correct.

10 MS. AILTS WIEST: Thank you. Any  
11 other questions of this witness?

12 CHAIRMAN BURG: Let me clarify that  
13 a little more. If I understand, they determined  
14 the factors that were being used were wrong or were  
15 those factors applied to do a catchup?

16 THE WITNESS: I guess I'm not sure  
17 what you're referring to in terms of factors.

18 CHAIRMAN BURG: If I understood the  
19 purpose of the Addendum, the purpose of the  
20 Addendum was to get a coal price for Coyote Plant  
21 to what was similar to a coal price across others  
22 And if that would have functioned properly, there  
23 wouldn't have been anything happen.

24 THE WITNESS: That's correct.

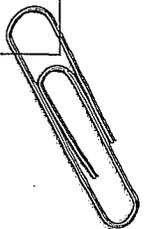
25 CHAIRMAN BURG: The fact they did

Continuation

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

4 A That's correct.

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

8 A That's correct.

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

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

12 MR. GUERRERO: Thank you.

13 MS. AILTS WIEST: Any other

14 questions?

15 (No audible response)

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

18 (Witness excused)

19 MS. AILTS WIEST: Mr. Dietrich.

20 MR. DIETRICH: Jeff Decker.

21 JEFF DECKER,

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

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

MS. AILTS WIEST: Go ahead.

DIRECT EXAMINATION

BY MR. DIETRICH:

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4 Q Would you state your name and position with the  
5 company.

6 A My name is Jeff Decker. I work for Northwestern Public  
7 Service, manager of pricing services NEC.

8 Q Okay. And are you familiar with the cost and related  
9 calculations that have been made as part of the filing  
10 of the Revised Petition marked as Exhibit 77

11 A Yes, I am.

12 Q Okay. If I could walk you through that exhibit, it has  
13 several exhibits within it. Among those, Exhibit C,  
14 which highlights the costs incurred. Are these costs  
15 all the costs -- are all categories except for the last  
16 line item, Northwestern Travel Expenses, these are all  
17 out-of-pocket costs for Northwestern's share of the  
18 witnesses and attorneys that were hired; correct?

19 A That is correct.

20 Q Okay. And the Northwestern Travel Expenses, what is  
21 constituted in that item?

22 A Just the costs related for travel only in relation to  
23 this arbitration case. There are no labor costs  
24 whatsoever in that \$13,218.22.

25 Q Okay. These costs represent essentially 10 percent of

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

2 A Yes. That is right.

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

6 A Yes. The final result was 10 percent.

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

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

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

19 A That is correct.

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

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

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

1 A Yes. In my review of the individual invoices these are  
2 the costs that I would agree with.

3 Q Okay. And you have shared a copy of all of those  
4 invoices with staff?

5 A That is correct.

6 Q The proposal in Exhibit 7 asks for crediting over a  
7 12-month period. Is that consistent with Northwestern's  
8 adjustment clause?

9 A Yes. Normally we would credit over a 12-month period as  
10 we calculate our normal fuel costs. We file on a  
11 quarterly basis, February 1, May 1, August 1, and  
12 November 1. So that is our normal procedure.

13 As far as if staff and Commission would order  
14 us to pass that back in a different time frame, we can  
15 sure do that. We've taken a look at that, and whatever  
16 their desire would be, we could pass that back in that  
17 manner.

18 Q Okay. And I guess I'd like to back up to a couple of  
19 other things. The damage award amount itself that  
20 Northwestern received, is that based just upon a  
21 percentage of ownership, or is it based on another  
22 calculation?

23 A The damage award we received is based on, I believe, the  
24 amount of usage we had at that time, the usage of the  
25 plant.

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

4 A Right.

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

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

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

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

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

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

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

19 A Okay. Correct.

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

22 A That's right. There is none.

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

1 A Yes. Only the direct costs related to this case.

2 Q Okay. I would like to offer Exhibit 7, which is the  
3 May 9 Revised Petition. I don't think it's necessary to  
4 offer the prior filings because they were all  
5 incorporated into this with the revised numbers, and I  
6 think it would avoid some confusion in having numbers  
7 essentially, Mr. Decker, this filing shows the largest  
8 pass-through, total pass-through, of the three filings  
9 Northwestern made; correct?

10 A To the customers' benefit.

11 MR. DIETRICH: Thank you. No  
12 further questions.

13 MS. AILTS WIEST: Is there any  
14 objection to Exhibit 7?

15 MR. HOSECK: No objection.

16 MS. AILTS WIEST: If not, it's  
17 admitted. Mr. Gerdes, Mr. Guerrero, do you have  
18 any questions of this witness?

19 MR. GERDES: None.

20 MR. GUERRERO: Before I do, I would  
21 note for the record Otter Tail and I would imagine  
22 the other partners here as well would offer the  
23 actual arbitrator's decision.

24 There were actually two decisions in this  
25 matter. For the record for the purposes of

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

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

6 MR. GUERRERO: Two decisions.

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

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

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

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

25 MR. GERDES: I would think we would

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want to offer it as a confidential document, both documents as confidential documents, to be held under the Commission's rules as such.

(Exhibits 8 and 9 are marked for identification)

MS. AILTS WIEST: Okay. Is there any objection to receiving Exhibits 8 and 9 which would be two arbitration decisions or agreements, and we would receive them as confidential?

MR. HOSECK: No objection.

MS. AILTS WIEST: If not, Exhibits 8 and 9 are received.

MR. GUERRERO: I have a few clarification questions. Hopefully, maybe the confusion was created by Otter Tail in this case.

CROSS-EXAMINATION

BY MR. GUERRERO:

Q I want to ask you briefly about the award. I believe your Counsel asked you about the basis of that award from the arbitration, 5.8 million in total. Part of that, which was allocated to Northwestern, as it was the other partners; correct?

A That's correct.

Q The basis of that allocation was not made on the basis of ownership of the Coyote Plant; correct?

A That's right.

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

3 A Yes.

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

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

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

12 A That is correct.

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

15 MS. AILTS WIEST: Mr. Hoseck?

16 MR. HOSECK: No questions.

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

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

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

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

1 question was on whether everybody was allocated on  
2 the basis of their share of fuel. That was just  
3 answered.

4 COMMISSIONER SCHOENFELDER: I hate  
5 to keep beating this dead horse to death but you  
6 have three Exhibit Cs before me and there were some  
7 significant changes in some of those numbers.

8 Can you explain why some of them went up and  
9 some went down in your final Exhibit C?

10 THE WITNESS: I reviewed the numbers  
11 that you see in the final exhibit, and in the  
12 process of my review I had seen that some expenses  
13 that were categorized in one column needed to be in  
14 another. There was some inadvertent  
15 categorization.

16 So, for instance, some numbers that were  
17 listed as one expert witness, one's consultant's  
18 fees should have been in a different category. So  
19 that's why those columns went up and down. I  
20 believe that the final fees, the total, is not  
21 significantly different between the exhibits. It's  
22 just the classification between witness columns.

