1	THE PUBLIC UTILITIES COMMISSION
2	OF THE STATE OF SOUTH DAKOTA
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4	IN THE MATTER OF THE APPLICATION OF
5	BLACK HILLS POWER, INC. FOR AUTHORITY TO INCREASE ITS ELECTRIC RATES EL09-018
	TO INCREASE ITS EDECIRIC RATES EDUS 010
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8	Transcript of Proceedings March 9, 2010
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11	BEFORE THE PUBLIC UTILITIES COMMISSION, DUSTIN JOHNSON, CHAIRMAN
	STEVE KOLBECK, VICE CHAIRMAN
12	GARY HANSON, COMMISSIONER
13	COMMISSION STAFF
14	Rolayne Ailts Wiest John Smith
15	Karen Cremer Dave Jacobson
	Bob Knadle
16	Tim Binder Jon Thurber
17	Anissa Grambihler
18	APPEARANCES
19	Lee A. Magnuson, appearing on behalf of Black Hills Power
20	ALSO PRESENT:
21	Kyle White, Black Hills Corporation Linden Evans, Black Hills Corporation
22	Chris Kilpatrick, Black Hills Corporation
23	Todd Brink, Black Hills Corporation
24	Reported By Cheri McComsey Wittler, RPR, CRR
25	Reported by cherr recombey wretter, Krk, CKK

1	APPEARANCES BY TELEPHONE
2	Jana Linderman, Residential Consumers Intervenors Andrew Moratka, Industrial Intervenors
3	Andrew Moracka, industrial intervenors
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5	TRANSCRIPT OF PROCEEDINGS, held in the
6	above-entitled matter, at the South Dakota State Capitol
7	Building, 500 East Capitol Avenue, Pierre, South Dakota,
8	on the 9th day of March, 2010, commencing at 2:40 p.m.
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1 CHAIRMAN JOHNSON: EL09-018. This deals with 2 Black Hills Power and their request to raise rates.

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Specifically before the Commission today is an interim rate request made by Black Hills Power to implement a reduced interim rate effective date of April 1 in lieu of the proposed rate increase of 26.6, which they would have the authority to put in under South Dakota Law 49-34A-17.

And maybe we'll start there and hear from the Applicant.

MR. MAGNUSON: Thank you, Commissioner Johnson.

My name is Lee Magnuson. I am outside counsel for

Black Hills Power, Inc., the Applicant in this matter. I

am with Lynn, Jackson, Shultz & Lebrun law firm in

Sioux Falls. Here with me today is Kyle White who's the

Vice President for Regulatory and Governmental Affairs

for Black Hills Corporation.

We're here today on Black Hills Power's request for authority to implement an interim rate increase on April 1 of 2010.

A brief history, and I don't mean to repeat everything that is in our request, generally speaking, on September 30, 2009 we filed with this Commission a Request for Approval to Increase Rates for Electric Services to Customers in our South Dakota Service

Territory.

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Pursuant to South Dakota Statute, this

Commission suspended the operation of those rates for

180 days beyond September 30. Therefore, the proposed

rate increase will no longer be subject to suspension on

or after March 30 of 2010.

Now we don't expect any final decision from this Commission, and it's not anticipated to be entered prior to March 30, 2010. Therefore, we have filed this request with this Commission.

As I believe Commissioner Johnson noted, we have the right to implement our proposed rates as set forth in our September 30, 2009 application on and after March 30 of 2010. But in lieu of implementing those proposed rates, we have set forth before this Commission interim rates that we would request be authorized to go into effect on April 1.

The interim rate increase that has been filed would be applied in accordance with the revised

Schedule I-1 that is on file with this Commission. All other provisions of the proposed tariffs as filed on September 30 of 2009 would be implemented.

Without going through the rest of our Petition,
I'll just note that one of the objections of the
Black Hills Industrial's Interveners was the fact that we

had not made any certification regarding Wygen III. Just shortly before this hearing we have filed with the PUC a document titled Certification Regarding Wygen III. I believe that the Commissioners have been provided with copies of that Certification.

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I understand that Ms. Linderman and Mr. Moratka are on the phone. In the event that they have not had an opportunity to review that Certification on the website, I will just briefly go through the substance of that Certification.

Number 1, this is a Certification by Linn Evans who is the President and Chief Operating Officer for Utilities of Black Hills Corporation. And he has certified that, 1, construction of the Wygen III Power Plant is presently 99 percent complete and is on schedule for Wygen III to be in commercial operation and in service on or before April 1, 2010.

Number 2, Black Hills Power, Inc., shall file with the South Dakota Public Utilities Commission a certification at such time as Wygen III becomes in service and is placed in commercial operation. And that's signed by Linn Evans and notarized and, as I noted, has been filed.

There have been some objections filed by Black Hills Industrial Interveners as well as

South Dakota Peace and Justice. I would reserve the right to respond to those objections after they've had a chance to make their oral argument, if that's acceptable with this Commission.

With that being said and for the reasons set forth in our request, we would respectfully request that the Commission enter an order allowing Black Hills Power to implement its interim rate increase for service on and after April 1, 2010 pursuant to the South Dakota Statute until final rates are implemented following entry of the Commission's final decision and order in this matter or until any appeals are exhausted.

And with that, we would be ready to answer any questions that you might have.

CHAIRMAN JOHNSON: Thank you, Mr. Magnuson.

We will go to the Residential Interveners.

Ms. Linderman.

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MS. LINDERMAN: Yes. My name is Jana Linderman. I am an attorney with Plains Justice, and as you indicated, I'm appearing on behalf of the Residential Consumers, Lillias Jarding, Bobbie Handley, Carla Kock, and the South Dakota Peace and Justice Center.

CHAIRMAN JOHNSON: Ms. Linderman, I'm sorry to interrupt. We do have a court reporter here. If you could just speak a little louder, I think that will help

her out.

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MS. LINDERMAN: Yes. I apologize for that. I will make every effort to be louder.

CHAIRMAN JOHNSON: It's still not loud enough.

We're going to adjust our volume on our end. You know,
legally we have to hear here, and the internet is nice
but not legally required. So we're going to go ahead and
turn up the volume a little bit, and we'll see what that
does. My apologies for the delay, Ms. Linderman.

Continue.

MS. LINDERMAN: Okay. Our objections are primarily based on the lack of information that we've been given regarding this proposed interim rate increase. It's not clear to me what the basis is for the specific numbers that are included in the proposed rate increase here.

The Residential Consumers do not dispute that the utility on an interim basis can implement the full rate increase as proposed in the September 2009 application. But Black Hills Power is asking that the Commission approve something different here. If the utility just went ahead on its own with the full proposed rate increase, that would be one thing. I don't think the other parties would have a say in that.

But here we're being asked and the Commission is

being asked to sign off and give our approval to a specific alternative without being told why that alternative was chosen.

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Residential Customers Black Hills Power is proposing a slightly lower rate increase for this interim period.

It's still quite a significant rate hike, in any case.

But it's not clear to me where the 20 percent figure comes from for the proposed revenue increase so it's hard for me to speak to whether the proposal is reasonable or not or whether and to what extent it's even needed right now.

I noticed the Industrial Interveners do not like the differential treatment of the customer classes in this proposal, and I can appreciate that viewpoint. But we really haven't been given any supporting documentation for any changes that were made from the September 2009 rate proposal. So, again, it's hard to say what is reasonable and what isn't.

That brings me to a second point that we raised in our written comments. If circumstances have changed for Black Hills Power, if the utility's revenue requirements have changed since the initial application was filed last year, then that should be reflected as an amendment to the permanent rate increase proposal that

will be considered by the parties and the Commission at hearings later this summer. And the parties should be provided with full supportive documentation for those changes.

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Finally, regardless of what interim rate increase is implemented, the Residential Consumers request that the utility be required to implement appropriate tracking mechanisms to detail all amounts received as a result of the rate increase. I don't know that that is really an issue that's in dispute here, but it would seem to be an important prerequisite for any interim rate increase.

As I indicated, we submitted written comments as well so I'll end here and listen to what the other parties have to say. Thank you.

CHAIRMAN JOHNSON: Thank you.

With that, we'll look to the Industrial
Interveners. Mr. Moratka.

MR. MORATKA: Thank you, Commissioner Johnson.

Andrew Moratka appearing on behalf of the Black Hills

Industrial Interveners.

Just to refresh the Commission's recollection, I am an attorney at Mackall, Crounse & Moore in Minneapolis, and the client group comprising the Black Hills Industrial Interveners is the Dakota Panel,

1 GCC Dacotah, Inc., Rushmore Forest Products, Inc.,
2 Sanford Underground Laboratory, Spearfish Forest
3 Products, Inc., and Rapid City Regional Hospital, Inc.

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We did submit comments in this -- in this Docket with respect to the interim rate increase on March 5, 2010. We made three general points in our comments.

The first is -- Mr. Magnuson referred to, which it related to the certification and request that Black Hills Power provide some information as to whether and when the Wygen III facility will be in service.

During the attorney's presentation I was able to get online and locate the Certification regarding

Wygen III. Based on my review, it does appear that they are representing that the Wygen III Power Plant will be in service on or before April 1.

I appreciate the Certification that was filed.

I would still request that to the extent that Wygen III isn't in service on April 1, 2010, that Black Hills Power be precluded from implementing interim rates.

I don't think that's going to be a problem. It doesn't seem, you know, based on the original filing and what was filed that there should be any problem. I'm more concerned about something that happens that's catastrophic or out of someone's control.

The second point that we raised in our comment related to rate design of the proposed increase. As Ms. Linderman alluded to, we really have no information as to why the company's seeking 20 percent versus the 26.6 percent in its proposed filing.

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Now we are opposed to the company utilizing a rate design that is different from what's proposed in the initial filing. The initial filing containing the 26.6 percent proposed increase is an across-the-board increase. Because the company is proposing an across-the-board increase in their final rates, we think it's only fair to have interim rates be based on an across-the-board increase and would support that position whether the company is seeking a 10 percent interim rate increase, 20 percent interim rate increase, or the full 26.6 percent.

The third point that we raised is an echo to Ms. Linderman's comments regarding tracking mechanism. Pursuant to statute, we think that any order that does finally approve interim rates should require Black Hills Power to track the total amount received by reason of the interim rate increase, a breakdown specifying by whom and in whose behalf the amounts were paid, interest calculated at Black Hills Power's cost of capital from the date interim rates take effect until the date of any

refund, and a separate line item on the rate payer's monthly bill as to the amount billed the rate payer that month by reason of the interim rate increase. We think that is a fair proposal and consistent with state law.

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And unless the Commission has any further questions, I will stop speaking and reserve my right to comment on any rebuttal.

CHAIRMAN JOHNSON: Commission Staff, comment.

MS. CREMER: I didn't know if you wanted to hear from Black Hills and just hear our recommendation then or --

CHAIRMAN JOHNSON: I thought if Black Hills wanted to rebut anything you brought up, I thought they should have an opportunity to do so.

MS. CREMER: Okay. In that then, Commission Staff would recommend the Commission approving Black Hills Power's request to implement the reduced interim rate increase, pursuant to SDCL 49-34A-17.

And then Staff would also recommend that Black Hills keep an accurate accounting of all the monies that is received pursuant to the statute.

I can specifically address any of the issues if you'd like raised by the Residential or the Industrial Interveners. I don't want to appear to be arguing Black Hills' case, however. And so I -- that would be

Staff's recommendation.

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CHAIRMAN JOHNSON: Perfect. Thank you. And we certainly may follow up with some questions on that.

Any rebuttal, Mr. Magnuson, Black Hills Power?

MR. MAGNUSON: Yes. Thank you. Let's start

first with what I'd refer as the accounting issue.

CHAIRMAN JOHNSON: I'd just ask you to pull the base of that microphone closer. That way people can hear you out in the internet world.

MR. MAGNUSON: First let's address what I will refer to as the accounting issue. Black Hills Power intends to fully comply with all the statutory requirements that are set forth in South Dakota statutes regarding rates as set forth in our application.

Therefore, I see it as a nonissue.

We are going to keep track of what is paid in on interim rates, and that will be in a full position with regard to credits or refunds as may be necessary and as may be ordered by this Commission. So we fully intend to comply with any statutory requirements regarding accurate accounting.

Second, let's talk about the certification of Wygen III. As I understand Mr. Moratka, he is indicating that we should be precluded from putting interim rates into effect if Wygen III is not commercially operable by

April 1, 2010. We would strongly object to any such requirement.

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The position that we are taking is that we fully expect Wygen III is going to be commercially operable and in service by April 1 of 2010. If for some unlikely reason that does not occur, then that is something that could be taken into account by this Commission when it makes its final decision with regard to final rates and with regard to any credit or refunds that may be due customers. So that item can be easily taken care of.

And as set forth in our Certification, we fully intend to certify the date that Wygen III does become in service and is placed into commercial operation. So there should be no argument in that regard.

With regard to the two other issues that have been raised, I'm going to turn those over to Kyle White. And the two issues that I'm referring to first are whether or not the interim rates unfairly target one class of customers as raised by the Industrials, and the second issue that I will ask Mr. White to address is why did we select the specific interim rate.

Mr. White.

MR. WHITE: Good afternoon. I'll address the second question first.

As the company considered the possibility that

this proceeding would not conclude prior to the 180 days, we had to evaluate what would be in the best interest of both our customers and our shareholders. And when we did that we took into consideration our long history of doing business in this state and being regulated by this Commission and recognized that there are often differences of opinion and different outcomes than what our rate application would typically provide for.

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With that then, we elected to essentially implement 75 percent of what we asked for. There is no specific documentation or record for that. It is a judgment call. And we needed to decide the likelihood of being fair to customers and recognizing that we will not have an opportunity to go back and raise rates so we needed to have rates at a level that would ensure that our shareholders would be fairly treated as well, as this proceeding continues on.

With that then in mind, we needed to determine how best to recover that revenue requirement. And so we made an evaluation of our filing and of the various class rates of return. We looked to the position taken by Chesapeake Regulatory Consultants when they made their proposal to be hired by you, recognizing that the returns were not equal by customer classes, and we elected then to favor the residential and small general service and

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     implement a higher rate for the general service large
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     classes of customers.
              It is a judgment call that we have made to
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     respect the interests of both our customers and our
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     shareholders. We did not make the decision lightly.
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    Probably the easiest would have been to go with the
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     26.6 percent. But we wanted to be fair to this process,
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     and so we made this decision.
              CHAIRMAN JOHNSON: Okay. Let's go ahead and
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     open it up to questions by Commissioners or advisors
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     then.
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              I can -- go ahead, Commissioner Kolbeck, if
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    you're ready.
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              COMMISSIONER KOLBECK: Let's see here. First of
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     all, I think just to clarify, a no vote by myself would
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    be a 26.6 percent increase; correct?
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              MS. CREMER: If you're asking if you denied
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     their request, yes, then under the law under the statute
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     the increase would go in at 26.6 percent.
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              COMMISSIONER KOLBECK: So the other side of the
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    coin would be a yes vote would be a 20 percent increase?
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                           That is correct.
              MS. CREMER:
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              COMMISSIONER KOLBECK: Okay. And if we track
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these -- I guess, Mr. White, when we track these,

Mr. Magnuson can address this too, we're going to track

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them on a precise customer-by-customer accounting; correct, in case there is a refund?

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MR. WHITE: Yes. What we intend to do is once the final rates have been established by you, we will then compare on a customer-by-customer basis, monthly bill-by-monthly bill basis, determine the difference, and if the rates are lower with your final decision, then the customers will be entitled to a refund with an interest rate set by you.

One caution I would give you is the Industrial Consumers have asked to have a specific line item identified as to the difference between the current rates and the interim rates. That may be difficult to do. We have not had an opportunity to verify that with our billing system. That should not have any outcome, however, as to the amount that the customers are billed. It's just an informational piece for them.