23 COMMISSIONER SCHOENFELDER: Okay. I  
24 can accept that. But then I think for my comfort  
25 level, if there is such a thing, as from

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

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

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

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

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

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

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

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

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

1 MR. DIETRICH: We can certainly  
2 provide that information. A complicating factor is  
3 that the expert witnesses' fees are all rolled into  
4 the Donelan, Cleary Law Firm bills because they  
5 retained those firms on behalf of us. And as in  
6 their billings it includes all four of those expert  
7 witness --

8 COMMISSIONER SCHOENFELDER: Counsel,  
9 you understand I need to be comfortable we're not  
10 paying double at some point in time or the consumer  
11 is not.

12 MR. DIETRICH: I understand. That's  
13 why we wanted to give the detail both in the  
14 breakdown on this exhibit and in work papers, and  
15 we can certainly share those work papers.

16 COMMISSIONER SCHOENFELDER: I just  
17 need a comfort level that that's what's happening.  
18 Thank you.

19 MS. AILTS WIEST: You stated and it  
20 was in your Petition that damages are based on  
21 usage, not ownership, and allocation fees are based  
22 on ownership; correct?

23 THE WITNESS: That's correct.

24 MS. AILTS WIEST: Is there any  
25 reason why you wouldn't use the same percentage for

1 both?

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

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

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

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

15 THE WITNESS: I don't know that.

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

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

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

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

1 MS. AILTS WIEST: Do we have any  
2 questions of this witness?

3 (No audible response)

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

6 (Witness excused)

7 MS. AILTS WIEST: Perhaps we could  
8 call Mr. Green back.

9 MR. DIETRICH: That would be fine  
10 If I could ask him a couple of introductory  
11 questions, it might help explain this.

12 MS. AILTS WIEST: Go ahead.

13 DIRECT EXAMINATION

14 BY MR. DIETRICH:

15 Q Mr. Green, when the negotiations process began parties  
16 at that time determined how they would share the costs  
17 going forward; is that correct?

18 A Well, actually the mechanism of our ownership agreement  
19 among the parties, the only mechanism in that agreement  
20 is to share the out-of-pocket costs, if you will, on an  
21 ownership basis.

22 There's a separate section in the ownership  
23 agreement that talks about allocating fuel cost on a  
24 usage basis. So that's where the two distinctions, cost  
25 on ownership basis and that is operating costs other

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

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

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

13 Q Okay.

14 MR. DIETRICH: Does that --

15 MS. AILTS WIEST: Just a couple. Do  
16 you know then -- I guess your point is is that the  
17 10 percent and 11 percent were fairly comparable  
18 percentages, usage and the amount?

19 THE WITNESS: Yeah.

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

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

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

1 agreement when the parties -- I assume they decided  
2 perhaps as a group to go forward with this  
3 litigation as to how expenses would be shared. Was  
4 was it entirely based on your prior ownership  
5 agreement?

6 THE WITNESS: Ownership agreement  
7 defines the cost sharing allocation.

8 MS. AILTS WIEST: That clause you  
9 spoke of, out-of-pocket cost, did that specifically  
10 reference litigation expenses?

11 THE WITNESS: I guess I'm not sure  
12 if it specifically states that. Essentially it's  
13 all operating costs other than fuel.

14 MS. AILTS WIEST: All operating  
15 costs other than fuel?

16 THE WITNESS: Well, labor costs, for  
17 example, at the power plant, miscellaneous  
18 materials necessary to run the power plant. Those  
19 kinds of costs are shared on an ownership basis.

20 MS. AILTS WIEST: So you considered  
21 that litigation expenses were part of operating  
22 costs other than fuel?

23 THE WITNESS: That's correct.

24 MS. AILTS WIEST: Thank you. Any  
25 other questions of this witness?

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

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

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

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

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

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

22 CHAIRMAN BURG: That's all. Thank  
23 you.

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

REDIRECT EXAMINATION

BY MR. DIETRICH:

Q Maybe we're beating this to death. As we went forward and hired the Donelan firm to move forward with the arbitration case essentially Otter Tail, Minnkota, and Northwestern agreed to fund their fees 100 percent without MDU reserving later to recover those expenses from MDU at the conclusion?

A Yes. That's correct.

Q Okay. So at that time we shared it at this slightly higher percentage?

A Our share was 13.3, of course, to cover our share of their share.

Q Okay. Until a damage award was received you had no idea of how the fuel use would be?

A No.

Q So it was just a mechanism to share the cost on a going-forward basis, and these invoices were paid during the pendency of the proceedings and other steps from 1995 to '99?

A That's correct.

MR. DIETRICH: Thank you.

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

(No audible response)

1 MS. AILTS WIEST: Thank you.

2 (Witness excused)

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

5 MR. DIETRICH: No, I do not.

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

10 MR. GUERRERO: Sure.

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

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

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

17 (Mr. Bowman takes the stand)

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

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

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

25 MS. AILTS WIEST: Relatively close?

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THE WITNESS: Yes. Within a few percent at the most.

MS. AILTS WIEST: Okay. Thank you. I guess at this point it's 10 to 12:00. Did the Commissioners want to take a break at this point?

CHAIRMAN BURG: I think we just as well. It will take you awhile with your position, will I not?

MS. AILTS WIEST: And we have MDU left. Do you want to come back at 1:00 or what time?

CHAIRMAN BURG: That sounds all right with me.

MS. AILTS WIEST: We'll be back at 1:00.

(A lunch break is taken from 11:50 p.m. to 1:00 p.m.)

MS. AILTS WIEST: I believe, Mr. Gerdes, you may call your first witness.

MR. GERDES: MDU calls Don Ball.

DONALD R. BALL,

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

DIRECT EXAMINATION

BY MR. GERDES:

Q Would you state your name, please.

1 A My name is Donald R. Ball.

2 Q Where do you reside?

3 A I live in Bismarck, North Dakota.

4 Q What is your occupation?

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

7 Q What's your educational background?

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

11 (Exhibit 10 is marked for identification)

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

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

16 (Exhibit 11 is marked for identification)

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

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

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

Amended Attachment A we have included the approximate allocation to our South Dakota retail customers.

MR. GERDES: Your Honor, copies of these two exhibits have been distributed to the Commissioners and to Counsel. We'll offer Exhibits 10 and 11.

MS. AILTS WIEST: Any objection?

MR. HOSECK: No objection.

MS. AILTS WIEST: If not, they're received.

Q Mr. Ball, would you please state MDU's position on its request for relief in this docket.

A In this case Montana-Dakota has sought approval of a waiver of our fuel clause under our Rate No. 38. We seek the waiver to allow the pass-through through our fuel clause mechanism of the arbitration costs that have resulted in the savings to our retail customers.

Now although Montana-Dakota was not a party to this arbitration, our retail customers will receive the same benefit as if Montana-Dakota had been a party to this arbitration. Knife River, after the arbitration decision, remitted the proper dollar amounts to Montana-Dakota for pass-through to Montana-Dakota's retail customers.

We paid approximately \$416,000 in arbitration

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

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

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

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

1 was sought from and obtained from Knife River.

2 So in our case there is an additional benefit  
3 other than the arbitration award related to Coyote. The  
4 arbitration award related to Heskett as well. And  
5 Montana-Dakota does own 100 percent of the  
6 Heskett Station.

7 We would propose to include the \$2,742,000 net  
8 benefit in the first fuel adjustment filing following  
9 the issuance of an Order granting our waiver. The  
10 approximate amount of the net benefit applicable to our  
11 South Dakota electric retail customers is \$185,000. I  
12 believe Exhibit 4 shows about \$184,000. Or Exhibit 11.  
13 I'm sorry.

14 We have agreed through discussions with your  
15 staff to pay interest on net benefit amount at the rate  
16 of interest for three-month treasury bill as published  
17 monthly by the Federal Reserve Board until such time as  
18 a credit is reflected in bills to our customers. We  
19 received payment from Knife River on February 28, 2000.

20 And, of course, in addition to the immediate  
21 benefit that we would propose to include in our next  
22 fuel adjustment filing, there is the ongoing price  
23 reduction which for our portion Coyote should amount to  
24 about \$519,000 per year. That concludes my direct  
25 remarks.

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MR. GERDES: No further questions.

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

MR. GUERRERO: None.

MS. AILTS WIEST: Mr. Dietrich?

MR. DIETRICH: No.

MS. AILTS WIEST: Mr. Hoseck?

MR. HOSECK: No.

MS. AILTS WIEST: Commissioners?

COMMISSIONER NELSON: I have one.

Why did you pay in protest?

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

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

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

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that?

THE WITNESS: We were concerned

about that. You know, we --

COMMISSIONER NELSON: But they were

willing to go to court, and you weren't.

THE WITNESS: If you look at the way

that this happened, we were named as an initial

party in the arbitration. However, the other

owners of Coyote demanded arbitration against

Knife River and MDU, and the demand indicated that

because MDU Resources owns Knife River that MDU had

a conflict of interest in furthering the buyers'

interest in the arbitration.

Subsequently MDU sought to be removed from the

arbitration process. The arbitrator agreed with

that because the Coal Purchase Agreement called for

arbitration between the buyers of the coal and the

seller of the coal. It did not contemplate

arbitration among the owners of Coyote.

COMMISSIONER NELSON: Thank you.

CHAIRMAN BURG: Just one. I believe

you mentioned that you have agreed to pay interest

up until the time the funds are disbursed.

THE WITNESS: That is correct. Our

initial filing did not address that.

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

5 THE WITNESS: That's right.

6 MS. AILTS WIEST: Any other  
7 questions?

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

11 THE WITNESS: Well, approximately  
12 25 percent.

13 MS. AILTS WIEST: Approximately 25.

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

17 In looking at our particular situation, my  
18 analysis indicated that based on the fuel usage  
19 type, we were very close to our 25 percent  
20 ownership interest. I don't think it was more than  
21 1 percent off either way.

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

1 Kilowatt Hour Sales, does that differ from how  
2 Otter Tail came up with their portion of  
3 South Dakota, or do you know?

4 THE WITNESS: I guess I don't know.  
5 I heard reference to an energy factor.

6 MS. AILTS WIEST: Right. In 1944.  
7 Could you explain what yours is in any more  
8 detail?

9 THE WITNESS: Ours is based on  
10 kilowatt hour sales to retail customers.

11 MS. AILTS WIEST: Any other  
12 questions?

13 CHAIRMAN BURG: I have one  
14 additional. Do the four owners of the company  
15 there is four; right?

16 THE WITNESS: There is four of the  
17 station, yes.

18 CHAIRMAN BURG: Do they take  
19 100 percent of the power?

20 THE WITNESS: I think generally they  
21 do.

22 CHAIRMAN BURG: Do you ever have  
23 excess power? Do they sell off outside of the four  
24 owners?

25 THE WITNESS: Well, in our case

**START**

**OF**

**RETAKE**

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

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

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

13 Q Okay.

14 MR. DIETRICH: Does that --

15 MS. AILTS WIEST: Just a couple. Do  
16 you know then -- I guess your point is is that the  
17 10 percent and 11 percent were fairly comparable  
18 percentages, usage and the amount?

19 THE WITNESS: Yeah.

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

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

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

1 agreement when the parties -- I assume they decided  
2 perhaps as a group to go forward with this  
3 litigation as to how expenses would be shared, or  
4 was it entirely based on your prior ownership  
5 agreement?

6 THE WITNESS: Ownership agreement  
7 defines the cost sharing allocation.

8 MS. AILTS WIEST: That clause you  
9 spoke of, out-of-pocket cost, did that specifically  
10 reference litigation expenses?

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12 if it specifically states that. Essentially it's  
13 all operating costs other than fuel.

14 MS. AILTS WIEST: All operating  
15 costs other than fuel?

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17 example, at the power plant, miscellaneous  
18 materials necessary to run the power plant. These  
19 kinds of costs are shared on an ownership basis.

20 MS. AILTS WIEST: So you considered  
21 that litigation expenses were part of operating  
22 costs other than fuel?

23 THE WITNESS: That's correct.

24 MS. AILTS WIEST: Thank you. Any  
25 other questions of this witness?

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2 not be directly pertinent to the case. How does  
3 the fuel cost compare to the amount of power taken  
4 from the plant?

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6 sure --

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8 thought to me it would be allocated -- I can see  
9 where the damages would be allocated, I would say,  
10 compared to the power taken from the plant.

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12 complicated, but, yes, basically the amount of  
13 power taken is directly correlated to the amount of  
14 fuel burned.

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16 if that was a direct correlation or not.

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

22 CHAIRMAN BURG: That's all. Thank  
23 you.

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

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REDIRECT EXAMINATION

BY MR. DIETRICH:

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3 Q Maybe we're beating this to death. As we went forward  
4 and hired the Donelan firm to move forward with the  
5 arbitration case essentially Otter Tail, Minnesota, and  
6 Northwestern agreed to fund their fees 100 percent  
7 without MDU reserving later to recover those expenses  
8 from MDU at the conclusion?

9 A Yes. That's correct.

10 Q Okay. So at that time we shared it at this slightly  
11 higher percentage?

12 A Our share was 13.3, of course, to cover our share of  
13 their share.

14 Q Okay. Until a damage award was received you had no idea  
15 of how the fuel use would be?

16 A No.

17 Q So it was just a mechanism to share the cost on a  
18 going-forward basis, and these invoices were paid during  
19 the pendency of the proceedings and other steps from  
20 1995 to '99?

21 A That's correct.

22 MR. DIETRICH: Thank you.

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

25 (No audible response)

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MS. AILTS WIEST: Thank you.

(Witness excused)

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

MR. DIETRICH: No, I do not.

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

MR. GUERRERO: Sure.

MS. AILTS WIEST: Which witness would that be?

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

Mr. Bowman, could you please take the stand.

(Mr. Bowman takes the stand)

MR. GUERRERO: You've already been sworn.

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

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

MS. AILTS WIEST: Relatively close?

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THE WITNESS: Yes. Within a few percent at the most.

MS. AILTS WIEST: Okay. Thank you. I guess at this point it's 10 to 12:00. Did the Commissioners want to take a break at this point?

CHAIRMAN BURG: I think we just as well. It will take you awhile with your portion, will I not?