COMMISSIONER KOLBECK: And have you given any thought to the rate of return -- if there is a return and then that interest rate as you discussed, how much that would cost rate payers or shareholders if it was at 26 percent versus if it was at 20?

MR. WHITE: We have not made that calculation. It has been our expectation that we would be successful with this application.

COMMISSIONER KOLBECK: Would it be your opinion, Mr. White, that if the 26.6 percent were allowed to go in, it could have more of a financial impact on rate payers and customers? If refunds were to be given?

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MR. WHITE: There are two parts to that. One, some of our customers would actually pay more than under our proposal that's before you today. And the second is that if there were refunds, there would be a greater interest paid by our shareholders related to putting rates into effect subject to refund.

COMMISSIONER KOLBECK: And I guess that's more where my questions are running is more towards the interest paid.

And you mentioned shareholders would absorb that or rate payers or both?

MR. WHITE: I guess I'm not certain. This is a case of first impression. If it were included in your decision as to establishing our revenue requirement, then possibly customers would pay for it.

COMMISSIONER KOLBECK: All right. And then -- I just want to make it clear to the public that this is not the PUC's rate. We didn't set this rate. This was a total internal judgment call, as you called it, by Black Hills Power; correct?

MR. WHITE: Yes. Black Hills Power has made a

1 decision to offer you the opportunity to authorize rates 2 that are lower than we would implement under the statute. 3 And at this point you are not in a position to do much 4 more than say thank you where it's approved or denied. 5 Unfortunately, that's where we're at. It's not 6 comfortable probably for either of us. 7 COMMISSIONER KOLBECK: And there's no sense in 8 going into class of service or arbitrary rates or whether the plant is actually in service or not. Those are all things that will be decided down the road. 10 11 MR. WHITE: Yes. 12 COMMISSIONER KOLBECK: So I'm trying to be 13 very -- I'm trying to listen to the Interveners and put a 14 lot of weight in what they say, but someone please 15 correct me if I'm wrong. If the rate is reasonable or 16 not is not of discussion today and whether Wygen III is 17 in or out of service is not in discussion either. It's 18 whether this interim rate will be implemented or not be 19 implemented. 20 MR. WHITE: I agree with your conclusion. 21 Anybody else disagree with me? 22 COMMISSIONER HANSON: I will. 2.3 COMMISSIONER KOLBECK: Okay. That's all I have. 24 CHAIRMAN JOHNSON: Okay. Mr. Magnuson,

Mr. White, I do find myself a little concerned with the

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asymmetrical application of your proposed interim rate to
various customer classes. Not that I necessarily think
what you've done is wrong, but I do think it sets a
little bit of an odd precedence.

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I mean, essentially you're saying that it's a judgment call by you. That's very broad discretion. And I'm not sure the statute envisions that kind of discretion. And read from page 3 of the Industrial Interveners Brief, in the middle of the page they say, The utilities would view the approval as giving them free reign to design the interim rates as they see fit.

I feel like that's not an unfair statement. Where am I wrong?

MR. WHITE: Well, I believe that you're wrong in this way: First, our offer needs to recognize the interest of our shareholders. And so the fact that we have no ability to charge higher rates than what we're implementing for interim rates later and backbill customers puts this in more of the company's discretion than I would say in most situations before this Commission.

CHAIRMAN JOHNSON: But your shareholders would care about a revenue requirement rather than an application specific to customers classes; is that right?

MR. WHITE: Well, right now the discretion for

your refund is on a customer-by-customer basis. And so
we will be living with the rates that are implemented and
comparing them to the rates that you approve.

And the revenue requirement during this interim period will not be as significant as it will after those rates are finally put into effect. So it's a little bit of an anomaly here.

The other reason why I believe that we have discretion here is we have not asked to implement any rates that were higher than what we proposed with our September 30 application. And so the discretion has been to actually accept lower rates for some classes of customers.

So there are no customers in our situation that are being discriminated against as they would have been affected under the state law had we implemented just the proposed rates.

CHAIRMAN JOHNSON: So is that the only limit you see to the Applicant's discretion?

MR. WHITE: Yes.

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CHAIRMAN JOHNSON: Well, then I'll pick up and ask the Interveners the reverse of that question, which is, I mean, you both sort of argue about a reasonableness.

I mean, we know that that standard doesn't

exist, at least not explicitly in the interim rates

statute. And so I guess my question would be, I mean,

who's prejudiced? I mean, to Mr. White's point, if

everybody's paying a little bit less under the proposed

interim rate, who's prejudiced?

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- MR. MORATKA: Well, Commissioner Johnson, I appreciate the question. I guess I'll try to break this out into two parts.
- First is I do think that rates have to be reasonable whether or not they are interim rates or final rates. I think that -- I believe that's true under any interpretation of South Dakota Law. And --
- CHAIRMAN JOHNSON: But now, Mr. Moratka, let's back up, and let's work through that interpretation. I'm not disputing it. As I'm reading 17, I'm trying to figure out, I mean, it appears as though there are three burdens that need to be met there. And I'm not reading at least explicitly a reasonableness burden.
- MR. MORATKA: Well, but I think that the overarching requirements on reasonable is set forth in 49-34A-6. And I think that governs all of Title 49 Chapter 34A.
- CHAIRMAN JOHNSON: But let's just read this from a common sense perspective, Mr. Moratka. Nobody other than the Applicant at this point has argued that 26.6 is

reasonable. No one's argued that. The Applicant certainly hasn't proven that 26.6 is reasonable, and yet it appears as though under state statute they have a near absolute right to put that rate into effect.

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How can I read 17 along with the statutes you're citing and make them all work together?

MR. MORATKA: Commissioner Johnson, I appreciate the question. And I'm not disputing the dollar amount at either level. What I'm focusing on is the distinguishing point of whether or not it's reasonable for the utility to incorporate a different rate design in interim rates than final rates. And taking -- and just if I could take an example that would be a little bit more extreme.

Assuming all the same dollar requirements that are set forth in the -- in Black Hills Power's Petition in this case, you have roughly \$15 million that they're seeking from residential, roughly 12 from small general service, roughly 600,000 from lighting and roughly 10 from the large general service and industrial.

Let's say that the converse were true and Black Hills Power said you know what, we need 15 million in interim rates, we're going to collect it 100 percent from the residential class, and we're not going to collect any of it from anybody else.

I think that there would be quite a few people

that would be coming in and would be saying, well, that's
unreasonable. That's not fair.

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And from another perspective, if you flipped it, on the business side I could at least speak from our clients' perspectives, if the flip is true and they say we only need 10 and we're going to collect all 10 from the large general service and industrial class, well, while they may not be overcollecting what they're proposing, they have made a conscious decision to collect and single out one class.

Now while that money may be subject to refund at a later date, the timing of that increase is just as important as the ability to refund. I mean, we all -- I think it's fair to say that we're getting close, but we're not necessarily out of a recession. And if the industrial class gets a smaller level of an increase now versus taking a full increase subject to refund later, there is an impact there. It may not be easily quantifiable, but I don't think it can be disputed that there is an impact.

CHAIRMAN JOHNSON: Well, Mr. Moratka, I don't think your arguments are without legal merit. I'm just trying to determine what the Commission does with them. I mean, this is a classic Catch-22.

Are you asking the Commission to deny the

interim rate request by Black Hills Power?

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MR. MORATKA: I don't think I'd have a legal argument to make to say that it needs to be denied. What I am seeking is that if the utility has proposed rate designs in its proposed rate increase and decides to do something different with that proposal for an interim rate purpose, that for ease of administration and to ensure fairness, then that is the rate design that should be used for interim rates.

Whether it's an across-the-board or something different, I think that the Commission should take this opportunity to set precedent and say that, you know, if you're proposing rate design in your initial Petition, that's the rate design you use for interim rates should you choose to put them into effect, regardless of the level.

CHAIRMAN JOHNSON: Legally, do you have any concerns with that? I mean, state statutes are really silent on the type of proceeding that we're currently -- or the question that's currently before the Commission.