MS. AILTS WIEST: And we have MDU left. Do you want to come back at 1:00 or what time?

CHAIRMAN BURG: That sounds all right with me.

MS. AILTS WIEST: We'll be back at 1:00.

(A lunch break is taken from 11:50 p.m. to 1:00 p.m.)

MS. AILTS WIEST: I believe, Mr. Gerdes, you may call your first witness.

MR. GERDES: MDU calls Don Ball

DONALD R. BALL,

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

DIRECT EXAMINATION

BY MR. GERDES:

Q Would you state your name, please.

1 A My name is Donald R. Ball.

2 Q Where do you reside?

3 A I live in Bismarck, North Dakota.

4 Q What is your occupation?

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

7 Q What's your educational background?

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

11 (Exhibit 10 is marked for identification)

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

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

16 (Exhibit 11 is marked for identification)

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

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

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

1 Amended Attachment A we have included the approximate  
2 allocation to our South Dakota retail customers.

3 MR. GERDES: Your Honor, copies of  
4 these two exhibits have been distributed to the  
5 Commissioners and to Counsel. We'll offer  
6 Exhibits 10 and 11.

7 MS. AILTS WIEST: Any objection?

8 MR. HOSECK: No objection.

9 MS. AILTS WIEST: If not, they're  
10 received.

11 Q Mr. Ball, would you please state MDU's position on its  
12 request for relief in this docket.

13 A In this case Montana-Dakota has sought approval of a  
14 waiver of our fuel clause under our Rate No. 58. We  
15 seek the waiver to allow the pass-through through our  
16 fuel clause mechanism of the arbitration costs that have  
17 resulted in the savings to our retail customers.

18 Now although Montana-Dakota was not a party to  
19 this arbitration, our retail customers will receive the  
20 same benefit as if Montana-Dakota had been a party to  
21 this arbitration. Knife River, after the arbitration  
22 decision, remitted the proper dollar amounts to  
23 Montana-Dakota for pass-through to Montana-Dakota's  
24 retail customers.

25 We paid approximately \$416,000 in arbitration

1 costs related to retail operations. These costs were  
2 billed by the Coyote operator for Montana-Dakota's  
3 25 percent ownership of the Coyote station. We believe  
4 it is proper to net the incurred costs of this  
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7 arbitration proceeding that the net savings would not  
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9 cause and effect here. We believe that granting the  
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13 the pass-through of a rather substantial credit, and  
14 they also benefit by the ongoing coal price reduction.  
15 Montana-Dakota's and its shareholders' interests will be  
16 upheld through the ability to recover the costs incurred  
17 in obtaining those benefits for the retail customers.

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

1 was sought from and obtained from Knife River.

2 So in our case there is an additional benefit  
3 other than the arbitration award related to Coyote. The  
4 arbitration award related to Heskett as well. And  
5 Montana-Dakota does own 100 percent of the  
6 Heskett Station.

7 We would propose to include the \$2,742,000 net  
8 benefit in the first fuel adjustment filing following  
9 the issuance of an Order granting our waiver. The  
10 approximate amount of the net benefit applicable to our  
11 South Dakota electric retail customers is \$155,000. I  
12 believe Exhibit 4 shows about \$184,000. Or Exhibit 11  
13 I'm sorry.

14 We have agreed through discussions with your  
15 staff to pay interest on net benefit amount at the rate  
16 of interest for three-month treasury bill as published  
17 monthly by the Federal Reserve Board until such time as  
18 a credit is reflected in bills to our customers. We  
19 received payment from Knife River on February 20, 1980

20 And, of course, in addition to the immediate  
21 benefit that we would propose to include in our next  
22 fuel adjustment filing, there is the ongoing price  
23 reduction which for our portion Coyote should amount to  
24 about \$519,000 per year. That concludes my direct  
25 remarks.

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MR. GERDES: No further questions.

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

MR. GUERRERO: None.

MS. AILTS WIEST: Mr. Dietrich?

MR. DIETRICH: No.

MS. AILTS WIEST: Mr. Hoseck?

MR. HOSECK: No.

MS. AILTS WIEST: Commissioners?

COMMISSIONER NELSON: I have one.

Why did you pay in protest?

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

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

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

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that?

THE WITNESS: We were concerned about that. You know, we --

COMMISSIONER NELSON: But they were willing to go to court, and you weren't.

THE WITNESS: If you look at the way that this happened, we were named as an initial party in the arbitration. However, the other owners of Coyote demanded arbitration against Knife River and MDU, and the demand indicated that because MDU Resources owns Knife River that MDU had a conflict of interest in furthering the buyers' interest in the arbitration.

Subsequently MDU sought to be removed from the arbitration process. The arbitrator agreed with that because the Coal Purchase Agreement called for arbitration between the buyers of the coal and the seller of the coal. It did not contemplate arbitration among the owners of Coyote.

COMMISSIONER NELSON: Thank you.

CHAIRMAN BURG: Just one. I believe you mentioned that you have agreed to pay interest up until the time the funds are disbursed.

THE WITNESS: That is correct. Our initial filing did not address that.

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

5 THE WITNESS: That's right.

6 MS. AILTS WIEST: Any other  
7 questions?

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

11 THE WITNESS: Well, approximately  
12 25 percent.

13 MS. AILTS WIEST: Approximately 25.

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

17 In looking at our particular situation, my  
18 analysis indicated that based on the fuel usage  
19 type, we were very close to our 25 percent  
20 ownership interest. I don't think it was more than  
21 1 percent off either way.

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

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Kilowatt Hour Sales, does that differ from how  
Otter Tail came up with their portion of  
South Dakota, or do you know?

THE WITNESS: I guess I don't know.  
I heard reference to an energy factor.

MS. AILTS WIEST: Right. In 1990  
Could you explain what yours is in any more  
detail?

THE WITNESS: Ours is based on  
kilowatt hour sales to retail customers.

MS. AILTS WIEST: Any other  
questions?

CHAIRMAN BURG: I have one  
additional. Do the four owners of the company  
there is four; right?

THE WITNESS: There is four of the  
station, yes.

CHAIRMAN BURG: Do they take  
100 percent of the power?

THE WITNESS: I think generally they  
do.

CHAIRMAN BURG: Do you ever have  
excess power? Do they sell off outside of the four  
owners?

THE WITNESS: Well, in our case

**END**

**OF**

**RETAKE**

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

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

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

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

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

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

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be able to make an opportunity sale in the pool. Otter Tail may be in a different situation where they need that for their retail load.

CHAIRMAN BURG: But we did hear an indication at some times at certain times a company may take more than their ownership share in power.

THE WITNESS: And I think that can happen from time to time. But in looking, I did a year and a half or almost two-year period, it averaged out at least in our case very close to our ownership percentage.

CHAIRMAN BURG: Okay.

MS. AILTS WIEST: And then just getting back to your kilowatt hour per sales percentage, was that based upon a particular time period, that percentage?

THE WITNESS: Actually I think we looked at -- let me double-check the year here. I believe the -- well, the 6.7 percent, which is the ratio, our South Dakota retail customers to our system, was equally applicable in both '98 and '99. It just doesn't change that much.

MS. AILTS WIEST: Okay. Thank you. Any redirect, Mr. Gerdes?

MR. GERDES: I have none.

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

3 (No audible response)

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

6 (Witness excused)

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

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

11 MS. AILTS WIEST: Mr. Hoseck?

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

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

17 DIRECT EXAMINATION

18 BY MR. HOSECK:

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

20 A Michele Farris.

21 Q And what is your job?

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

24 Q How long have you been there?

25 A Approximately a year and a half.

1 Q What is your educational background?

2 A I have a Bachelor of Science Degree in mechanical  
3 engineering from South Dakota State University and a  
4 Master's of Science Degree in civil engineering from the  
5 University of Colorado.

6 Q Do you hold any professional designations?

7 A I'm a registered professional engineer in the  
8 State of South Dakota.

9 Q And would you just briefly tell the Commissioners what  
10 your work experience has been since you graduated from  
11 college.

12 A I worked approximately four years for an aerospace firm  
13 in Denver, Martin Marietta & Associates, and then I  
14 worked for two years as an engineering consultant in  
15 environmental engineering for Applied Environmental in  
16 Denver and I took a job with the Department of  
17 Environment and Natural Resources in South Dakota and  
18 worked for them approximately six years.

19 Q And are you familiar with the cases that we've been  
20 discussing here today in the hearing room?

21 A Yes, I am.

22 Q And were you assigned these dockets, and I'll shorten up  
23 the numbers but it's EL-002, 03, and 09?

24 A Yes, I was.

25 Q Okay. Just generally would you describe what these

1 docket attempt to accomplish.

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

9 Q And did that have a similar objective?

10 A Yes, it did.

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

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

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

23 A Yes, I did.

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

1 A Yes. I went out to the National Oceanic and Atmospheric  
2 Administration website and got some information for the  
3 State of South Dakota on what the cooling degree day  
4 high months were and what the heating degree day months  
5 were.

6 Q And did the companies provide examples of how the  
7 distributions were proposed to be made?

8 A Yes, they did.

9 Q And did you do any calculations or any further  
10 investigation into those figures?

11 A I just verified the costs that were presented and  
12 calculated the -- ran the numbers myself.

13 Q Generally now with regard to Otter Tail Power's Petition  
14 in this matter would you describe what information they  
15 furnished to you.

16 A Could you state that again.

17 Q In other words, what information did Otter Tail Power  
18 provide to you just in a general sense?

19 A They provided an example calculation of how they would  
20 use the Fuel Adjustment Clause. They provided the  
21 future benefit to the consumers based on the arbitration  
22 agreement and they also provided the summary of their  
23 expenses.

24 Q And was similar information provided by MDU and  
25 Northwestern?

1 A Yes, it was.

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

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

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

11 A That's correct.

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

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

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

1 of 2000 is when Montana-Dakota Utilities received their  
2 award. There was also interest that was received by  
3 Otter Tail Power Company and Northwestern Public  
4 Service, and that was received on 12-21 of '99.

5 Further down there's the litigation expenses  
6 incurred by each of the three companies and on  
7 Montana-Dakota Utilities there's an asterisk and that's  
8 to indicate that that also -- this was what was in their  
9 filing, and it included the amount that was paid to  
10 Northern Municipal Power Agency.

11 Underneath Litigation Expense is the amount  
12 that MDU reimbursed to Otter Tail Power Company and  
13 Northwestern Public Service Company. Then the portion  
14 that's retail sales, the portion that's wholesale sales  
15 and then the percentage of the customer base that's in  
16 South Dakota for each of the three companies.

17 MR. HOSECK: At this time I would  
18 move Exhibit A into evidence.

19 MS. AILTS WIEST: Any objection?  
20 (No audible response)

21 MS. AILTS WIEST: If not, it's been  
22 received.

23 Q In looking at Exhibit A, would you explain MDU's damage  
24 award in how that is different from the other  
25 utilities.

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

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

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

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

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

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

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

1 A I don't believe so.

2 Q Okay. I've shown you what has been marked as  
3 Exhibit B. Would you identify that for the Commission,  
4 please.

5 A This is an exhibit I put together to summarize the three  
6 companies and how the refund calculation would be  
7 calculated for each of them.

8 Q Would you go through Exhibit B, each of the categories  
9 of numbers here, and explain to the Commissioners where  
10 they came from.

11 A Okay. Line 1 is the total damages that were awarded to  
12 each of the companies. And, there again, that doesn't  
13 include any of the interest that's accruing. Line 2 are  
14 the company request litigation expenses for each of the  
15 three companies. Line 3 is just the difference between  
16 the total damage award and subtracting off the  
17 litigation expenses to come to a net damage award.

18 Line 4 is the percentage of retail sales that  
19 are included in the Fuel Adjustment Clause. Line 5  
20 would be the total refund to the retail customers.  
21 Line 6 is the percentage of the customer base in  
22 South Dakota, and line 7 is just a calculation to show  
23 the total amount that would be refunded to South Dakota  
24 customers.

25 Q Now earlier in the proceedings there was a stipulation

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

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

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

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

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

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

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

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

1 rate case was in the latter part of 1980, and these  
2 would not have appeared in the test case, test year

3 Q Based on your analysis of this, would you deem these  
4 costs to be extraordinary events?

5 A Yes.

6 Q And why?

7 A Because they did not occur during the test year for the  
8 rate cases.

9 Q And is it true that they would not be an ongoing  
10 expense?

11 A That's correct.

12 Q Were the litigation costs in these dockets as you have  
13 adjusted them in direct relation to the delivered cost  
14 of fuel used in the generation of electricity by these  
15 three utilities?

16 A In my opinion it is.

17 Q And how much was the cost of coal reduced by this  
18 arbitration?

19 A I have to get my sheet out. I can't remember. In the  
20 fourth quarter of 1996 the delivered cost was \$11.51,  
21 and the panel determined the cost to be \$9.83. For 1997  
22 it went from \$11.61 to \$9.83. In 1998, \$11.48 to  
23 \$10.20, and the first quarter of 1999, \$11.23 to \$10.25.

24 Q Based on the analysis that you did, do you have an  
25 opinion as to whether or not each of these utilities

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

3 A Yes.

4 Q What is that opinion?

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

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

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

14 Q And how did you do your research?

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

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

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

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

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

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

1 A Yes, I did.

2 Q What years did you look at for that data?

3 A For heating degree days they go by seasons. I went  
4 from -- looked at '93-94 to '98-99.

5 Q And, again, what did that data show you in terms of the  
6 degree heating days?

7 A It showed that the months with the highest heating  
8 degree days were December, January, and February.

9 Q Now is this information useful in the analysis that you  
10 did with regard to when a Fuel Adjustment Clause  
11 adjustment might be put into effect?

12 A Yes.

13 Q Okay. And based on your research, did you form an  
14 opinion as to when that refund should be distributed to  
15 South Dakota customers?

16 A Yes.

17 Q And what is that opinion?

18 A It's my opinion that June, July, and August are going to  
19 have the highest usage resulting in higher bills, and if  
20 the refund were to be given during that period of time,  
21 it would lower the bills.