The Commission doesn't have any -- there's no direction to the Commission about whether or not it can pick and choose what it thinks an accurate rate design is for an interim rate that is separate from that which has been filed by the Applicant.

I mean, so I guess I'll ask you, do you see anything in statute that would give the Commission the power to pick and choose what this interim rate looks like?

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MR. MORATKA: Well, Commissioner Johnson, I appreciate the question, and I think that's basically my point. It's not that whether the Commission has the authority to decide what the rate design should be, it's whether Black Hills Power has offered anything to demonstrate the reasonableness of what it proposed.

I mean, it's easy -- the statute is set up so that we're assuming -- if they get interim rates, we're assuming the reasonableness of what they proposed. So it would seem to be fair then you're assuming that the reasonableness of what they proposed for rate design is -- should be improved subject to refund.

CHAIRMAN JOHNSON: And I'm just trying to take your logic, which I don't dispute, to a decision. I mean, the Commission ultimately today or sometime very soon is going to have to make a decision on this. Let's say that I agree with you that the filing before us is unreasonable and as a result I couldn't bring myself to vote for it.

That, in essence -- unless Black Hills Power makes a different decision, that puts into place a

26.6 percent rate increase.

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What I'm trying to figure out is, is that really in the best interest of rate payers, and is that really what the Interveners are asking us to do?

And if I agree with you, I feel like we end up in a place maybe your client's not entirely comfortable with. Am I wrong?

MR. MORATKA: Well, in all fairness,

Commissioner Johnson, it wouldn't have a measurable

impact on our clients because Black Hills Power is

essentially seeking the full increase in interim rates as

they are for final rates against our customers.

But, again, I think that the Commission has the authority to permit the increase and state that the way the interim rate statute is structured is that the proposed rate as set forth in its Petition come into affect 180 days after filing. I would read proposed rates, oddly enough, to include rate design and every other aspect in the initial filing.

And, therefore, if Black Hills Power has elected to seek a less than, you know, 26.6 percent, whether that's 20 percent, 10 percent, what have you, they are still stuck with the remainder of the filing for how that 20 percent is to be collected. And, therefore, because they propose an across-the-board increase in their

initial Petition, they should use an across-the-board increase for interim rates.

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Had they proposed a different structure in their initial Petition, I think that then that would be what should have been used for interim rates. All I'm saying is that the initial Petition was approved under statute for interim rates. And if that's true, then just because Black Hills Power seeks an overall smaller dollar amount doesn't give Black Hills Power the authority to tinker with other aspects of its own filing.

CHAIRMAN JOHNSON: Okay. I'm sorry for so many follow-ups, but I am trying to make sure I understand your legal reasoning here.

Do you believe that if the Commission were to tinker with the proposed new interim rate suggested by Black Hills Power in a way that was not acceptable to Black Hills Power, that they would maintain an absolute right to put a 26.6 percent increase into effect?

MR. MORATKA: I don't think that the -- that there is much room to argue about the proposed rate increase, and it going into effect as of the date stated on the tariff sheet.

CHAIRMAN JOHNSON: Okay. And I've got a couple more lines of questioning, but I want to give my colleagues an opportunity too. So I'm just going to ask

the same general types of questions to the Residential
Interveners.

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Ms. Linderman, I mean, you talk about -- you ask on page 2 of your filing -- or you say that Black Hills Power should file an amendment to its original rate increase application with full supporting documents to allow the other parties and the Commission to have a full and fair hearing on the merits of the proposal.

Doesn't that just seem -- I mean, I read that, and I think it seems totally at odds with what 34A-17 envisions. I mean, if we were going to have a full and fair hearing, wouldn't we -- I mean, then that's the final rate; right?

MS. LINDERMAN: Well, I think that the question that we intended to raise there is, is Black Hills Power the reason for proposing a lower rate increase here in the interim period based on a change of circumstances? The fact is we don't know.

But if that's the case, then that's relevant information for the permanent rate increase to request as well. And, you know, my clients have been put in a very difficult position here, and I think the legal distinction is if the utility were to go ahead with the full rate increase as proposed in their initial application, that's their choice. They're not legally

required to, but they're certainly legally entitled to do
that and that's their decision.

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In this case they're presenting an alternative and asking that -- the parties and the Commission to take a position on whether or not this is an acceptable alternative. And I don't know what standard that implies, but it does seem to imply some kind of qualitative decision-making process on the part of the other parties and the Commission and I'm just trying to understand, you know, what is their rationale behind that.

Because without that information, I can't say whether this is okay with my clients or not. I mean, yes, I would agree they don't want to pay less money, but if we're opening this up for debate and we're going to take this to the hearing process with the Commission, then I kind of want to know what it is that I'm being asked to respond to.

CHAIRMAN JOHNSON: Well, in what way is the 20 percent suggestion by Black Hills Power less reasonable to Residential Interveners than the rate they have I think we all agree a near absolute right to impose?

MS. LINDERMAN: I don't know that it is less reasonable or not. But if I do not know what the basis

is for those numbers, if it reflects a change in circumstances for the utility, I'm a little bit troubled on saying -- the idea that I'm saying on behalf of my clients, yes, that this is an acceptable option for us.

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If the utility has unlimited discretion to do whatever they want to do as long as they don't go above their proposed rates, then I'm not sure why we're even having this hearing process where the Commission and the parties have required to take a position on this proposal.

CHAIRMAN JOHNSON: So you're arguing in your brief as well as today that the Commission just doesn't have enough information to determine that the 20 percent proposed rate is reasonable. Again, if that's the legal argument that the Commission is to adopt, then it would seem that our option would be to deny this request. If that's the case, Black Hills Power is likely to implement 26.6 percent increase.

Is that what you're asking us to do, turn down the filing, the application by Black Hills Power?

MS. LINDERMAN: I think one alternative might be just to ask the utility for more documentation to support what they did. And I don't know that that's available if they were just doing -- exercising a judgment call as was indicated.

But, as I said, this does place my clients in a difficult position because I feel like we're being asked to endorse something we don't understand. The utility does have an option to go ahead and implement the higher rate increase and we can't do anything about that. I don't know that we have a lot of power in this process one way or the other.

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CHAIRMAN JOHNSON: Okay. Thank you. Again I have a couple more lines of questioning, but let's pause and see if my colleagues have other questions.

COMMISSIONER HANSON: Thank you, Mr. Chairman. Excellent questions and discussion. I appreciate the opportunity to ask a few questions.

First of all, it appears that we're operating under the theory that -- and I can certainly understand why -- in the filing it states that if the interim rate increase requested is not acceptable, then it's Black Hills Power's intent to utilize its right under SDCL 49-34A-17 to implement its proposed rate, which is 26.6 percent.

And I'll be simply referring to South Dakota

Law 17. And if I refer to that any further so I don't

have to repeat the entire -- in its entirety.

I said "theory" because it really appears that we have a choice, either 20 percent or 26.6. However, as

I -- I'm not an attorney, but as I keep reading that chapter trying to figure it out, nothing really prevents us as a Commission -- at least I don't believe so -- from making a motion for a different percentage. And then it's up to you to decide whether or not you would want to abide by that percentage.

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I'd be interested in hearing your comment on that, Mr. Magnuson.

MR. WHITE: Kyle White responding.

Commissioner, from the perspective of the company, we have elected to come forward and relinquish some of our rights under state law. And we do that at the risk of our shareholders having a full recovery of their costs associated with this rate increase.

A lot has been said about Wygen III being a key driver in this rate case, and it is. But it's only 65 percent of those costs. Those other costs have increased over time.

You are correct. You could enter into a negotiation with us today, in effect, to see where we might move on these rates. I don't believe that that would encourage other companies to come forward and do what we've done.

If the company is going to subject itself to additional risk by coming before this Commission and not

implementing its rights under the statute, more than likely in the future you'll see utilities if this situation occurs again just implement the full rates.