22 Q And is that your opinion as to what would be the most  
23 desirable thing in these cases?

24 A Yes.

25 Q Now is there a difference between the utilities, the

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

3 A Yes.

4 Q And what is that difference?

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

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

11 A Yes, I did.

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

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

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

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

23 MR. HOSECK: Okay. I would offer  
24 Exhibit B.

25 MS. AILTS WIEST: Any objection?

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MR. GUERRERO: No objection.

MR. GERDES: No objection.

MR. DIETRICH: No objection.

MS. AILTS WIEST: If not, it's admitted.

MR. HOSECK: I have no further questions of this witness at this time.

MR. GUERRERO: I have no questions. Thank you.

MS. AILTS WIEST: Mr. Dietrich?

MR. DIETRICH: No questions.

MS. AILTS WIEST: Mr. Gerdes?

MR. GERDES: No questions.

MS. AILTS WIEST: Commissioners?

COMMISSIONER NELSON: Michele, do you know when we'd have to make the decision in order for them to do this in June, July, and August?

THE WITNESS: Well, as Mr. Guerrero stated earlier, Otter Tail would need a decision in the next day or two, and as far as the other two companies, I wasn't given a date.

CHAIRMAN BURG: I have a couple of questions. On Exhibit A there's no interest shown for Montana-Dakota Utilities. Why would that be?

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

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

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

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

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

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

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

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refund to be made?

THE WITNESS: Yes. I would recommend that it be done during the high cooling degree day season when most people will be using their space heat -- space cooling. I'm sorry.

CHAIRMAN BURG: Yeah. When I first saw the recommendation that Northwestern was over 12 months I had the same feeling, it ought to be done in a short period of time because I think you don't have interest accumulation over the long period of time and that.

However, through more consideration, are there any people who would not receive a refund because they would not be using power during that time that actually have paid it over the years? Is there a danger of a miscalculation of who receives refunds?

THE WITNESS: I'm not sure I can answer that for what their customer base is. But I did have examples of refunding it over a 12-month period versus a three-month period, and there wasn't a lot of difference in how much was given back --

CHAIRMAN BURG: No. I understand how you could give it all back properly, but I'm

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

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

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

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

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

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

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showed very little difference in the calculations.

MR. RISLOV: But you're recommending a refund over three months during the summer period. NWPS had mentioned 12 months. It's not clear to me that they're holding tight with the 12 months or they're agreeing with what staff is recommending. I guess I'm not clear. What's your understanding?

THE WITNESS: My understanding is if the Commission decided for them to do it over a three-month period, they would be agreeable to do that. There's no extra cost involved for them to do that.

Their Fuel Adjustment Clause is done over a 12-month period and to keep it consistent they proposed doing it that way but they're not in disagreement about doing it over a three-month period.

MR. RISLOV: Thank you.

MS. AILTS WIEST: Did you have any -- did you agree that the percentage of allocation of cost should be based on ownership rather than how the determination of damages were based, which is on usage?

THE WITNESS: I agreed that it

1 should be done on ownership.

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

8 THE WITNESS: No. I can't.

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

12 THE WITNESS: No, I didn't.

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

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

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

19 MR. GUERRERO: No. Thank you.

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

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

25 CHAIRMAN BURG: That is going to be

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submitted later?

MS. AILTS WIEST: Right.

CHAIRMAN BURG: I still have some concern over allocating it on a three-month basis if there are certain customers who may not get any refund that actually end up paying. I'm interested in some kind of a customer profile.

MS. AILTS WIEST: Customer profile?

CHAIRMAN BURG: Well, as to see what customers paid over the years and which ones may not receive anything if it's only paid on a three-month basis rather than a 12-month.

MS. AILTS WIEST: From all three companies?

CHAIRMAN BURG: Probably. I don't want anything elaborate, but I'm just wondering if there's a mismatch here.

MR. RISLOV: Commissioner Burg, if I could.

CHAIRMAN BURG: If anybody's got clarity.

MR. RISLOV: With regard to the residential class, and I'm anticipating maybe incorrectly what you're asking, but there are some customers who don't have air conditioners who don't

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

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

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

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

25 MR. DIETRICH: If it would help shed

1 any light, Mr. Decker, he does the monthly analysis  
2 of billings. He may be able to shed some light on  
3 the issue as far as our company is concerned.

4 MR. GUERRERO: Same with Ms. Brutian  
5 of Otter Tail Power Company.

6 CHAIRMAN BURG: I would just as soon  
7 get as much information now as we can, whichever  
8 one wants to start.

9 DIRECT EXAMINATION

10 BY MR. DIETRICH:

11 Q Jeff, can you shed any light on any inequities or  
12 differences that you can see among the Northwestern  
13 electric customer profile over a three-month summer  
14 period as opposed to a 12-month period?

15 A Yes. Mr. Rislov and Chairman Burg have touched on two  
16 of the major groups of customers. With the irrigation  
17 obviously they don't use much in the other nine months  
18 of the year so they would get a benefit they probably  
19 don't fully deserve.

20 We do have some customers that are on electric  
21 heat that will probably not -- use very little of this  
22 benefit compared to if we'd use the 12-month basis. We  
23 have some commercial customers who are also electric  
24 heat that use much more usage in the wintertime than the  
25 summer.

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

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

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

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

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

1 June, July, and August.

2 COMMISSIONER SCHOENFELDER: I can  
3 see how that can work with irrigators and I know  
4 this is really very difficult, at least it would be  
5 for me, but if you're just a regular residential  
6 user and you don't use air conditioning, which I  
7 think there probably aren't a large number of those  
8 people, but if there were people who didn't use the  
9 air conditioning for one reason or another, how  
10 much difference would it be in refunded over -- I  
11 mean, dollar amount?

12 If I'm a consumer residential and I want a  
13 dollar amount credit, do you have any idea how to  
14 calculate the difference between 12 months and  
15 three months?

16 THE WITNESS: As far as what the  
17 monthly amount will be?

18 COMMISSIONER SCHOENFELDER: No.  
19 Just the total dollars that -- the total inequity  
20 that people perceive is there. Because, I mean,  
21 this is different than natural gas because natural  
22 gas there's practically no usage at some times of  
23 the year, and it spikes up.

24 Most people paying the electric bill have some  
25 level of usage over the three months or the whole

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

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

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

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

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

19 COMMISSIONER SCHOENFELDER: Thank  
20 you.

21 (Witness excused)

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

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

DIRECT EXAMINATION

BY MR. GUERRERO:

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3 Q Ms. Brutlag, you've heard discussion regarding whether  
4 or not it would be more equitable or more practical to  
5 flow the refund over a three-month versus a 12-month  
6 period.

7 Do you have any comment on that from  
8 Otter Tail's perspective?

9 A A couple of things, I'm not as close to the rate  
10 analysis as Mr. Decker is in his company, but one thing  
11 I should point out is we have certain rates that don't  
12 have the Fuel Adjustment Clause applied to them. One is  
13 dual fuel. If we waited until winter, those dual fuel  
14 customers who haven't paid the higher cost in the first  
15 place wouldn't receive any benefit of this award.

16 And a lot of our heating load is the  
17 controllable heating load. So that's, you know, one  
18 reason where in their case it's not going to make any  
19 difference whether we give it back in the summer or  
20 winter.

21 The other thing is I haven't done a per  
22 customer amount, but I think a typical residential  
23 customer is something in the 5 to \$6 range that they  
24 will receive back over the three-month period. If you  
25 take that and spread it over 12 months administratively.

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

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

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

8 CHAIRMAN BURG: You do your --

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

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

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

17 CHAIRMAN BURG: Okay.

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

20 (Witness excused)

21 DIRECT EXAMINATION

22 BY MR. GERDES:

23 Q Mr. Ball has a couple of comments.

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

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simply because the dollars are not that substantial. It would be a lot easier administratively for us to do that. And I guess, in our opinion, the dollar amount is small enough for a typical residential that it does not warrant running it over a 12-month period.

For example, in the information that we gave to your staff we were looking for a typical residential customer, and this would have been had we done it in January, February, and March. We were looking at \$4.12 as the credit for a typical residential bill in the month of January, 4.71 in February, 4.45 in March. The grand total would be \$13.85. It's all over in three months.

If you went on an annual basis, we were looking at, you know, rather than returning \$13.85 in our example, returning \$13.56 over a 12-month period. In other words, you know, just about a dollar 13 cents a bill for a typical residential customer. In our view we'd rather do it over three months, and then it's behind us.

CHAIRMAN BURG: I can understand from, you know, the ease for the company. Do you see any group of customers who will not receive their share, their return on this, by just doing it in a three-month period?

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

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

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

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

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

(Witness excused)

MS. AILTS WIEST: Mr. Hoseck?

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

1 reasonable in staff's opinion which is the  
2 three-month period.

3 Further, I'm not really hung up on this, but I  
4 don't believe that there's a need for a waiver. I  
5 know the two of the three companies asked for a  
6 waiver of their tariff. NWPS did not.

7 It would be my position that under  
8 49-34(a)-25, I believe it is, that this could flow  
9 through as a cost directly attributable to fuel  
10 cost used in the generation of electricity. And I  
11 would refer the Commission to Otter Tail's petition  
12 at Page 5 which talks about the use of  
13 Account 151. And in that, as I read the tariffs,  
14 that is a mechanism all three tariffs seem to  
15 universally have.

16 There is a provision in there for other  
17 expenses directly assignable for the cost of fuel.  
18 And I would submit that is a proper mechanism for  
19 the use of that. Like I say, I'm not necessarily  
20 hung up on this as a matter of legal protocol.  
21 However, I think it is possible to do it without  
22 necessarily having any waivers. Thank you.

23 MS. AILTS WIEST: You mean waivers  
24 of the tariffs?

25 MR. HOSECK: Yes.

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

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

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

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

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Our goal obviously is to get recovery of the litigation costs that we incurred that have since benefitted rate payers. Thank you.

MS. AILTS WIEST: Mr. Dietrich, do you have anything?

MR. DIETRICH: Not to prolong this further, but, I think we're pleased to be able to bring a result to the Commission that shows that the companies have been able to work to a successful result for rate payers, both in an ongoing reduction in the costs of coal, other contract changes that you'll find described in the panel's decisions, and a damage award.

And I think we're just pleased that through these steps we're able to receive a positive result and whatever the mechanism is used to pass that credit on to the customers, we're apt to do so.

MS. AILTS WIEST: Just to clarify, would you still prefer the 12 months, or is that correct or not?

MR. DIETRICH: We're indifferent as to the approach used. We do have -- our tariff in place speaks to 12 months, but we can certainly mechanically do it on a three-month basis with our next quarterly filing locally.

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

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

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

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

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

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

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

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

1 MR. GERDES: Like other counsel, I'm  
2 not hung up on whether it's in the form of a waiver  
3 or not. I believe that the Commission is entitled  
4 to interpret the fuel clause, the statute, and a  
5 Commission Order directing that would, I think,  
6 serve the same purpose.

7 MS. AILTS WIEST: Thank you.

8 CHAIRMAN BURG: Can I have  
9 clarification? Is there a necessity that all three  
10 companies use the same three months?

11 MS. AILTS WIEST: I don't think so  
12 but --

13 CHAIRMAN BURG: Because I do see  
14 there's different quarters and --

15 MS. AILTS WIEST: Yeah. I doubt  
16 that there would be any -- unless somebody has any  
17 different information.

18 CHAIRMAN BURG: And, again, to  
19 refresh me, how much late filed do we have if  
20 looking at trying to get this turned around at the  
21 request of at least one company?

22 MS. AILTS WIEST: Well, I had asked  
23 for the Minnesota decision and North Dakota's in  
24 the future but that doesn't matter if we get that  
25 one in or not. I'm not sure if there's anything

beyond there. Was there?

CHAIRMAN BURG: Do you have Minnesota with you?

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

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

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

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

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

MR. GUERRERO: On a three-month basis.

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

1 COMMISSIONER NELSON: They were  
2 going to do it June, July, and August.

3 CHAIRMAN BURG: I thought if they  
4 didn't do it June, July, August, they had to do it  
5 August, September, and October. I thought they  
6 were going on a quarterly basis. That's not true?

7 MR. GUERRERO: That's correct.

8 CHAIRMAN BURG: Would that be true  
9 of the other two companies as well?

10 MR. GREEN: Correct.

11 CHAIRMAN BURG: Northwestern, would  
12 you do it -- you didn't do it May, June, July. Can  
13 you do it July, August, September as well?

14 MR. DECKER: Yeah. Our normal  
15 filing is May and August, but we'd make a special  
16 filing to do it July and August -- whether we do it  
17 June or July, we'll have to do a special filing so  
18 it doesn't matter either way.

19 MS. AILTS WIEST: Are you taking it  
20 under advisement?

21 CHAIRMAN BURG: Well, if we got to  
22 wait for -- don't we have to wait for the late  
23 filed?

24 MS. AILTS WIEST: The Minnesota  
25 decision was prior to the time that that -- we were

informed that those expenses had been taken out by staff.

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

MS. AILTS WIEST: Right.

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

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

CHAIRMAN BURG: But not base our decision on it.

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

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

COMMISSIONER NELSON: Rolayne wants to see it.

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

MS. AILTS WIEST: He said today or

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tomorrow.

MR. BULLARD: I think this room is open back here (Indicating).

MS. AILTS WIEST: Even though the Commission would make a decision today, there would not be a written decision because I have to wait for the transcript in order to make findings of fact so my point is you'd have to implement this based on a nonwritten decision if you would be willing to do that.

MR. GERDES: Based on faith.

MS. AILTS WIEST: Yes. Did you want to recess, Commissioners?

MR. GUERRERO: Counsel, we'd certainly -- to the extent there was a vote and we knew what the decision was, we could certainly base our decision on the basis of a record vote without a written opinion.

(A short recess is taken)

MS. AILTS WIEST: I think we want to recall a witness. Ms. Farris.

COMMISSIONER SCHOENFELDER: I have questions. When you went through the calculation of the refund and you prepared the numbers of each company Northwestern has travel expenses for around

\$13,218.22.

Did you justify those travel expenses anyway?