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We had to make a decision as to what we were willing to do in this circumstance. What you have before us is what I would say our best offer. And your job I don't believe is to negotiate. It's to decide whether or not we've made a good offer.

appreciate your offer. And I do very much appreciate Black Hills' position to come before us and give us the option of 20 percent versus 26.6, but I beg to differ with you. It is my responsibility to negotiate and dicker and fight for everything I possibly can to make certain that the rates are not detrimental to the consumers.

If you were filing the rate case today, what percentage would you be requesting as opposed to 26.6? I ask that question because the vice president in -- at least in a news release stated that there has been some savings and, therefore, they don't anticipate the 26.6 is necessary.

MR. WHITE: It would be slightly less. We did successfully issue \$180 million of first mortgage bonds last year at an interest rate that was about a half a

percent less. That then is a savings of several hundred
thousand dollars.

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We are in a process of responding to discovery by staff, in particular. There have been a few items that have been identified there.

Largely, our application would be filed very similarly to the way it was filed. We believe that had you made a decision to authorize those rates, that they would result in just and reasonable rates.

What you have before you today, though, is four parties arguing what just and reasonable rates are. And you get the opportunity to decide that. As you're well-aware, from decisions you've made in other rate cases, staff often comes in with a recommendation well below what the company does. We have taken that into consideration as we've made this offer.

COMMISSIONER HANSON: Thank you. There's a -in your request for authority to implement an interim
rate there is a Schedule I that was part of the
information that I -- at least that I received as part of
the e-mailed packet. I assume that it was all part of
the same filing.

MR. WHITE: Yes, it was.

COMMISSIONER HANSON: When I review those numbers I have a little bit of a challenge with the ECA

revenue, the fuel charge, and subtracting that, adding back in. But I'll -- I think I'll work with my -- my staff to give me a better idea of why that has to be added back -- or, rather, subtracted as it's filed in the rate case portion of it.

As I look through these numbers, there's one section that I'm curious about on page 2 of Schedule I, line 26 under Utility Controlled Residential, UCR to be closed.

MR. WHITE: Yes.

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COMMISSIONER HANSON: Shows a customer charge. It's certainly not a huge number, but it shows the proposal for the 26.6 percent would end up in a 33.9 percent increase, but for the interim, which actually I would think would be a lower percentage, it shows that it's 40 percent on the far right.

Why is that percentage higher when it would seem that it should be lower?

MR. WHITE: This applies to three customers.

And what we have done in our rate design is rounded for those customer charges so that they're easier for customers to compare the difference. And so you'll see we are currently at \$5. We've proposed to move to \$7.

Overall we're showing a lower percentage increase for that group of customers.

1 But you're correct that the increase in the 2 customer charge is that 40 percent. But it's still a 3 relatively low customer charge at \$7. It affects just 4 three customers, and we are intending to close that rate 5 as part of this application and just hasn't been 6 effective in creating the load reductions that we would have liked from it. 7 8 COMMISSIONER HANSON: And that's a monthly 9 charge; correct? 10 MR. WHITE: It is. 11 COMMISSIONER HANSON: Are all of your customer 12 charges monthly charges then? 13 MR. WHITE: Yes. And they're prorated by the 14 day. So we state them monthly in the tariff, but they're 15 actually prorated.

COMMISSIONER HANSON: Since this is part of the filing for the interim, I'd like to explore just a couple other things. I may get off target just a little bit

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here.

But on the next page, on page 3, showing your energy charges, it shows your first 1,000 kilowatt hours of use at -- well, you have a declining rate. I'm always in favor of rising -- I shouldn't say that as a regulator. It sounds wrong. I'm in favor of increasing block rates, which essentially means that the first users

have a lower rate, and then the more a person uses or a business uses, there's blocks so that it increases so that it's not as harsh on the general population.

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I know the theory of why you do that, but have you ever explored the possibility of switching that rate, instead of making it cheaper for the more usage, making it more expensive for the more usage? That encourages efficiency and hopefully eliminates the need or decreases the need for building additional capacity like Wygen III.

MR. WHITE: We have not spent a lot of time looking at inverted block rates.

COMMISSIONER HANSON: All right. After the Docket is closed, perhaps you and I can have some chats on that then.

MR. WHITE: I'd like to.

COMMISSIONER HANSON: You have -- also it shows on a number of areas additional charge 1.25 percent, one and a quarter percent. Can you tell me what those are for? There isn't anything specifying.

For instance, on page 6 and page 7, page 8. At the bottom of -- just after the totals when it shows the total amounts it shows additional charge 1 and a quarter percent, and that's multiplied times the total revenue.

MR. WHITE: These apply to the lighting service schedules. And there are circumstances where the

customer will request a special installation and under that special installation there is an additional charge to cover the costs associated with that special request and that's what the 1 and a quarter percent applies to. Essentially the contract type service.

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COMMISSIONER HANSON: All right. Thank you. When I look at the percentages, these are really frightening percentages when I see -- I understand that somehow they blend to 20 percent, but a lot of them are much higher than 20 percent.

What -- and I've seen it reported in one of the news stories, I believe, and tried to figure it out for myself because of the kilowatt hours that were used in the story I think was used 600 kilowatt hours, I've always thought it was a little bit higher than that for the average home.

Do you have a figure for what a 20 percent -- what a 26 percent would cost the average residential homeowner?

MR. WHITE: I do recall the original filing was \$17.99 per month for a typical residential customer using 600 kilowatt hours. Our number today is \$12.99, as this rate design would be implemented as interim rates.

COMMISSIONER HANSON: And is 600 kilowatt hours the average residential usage that you have for your

customers?

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MR. WHITE: We use it as representing a typical residential customer. Our residential customers' average varies depending upon the year and the weather, and it varies consumption. But it's slightly more than 600 kilowatt hours most years.

COMMISSIONER HANSON: Wygen III is a mine mouth coal plant. Your Black Hills -- I have to get Black Hills Power and Black Hills Corp. correct. Black Hills Power services South Dakota, Wyoming, and Montana.

Will Wygen service other states other than those three states? And will they be asked to help to finance it?

MR. WHITE: Well, the Wygen Power Plant is a shared ownership plant. Montana-Dakota Utilities owns 25 megawatts of it for service in their Sheridan, Wyoming. We are in the process of working with one of our wholesale customers to attempt to sell them a share of the plant.

What we've proposed in our filing is 52 megawatts of that roughly 100 megawatt plant being put in. It is being constructed to serve now our retail customers in South Dakota, Wyoming, and Montana.

COMMISSIONER HANSON: Okay. Where has the growth been historically for Black Hills Power?

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              MR. WHITE: Well, we serve primarily
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     South Dakota.
              COMMISSIONER HANSON: And I'm interested in
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     specifically the three states, not particular businesses
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     or things of that nature.
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              MR. WHITE:
                          Right.
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              COMMISSIONER HANSON:
                                    Do you know --
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              MR. WHITE:
                         Yes.
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              COMMISSIONER HANSON: -- from a percentage
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     standpoint, that sort of thing?
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              MR. WHITE: I'm a little out of date on our
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     percentages, but our load in Montana is probably 6 or
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     7 megawatts. Our load in Wyoming may be 20 megawatts.
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     And in South Dakota, you know, we're 300 megawatts or so.
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              Those are not precise numbers. But to give you
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     an approximation, probably 90 percent of our retail load
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     is South Dakota. And we have seen some growth in Montana
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     and Wyoming, but it's certainly not enough to have driven
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     the need for Wygen III.
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              COMMISSIONER HANSON: All right.
                                                 Thank you
     much.
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              Mr. Chairman, I'd like to just conclude by going
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     through some of the responses to Black Hills Power's
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     requests, as you did, from Residential Consumers
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     Coalition and Black Hills Industrial Interveners, just
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hopefully so that I don't have to jump back on and discuss further.

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I found their filing interesting. I was trying to figure out now if I were an attorney attempting to challenge this, how would I approach it? And I say that their points were interesting. I don't know if they were valid or not, but I in going through them that -- I'm really challenged, as obviously you were, as to the conclusion.

If you look at each one of their arguments stating the Application does not provide statutory authority, it certainly does under the statute that I read earlier. And it's -- the argument is that they have not provided other parties rationale or supporting documentation or the specific rate schedule proposed.

It certainly -- I just went through that rate schedule, and the documentation is with the first filing.

Additionally, argument is that the request does not establish whether and to what extent Black Hills Power has actual need of additional revenue prior to a final decision. That same statute does not allow us to make that determination at this juncture.

Another argument, that other parties and the Commission cannot judge whether the interim increase

requested by Black Hills Power is reasonable or needed at this time. It's the same situation that we're in, that the statute does not provide us that opportunity.

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I don't argue with their arguments. They have valid positions. And that's the challenge with the legislation that we're working with that was passed by the legislature that we must abide by.

Argument, seventh argument, that part of the filing has not offered a detailed explanation of the specific adjustments. Well, actually that I would disagree with because they have.

And we've had a significant discussion,

Mr. Chairman, that you brought up on the differential treatment of customer classes.

It appears that if we accept any of their arguments, then instead of having a 20 percent, we have a 26.6 percent. So it is like an opportunity to be shot once or shot twice. And it's rather challenging.

Thank you, Mr. Chairman.

CHAIRMAN JOHNSON: I do have, as I indicated, a couple lines of questioning. And I think

Commissioner Hanson did a good job of examining one of them. Maybe I'll just add a little bit to it. I mean, this does seem like a Catch-22, like there are two options.

Part of me wondered if this was a false dichotomy, if indeed our only choices were 20 percent or 26.6 percent. I am very grateful Commissioner Hanson examined, you know, is there a third option? Is there something negotiated below 20 percent?

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It seemed as though Black Hills Power was not particularly open to that discussion, but maybe I'll try one more time. Is something less than 20 percent an option, Mr. White?

MR. WHITE: What we have presented to you with our March 1 filing is what is our best offer at this time.

CHAIRMAN JOHNSON: Okay. With that -- and I'll go to my second line of questioning. And I couldn't figure out for a couple days why this idea of interim rates bothered me more in this situation than it has in other situations.

And I think part of it just has to do with the idea of easing in rates. And there's a rate stability statute. And this is only slightly involved with the filing today. So if you want to tell me to go pound sand, that's fine.

But I really have been wanting to ask for a while, why didn't Black Hills Power avail itself of 49-34A-73?

I mean, it seems as though a lot of complaints about this rate at least heretofore, at least for the citizenry, hasn't necessarily been about the merits, although we'll have a lot of discussion about that, but has been consumer acceptance of the timing and the size of the increase.

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Was there a reason that the rate stability phase-in didn't make sense in this situation? Something I'm missing?

MR. WHITE: Well, we actually have some experience with the rate stability plan. That legislation was designed to allow for construction work in progress, essentially, for the Neil Simpson II Plant. And we did file a rate stability plan with this Commission.

It ended up being a fairly challenging Docket in this circumstance. Because we build power plants very quickly. We broke ground on this power plant in March of 2008. We're just two years later.

A rate phase-in that's tied to essentially construction work in progress or forecast would not have mitigated a lot of this increase, in my opinion. And it's better designed in situations where you've got a power plant that's going to be strung out over several years during its construction.

CHAIRMAN JOHNSON: But even if the increase could have only spread out over two years, I mean, that -- am I overstating the value of that?

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MR. WHITE: One of the situations with the rate stability plan is that customers would actually pay for costs related to Wygen III prior to its serving those customers. And so it gets into the used and useful concept and some of those kinds of pretty contentious situations.

We felt that this power plant was justified. It would come in at a cost that would be acceptable to customers. It's a 50-year asset. 45- or 50-year asset. Customers will benefit from it for a long period of time. Our customers have experienced a pretty significant rate stability in the last 15 years.

We've made presentations that show consumer price index up over 40 percent. Whereas, our customers' rates are up 14 percent or so in that period of time.

And we had 11 years of flat rates.

The process for regulation creates a situation where we can't recover our costs until we incur them. It was our decision not to utilize the possible benefits of the rate stability plan. I don't think that was a wrong decision.

CHAIRMAN JOHNSON: And I do understand that it's

not traditional rate making, but in traditional rate making, I mean the reason these sort of statutes exist across the country is you have a collision of two tenets of traditional rate making, the used and useful you referred to, but then also rate payer acceptance.

MR. WHITE: Right.

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CHAIRMAN JOHNSON: I did know enough history to know that Black Power -- this statute came about at least in part by its efforts so that's also why I've been really, really curious why it wasn't used in this situation. I don't know that I agree with you, but I certainly understand where you're coming from, Mr. White, and it makes sense here.

Go ahead, Commissioner Kolbeck, and I'll come back. I'm not done, but go ahead.

COMMISSIONER KOLBECK: I just have a couple follow-ups. Do you have any numbers on how much would waiting and basically doing 0 and waiting for a final ruling would cost the company on a per week or per month basis?

MR. WHITE: Well, our request is for \$24 million related to interim rates. So that's \$2 million a month.

COMMISSIONER KOLBECK: Taking into effect we took the full six months to get the rest of the -- the

rest of the six months to go and get the decision done;
correct?

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MR. WHITE: Well, it would be \$2 million in the month of April and another 2 million in May and so forth.

COMMISSIONER KOLBECK: Which would come straight out of rate payer --

MR. WHITE: Which would come from our shareholders because we have no way of recovering that from customers without raising rates.

commissioner Kolbeck: Earlier you spoke of easier, the 26.6 would be easier. Does the -- this easier correspond to less cost at the end? And what I'm getting at is sometimes being a father of four you feel like you're hemorrhaging money, and I don't want this rate case to hemorrhage money. I want to do -- I want to make the best decision that costs the least that gets you to the best outcome.

And I just want to know would -- saying yes or no to this, which way is going to save rate payers the most amount of money? And when you said easier at 26.6, does that correspond to spending less money in the end?

MR. WHITE: No. But I also don't believe that rate payers are -- they are better off with the rates that we have proposed because they will keep their money

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in their checking accounts and not give it to us subject
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     to refund if we were to implement the 26.6 percent.
              There will be a difference probably on interest
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     expense associated with any refunds paid to customers.
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    But other than that, I don't see much difference other
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    than we believe this application before you and the rates
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     that are provided for it are more fair given what we know
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    about the rate case at this point in time.
              COMMISSIONER KOLBECK:
                                     Thank you.
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              CHAIRMAN JOHNSON: Go ahead. I'm thinking.
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     takes a while.
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              COMMISSIONER HANSON: Mr. White, can you tell us
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     if the XL Pipeline -- the kilowatt hours, if they're
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     estimated in Schedule I?
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              MR. WHITE: Are you talking about the Keystone
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     Pipeline or -- I'm not familiar with the XL Pipeline.
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              COMMISSIONER HANSON: TransCanada XL Pipeline,
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    will you be providing service to them?
              MR. WHITE: I'm not aware that we will be
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    providing service. It's a fairly rural line.
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              COMMISSIONER HANSON: All right. I thought you
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    might be providing to one of the pumping stations when --
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              MR. WHITE: If we were, we would likely have
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    made an adjustment for that, but I don't believe that
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goes through our service territory.

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COMMISSIONER HANSON: I could not find it in your large general service areas so I was curious where it might be. And it's not. Thank you.

Thank you, Mr. Chairman.

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CHAIRMAN JOHNSON: Does anybody have any further questions?

Okay. Maybe we'll drift into Commissioner comment. And obviously if we have a question that's got to be answered, we can pop back out.

Any general thoughts?

COMMISSIONER HANSON: Mr. Chairman, I -- I was serious when I was saying it's like having a choice of whether you get one bullet or two. It's -- as Mr. White said, it's not a good position for them to be in or for us or certainly for their customers. No one wants to see rates increase.

But from that standpoint I do sincerely appreciate the fact that they came before us and gave us this opportunity, as much of a dilemma as it is.