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

COMMISSIONER SCHOENFELDER: Okay.

Were any of the expenses that you asked to be disallowed from Otter Tail travel expenses?

THE WITNESS: No. Labor and miscellaneous.

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

THE WITNESS: Otter Tail also has travel expenses.

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

THE WITNESS: Yes.

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

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

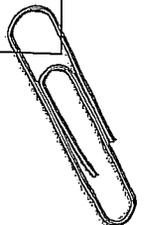


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clause and this is not a precedential decision and I'm going to second Commissioner Burg's motion but I want it to be very, very clear that this is a one-time only thing from my perspective.

COMMISSIONER NELSON: I'd concur.

MS. AILTS WIEST: Mr. Hoseck?

MR. HOSECK: Point of clarification. Does that include the interest?

CHAIRMAN BURG: Yes.

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

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

COMMISSIONER SCHOENFELDER: Thank you.

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

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

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STATE OF SOUTH DAKOTA )

:SS

CERTIFICATE

COUNTY OF HUGHES )

I, CHERI MCCOMSEY WITTLER, Registered  
Professional Reporter and Notary Public in and for the  
State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed  
shorthand reporter, I took in shorthand the proceedings  
had in the above-entitled matter on the 15th day of  
May 2000, and that the attached is a true and correct  
transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 7th day  
of June 2000.

  
Cheri McComsey Wittler,  
Notary Public and  
Registered Professional Reporter

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

IN THE MATTER OF THE PETITION OF )	FINDINGS OF FACT AND
NORTHWESTERN PUBLIC SERVICE FOR )	CONCLUSIONS OF LAW;
APPROVAL OF PLAN TO UTILIZE ITS )	NOTICE OF ENTRY OF
ADJUSTMENT CLAUSE TO CREDIT )	ORDER
CUSTOMERS FOR ARBITRATION AWARD )	
LESS COSTS )	<b>EL00-009</b>

On March 20, 2000, the Public Utilities Commission (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 February 10, 2000, the Commission received a petition from Montana-Dakota Utilities Co (MDU) for approval of a waiver of its Fuel Clause Rate 58. Docket EL00-003. The petition stated that "[t]he waiver is requested to allow the pass-through, in the fuel cost adjustment (FCA) of arbitration costs that have resulted in savings to retail customers." An intervention deadline of March 3, 2000, was set by the Commission. No petitions to intervene were filed.

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

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

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

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

**FINDINGS OF FACT**

1. On March 20, 2000, the Commission received a petition from 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 May 10, 2000, NWPS filed a revised petition which proposed a credit of \$674,652.47. Exhibit 7.

2. Otter Tail, NWPS, the Northern Municipal Power Agency, and MDU own the Coyote Power Plant. Tr. at 12. They entered into a 35-year contract with the Knife River Coal Company (Knife River) for delivery of coal. *Id.* MDU Resources is the parent company of Knife River. Tr. at 100. To determine the price of the coal, the contract uses various indexed price components, some actual cost price components, with quarterly price adjustments. *Id.* An addendum to the contract required that the pricing mechanism within the contract would result in prices that were comparable to similar mines developed at similar time frames. Tr. at 13.

3. The owners of the Coyote Power Plant, with the exception of MDU, disputed the prices charged by Knife River through an arbitration proceeding. Tr. at 14. MDU was named as an initial party in the arbitration but sought removal from the arbitration proceeding because MDU Resources owns Knife River and, thus, there was a possible conflict of interest. Tr. at 100. The initial arbitration decision in March of 1999, lowered the coal prices charged by Knife River, beginning the fourth quarter of 1996 up until the time of decision. Tr. at 15. The arbitration decision also requested that the parties modify the pricing procedure within the contract. *Id.* The parties were unable to come to an agreement so that issue went back to arbitration and the decision of the arbitration panel was to essentially accept Knife River's pricing procedure modification and to accept the profit limitation recommendations of the Coyote Power Plant owners. *Id.*

4. The prices were adjusted downward and the retroactive adjustment of the prices resulted in a refund to the owners. Tr. at 16. NWPS' share of the award was \$858,373.00, which was reduced to \$850,980.99 to reflect the amount of the award associated with serving NWPS' retail load. Exhibits 7 (attached as Exhibit D), B. The costs of the arbitration were allocated to the owners based on each owner's plant ownership percentage. Tr. at 21. NWPS incurred arbitration costs of \$236,774.09, of which \$234,734.99 is related to its retail operations. Exhibits 7 (attached as Exhibit D), B. NWPS' South Dakota retail customers' share of the award was 100% of NWPS' retail share. Exhibit B. NWPS requested that it be allowed to deduct its arbitration costs from its share of the refund and then pass the net amount to its customers through the fuel clause. Exhibit 7 at 2. Interest earned on the amount associated with its retail operations was \$58,406.77 through April 30, 2000. Exhibit 7 (attached as Exhibit D).

5. NWPS also estimated that, on a going-forward basis, the result of the arbitration decision would result in additional fuel cost savings to its retail and wholesale customers of around \$250,000.00 per year. Exhibit 7 at 3.

6. Michele Farris, utility analyst for the Commission, recommended that NWPS be allowed to deduct its litigation expenses from its total damage award of \$858,373.00. Exhibit B. This net damage award was further reduced by excluding wholesale sales, for a total refund of \$616,253.00, plus earned interest. *Id.*

7. Ms. Farris also recommended that NWPS issue the refund to customers through its fuel clause during the months of June, July, and August. Tr. at 116.

8. The Commission finds that Staff's recommendation is fair and reasonable and will allow NWPS to deduct its litigation expenses from its total damage award of \$858,373.00. The Commission further finds that NWPS shall refund an amount of \$616,253.00, plus interest earned up until the time of the refund, to its South Dakota customers during the months of June, July, and August, 2000.

9. The Commission further finds that this allowance of the deduction of litigation expenses is not to be interpreted as allowing future litigation expenses to be recovered through the fuel clause. The Commission's decision in this case is based on the facts of this case and any future recovery of litigation expenses must be approved by the Commission.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 49-34A-2, 49-34A-3, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-10, 49-34A-11, 49-34A-13, 49-34A-19.2, 49-34A-25, 49-34A-26, and 49-34A-27.
2. The Commission finds that Staff's recommendation is fair and reasonable and will allow NWPS to deduct its litigation expenses from its total damage award of \$858,373.00. The Commission further finds that NWPS shall refund an amount of \$616,253.00, plus interest earned up until the time of the refund, to its South Dakota customers during the months of June, July, and August, 2000.
3. The Commission further finds that this allowance of the deduction of litigation expenses is not to be interpreted as allowing future litigation expenses to be recovered through the fuel clause. The Commission's decision in this case is based on the facts of this case and any future recovery of litigation expenses must be approved by the Commission.

It is therefore

ORDERED, that NWPS may deduct its litigation expenses from its total damage award of \$858,373.00 and shall refund an amount of \$616,253.00, plus interest earned up until the time of the refund, to its South Dakota customers during the months of June, July, and August, 2000.

### NOTICE OF ENTRY OF ORDER

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

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

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Melanie Kelbo</u>
Date:	<u>6/29/00</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