I would love to say 15 percent and see if they would accept our -- I do play a lot of poker so I would love to do that, but at the same time, Mr. White makes a very good point. We have to look at the future as well. And if we said 15 percent, we would probably discourage -- I mean, when I came here this afternoon I

fully intended to argue on behalf of lower than 20 percent. But as I think about it, we would discourage future utilities from even coming in to making a presentation to us on an interim rate.

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And if we -- and I struggle with the potential for changing the SDCL -- the law so that it would enable us to make decisions of that nature without them having to come in. But at the same time, I mean, that's the entire purpose of a rate case. And so we really shouldn't change the law because of that and because of the fact that we need to base our decisions upon facts.

And I think that's one thing that troubles all of us right now is the fact that we don't have that information digested at this juncture. We don't have the analysis done by our own expert analysts in house as well as those who -- we haven't gone through the hearing process. So it's -- this is -- this is foreign. This is something that I won't call it disgusting, but it's very difficult to simply -- and I do -- it's almost arbitrary and capricious, as the Residential Consumers response stated. It's because we don't have that opportunity to go through the process.

But when you go through the entire discussion and analyze and digest everything that we have before us, we have a choice basically of either providing 20 percent

or 26.6 percent. And I just would not feel good at all if we gave -- said no and gave a 26.6 percent rate increase.

CHAIRMAN JOHNSON: I think that's well said. I can't wipe out of my mind -- I can't wipe out of my mind the little voice that says, well, yeah, but, I mean, that's not the only choice. I mean, they don't have to raise rates 26.6.

I mean, maybe financially they don't feel as though other options are available to them. But certainly legally other options are available to them. And part of me wants to say, well, we don't have enough information here to raise rates. So if you feel like you've got to raise them, go for it. I'm not sure I can --

The counterargument is the one you've made,

Commissioner, and that is, okay, fine, you know, you can

make that argument, Commissioner Johnson, but it may cost

real people real money. And so this is -- I've used

Catch-22 a couple of times to describe it, but it's not a

lot of fun. That's for sure.

Other thoughts?

COMMISSIONER KOLBECK: I agree with both of you. I think it really comes down to money for me. And I think 26.6 percent compared to 20, obviously we can do

the math on that and find out how less money is going to come out of the Black Hills Power area with a lower rate.

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Now having said that, voting no on principle would be something that I have entertained. But some very wise attorneys told me one time that once you vote no on principle you're voting no for the wrong reasons. So the facts of the matter are less money and less cost for rate payers would come with a yes vote.

I don't think it's an easy decision at all, but
I just don't think that taking that money out of the
Black Hills Power territory when we have a chance to take
less would be a prudent move.

CHAIRMAN JOHNSON: You know, I will -- even if your attorney wants to object to asked and answered, Mr. White, he can certainly have that opportunity. But I'm going to ask one more time with a little bit different flavor maybe.

Is there a way -- because some arguments have been made rather articulately by individuals that it's going to be difficult to work an increase of this size into their budgets.

Is there a phase-in mechanism maybe even over a couple of months that would be able to -- that would be acceptable to Black Hills Power? I mean, is 10 and 10 -- is that doable?

MR. WHITE: We have spent a substantial amount of time weighing this dilemma. And we have a responsibility to our customers and our shareholders. During that period of time we made the conclusion that for the purposes of this rate application this is the best we can do. And so my answer is no, I don't see a phase-in.

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What we are asking you today is to please approve the application we made on March 1 implementing these interim rates.

CHAIRMAN JOHNSON: I mean, that does make a decision by the Commission significantly more difficult. If it's purely a Hobson's choice, take it or leave it, I mean, that does put the Commission in a more difficult situation.

MR. WHITE: I'd like to remind you that we're dealing with interim rates that are subject to refund, and so we are not really presenting anything that is that permanent. You will have your opportunity when this case either is settled or goes to hearing to make a determination as to what the just and reasonable rates are going forward.

What we have offered today is to not go with our rights under state law and give customers somewhat of a break.

CHAIRMAN JOHNSON: Your analysis makes sense in a perfect world. In the real world we live in there is a substantial opportunity cost of taking dollars out of consumers' pockets. I know you get that.

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But a refund in some number of months down the road may not be of much solace to families who are having a hard time today. That's why I think we struggle with a lower interim rate of 20 percent taking effect in a couple of weeks. That doesn't give people a lot of time to plan.

I know this process has been undergoing for almost six months, but it's not going to be particularly easy if that's what the Commission decides to do.

Other comments or thoughts?

want to make it very well known that this is not our rate. This is not a Commission-determined rate. This is a company rate. Our rate would come with the final decision. So they are -- we're obligated to follow the law, and under the law they're afforded this. So I think that's our best option.

CHAIRMAN JOHNSON: I mean, what do you think -- and I'm just brainstorming out loud here, but what do you think about a 10 and 10?

I mean, that gets them to a 20 percent? It gets

them -- rather than April 1, that becomes May 1. There
is some interim cash there to assist the company in
paying for some of this new plant that they believe is
going to be online April 1.

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- Now the real danger to that, I mean, just as Mr. White is saying, well, here, either do this or we do this, if we reverse the tables and say in a different way either do this, then we do know the 26.6 is probably the only other legal option available to them.
- 10 COMMISSIONER HANSON: When you're speaking of a 11 10 and 10 you're speaking of a month later?
 - CHAIRMAN JOHNSON: I would talk about a 10 percent increase effective April 1 and another 10 percent increase not cumulative but, you know, so that -- a 20 percent total increase on May 1. So a phase-in of the 20 percent.
 - COMMISSIONER HANSON: So for one month it's 10 percent and then --
 - CHAIRMAN JOHNSON: Yes. It would do little more to consumers other than give them six weeks to plan for the higher 20 percent interim rate.
 - The Commission can order that, and I don't think we have any legal right to force Black Hills Power. I mean, I don't think we can prohibit them from 26.6 if they don't like our 10 and 10. Or maybe I'll call it

1 10 and then 20, a little more clarity. I mean, in some 2 ways it's -- I mean, it -- it's not --

2.3

2.4

COMMISSIONER HANSON: Well, Mr. Chairman, I -- while you're searching for the adjective, I'm happy to support anything that would help the rate payers. This is just such a challenging time in everyone's life economically to have this.

And I know that Black Hills Power is aware of that. But it's just -- these numbers are frightening when you look at the businesses that are going to be challenged by it and how that affects cost to everyone.

And I just -- we're seeing this across the entire country right now with rates being increased. And now finally it is roosting here in South Dakota.

And so anything that is pragmatic that can help the -- you know, we talk about one month of a -- you know, it might be \$30 for some folks and 10 for another, but it's -- it's at least a little help.

CHAIRMAN JOHNSON: As long as -- and we won't -- I won't put them on the spot a fourth time, but, I mean, that presumes that Black Hills Power is willing to swallow hard and take 10 and then 20. If they don't, then we're right back at 26.6.

COMMISSIONER HANSON: And, on the other hand, do we discourage -- they did not have to come in here and

talk to us today. They could have just implemented the 2 26.6 percent.

2.3

So, on the other hand, do we discourage future folks from coming in and being good stewards and --

CHAIRMAN JOHNSON: That's certainly a possibility. I will also tell you that I don't think any of us want to provide -- I mean, had they done 26.6, that's Black Hills Power's decision and the State Legislature's decision and we can vehemently disagree with those decisions.

If we bless a 20 percent rate, that feels different to me. I mean, it feels like there needs to be -- you know, to the point of the Interveners maybe there almost needs to be more there there. I don't know.

MR. WHITE: May I speak? We've been at this for over five months. There has been significant notice to customers, both formal and informal notice, that there's a possibility of a 26.6 percent rate increase.

We have indicated that Wygen III would be completed by April 1. We have now certified that. We have endured now five months of regulatory lag. We are likely to enter several more.

I don't understand how this process now has come in to a negotiation of, well, what should be fair to Black Hills Power shareholders. The state law says we're

1 | entitled to our proposed increase after 180 days.

2.3

We have made a good-faith, fair offer, and we would like you to consider it. And I can honestly say if I continue to be Vice President of Regulatory and Governmental Affairs, I would not recommend coming before the Commission again if this is going to be a negotiation.

CHAIRMAN JOHNSON: Well, Mr. White, I can't disagree with what you've said. You certainly have the right under state law to go 26.6. And I understand the difficulty that Black Hills Power has been in.

But I will also tell you that asking the Commission to give its blessing on a 20 percent rate increase without any evidence indicating that it's reasonable and just -- and it may be. It maybe the 26.6 is reasonable and just. I'm certainly not going to prejudge the facts of the case.

But I will indicate to you that it should not come as a surprise to Black Hills Power that the Commissioners would have some discomfort with giving its blessing to a 20 percent rate increase to take place in something like two and a half weeks. That does not surprise me. I'm a little surprised it would surprise the company.

MR. WHITE: It does not surprise me either. We

do read the stories. We do see your responses to the comments. All of those things influenced our decision to come forward.

CHAIRMAN JOHNSON: Any other comments,

Commissioners?

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COMMISSIONER KOLBECK: Well, I suck at poker.

I'll tell you that much. But, like I said, my -
maybe -- I understand the arguments on both sides of the aisle.

And maybe I'm too fixed on the end -- the end of this, but this rate is not our rate. The financial risk to rate payers after hearing what the company had said I do not think -- I do think that the risk is too high and we may cost rate payers more in the end if we do try to do a 10 and a 10 as opposed to accepting the company's offer of 20.

Now our rate might be 10. We don't know. Our rate might be 15. However, hearing the conversation that's gone on, you've really fought adamantly. I feel that you feel that you're not comfortable with this. And I understand that.

But I would rather we did the 20 percent as the company has requested and then work forward to a resolution in hopes that we're doing the best that we can for rate payers so that they pay the least amount in the

end.

2.3

slightly clarify your comments. I think they're good.

Certainly I have discomfort with the 20 percent.

Certainly I have discomfort with 26.6. And certainly I have discomfort with 10 and then 10. I mean, I would say I don't think there's a winner out of the bunch here.

CHAIRMAN JOHNSON: Well, and I will ever so

COMMISSIONER KOLBECK: Sure.

CHAIRMAN JOHNSON: So, Commissioner, I'll be honest with you. I at this moment do not know what I would move to do or how I would vote if either of you made a motion.

I'm thinking out loud here trying to brainstorm some solution that would be acceptable to all three of us. Because I do think we have a tendency to get right when the three of us can get to the same point. Maybe that won't be possible here. I don't know.

COMMISSIONER KOLBECK: I'll just clarify that too. I'm really scared of the 26.6. Especially if it -- if we do end up at 15. That's a huge refund. That's a lot of money coming out of a lot of people's pockets for an unknown amount of time.

So I would rather we took the for sure 20 and then worked toward a goal -- or a final rate and then hopefully there will be more refunds but we just won't

take as much out in the interim.

CHAIRMAN JOHNSON: And I just want to make it clear we can throw out potential rates about what might come out, but we don't have a clue.

I mean, you know, if Wygen III is indeed two-thirds of the cost driver of this, you know, the Commission will determine whether that decision is prudent or not. I mean, it may be costs in this rate case are going to move in very large chunks and that this is, as we all know -- as you know better than I do, this is a judicial proceeding and not a legislative one and we don't get to pick a number in the middle. It would be really nice in some cases if we could, but we don't.

COMMISSIONER KOLBECK: That's one thing I should clarify. We have no idea how it's going to end up. I shouldn't throw out numbers other than what we're dealing with today. 26.6, I absolutely do not want to see that come in. So I'm in the position of taking what the company is offering.

CHAIRMAN JOHNSON: In an interim rate you don't want to see 26.6?

COMMISSIONER KOLBECK: Interim rate.

CHAIRMAN JOHNSON: I'm sorry, Commissioner. You wanted to get in, and we were back and forth.

COMMISSIONER HANSON: No. I'm fascinated by the

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1
     discourse. No problem. To help get us along, I thought
2
     I would make a motion, and then we can either amend the
 3
    motion or vote it up or down.
 4
              Are you ready for a motion?
 5
              CHAIRMAN JOHNSON: I'm not sure I'm going to get
 6
    a lot more ready. Go ahead and proceed.
7
              COMMISSIONER HANSON: I will move the Commission
8
    approve Black Hills Power's request to implement the
     reduced interim rate increase on April 1, 2010 in lieu of
10
     the proposed rate increase in its rate filing, as would
11
    otherwise occur under SDCL 49-34A-17, and that the
12
    Commission require Black Hills Power to keep an accurate
13
    account in detail of all amounts received by reason of
14
     the increase specifying by whom and in whose behalf the
15
     amounts are paid as provided under SDCL 49-34A-17.
16
              I, in essence, Mr. Chairman, am opting for one
17
    bullet instead of two.
18
              CHAIRMAN JOHNSON: The Motion has been made.
                                                             Ιs
    there a discussion on the Motion?
19
20
              Yes, Commissioner.
21
              COMMISSIONER KOLBECK: I'm sorry. I didn't
22
    hear --
2.3
              COMMISSIONER HANSON: There was a question as to
24
    the second portion of the -- under SDCL there's a
25
    provision that allows the Commission to require
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1
     Black Hills Power to keep an accurate account of all
 2
     amounts and then to rebate those.
 3
              COMMISSIONER KOLBECK: And that would be on a
 4
     customer-by-customer basis?
 5
              COMMISSIONER HANSON:
 6
              COMMISSIONER KOLBECK: And that would be
7
     accepting Black Hills Power's 20; right? We're not
8
     talking anymore about the 20 by 20? Or 10 by 10?
 9
              COMMISSIONER HANSON:
                                    That's correct. It would
10
     provide that we accept their filing for the 20 percent.
11
              COMMISSIONER KOLBECK:
                                     Okay.
12
              CHAIRMAN JOHNSON: Any other comments?
13
              COMMISSIONER KOLBECK: It stinks either way.
14
     But it's -- it's -- I mean, we all signed up for this.
15
     We knew this was going to be -- you don't sign up to work
16
     for a power company and think everyone's going to love
17
     you, and you don't get elected to the Commission thinking
18
     every decision you make is going to be loved.
              So I'm comfortable with that because I feel that
19
20
     in the end long-term rate stability along with the final
21
     outcome of the rate case this will pull less money out of
22
     rate payers' pockets in the end.
2.3
              CHAIRMAN JOHNSON:
                                 I think, Commissioner, you're
24
     right. So much of me wants to just tell the Applicant
25
     to, you know, take this filing and that they're not going
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to get the Commission's approval for it for this interim
rate.

2.3

A great part of me wants to say, you know, if you're offering a take-it-or-leave-it, you know, we can do that too. You can take our offer or leave it. That game of regulatory chicken has great appeal from a visceral level for me. You guys know that I like to be combative sometimes, and part of me very much wants to do that.

Commissioner Kolbeck, you're exactly right. To do that ultimately means that we're -- I mean, the result of that is a 26.6 percent increase. Unless Mr. White has been, you know, not telling us the truth, then if this Commission does not approve 20 percent, then 26.6 is what the people shall get. And that is going to be real dollars out of real people's pockets.

We'll have the company taking more of that money out of people's pockets because Dusty Johnson wants to make some sort of a principle or more combative stance.

And I suspect you're right. That would not be the right approach. I'm not going to like voting for the Motion.

It is the right thing to do.

COMMISSIONER HANSON: Mr. Chairman, I assume you're ready for a vote. But I -- my final remarks would just simply be that we -- each one of us have recognized

as we attend conferences, as we are panelists, and as we provide expert testimony ourselves of the increased costs of new capacity. We recognize those challenges, and we recognize that whether it's nuclear or natural gas or wind or solar or biomass or whatever it is -- in this case it's a mine mouth coal -- the cost of capacity has increased dramatically.

2.3

And as those new generators have to come online, have to, if we're going to have electricity, that the costs necessarily are going to increase. We've seen the costs, whether they're in Florida or whether they're in California, of new capacity, and it's -- it's expensive.

Unfortunately, in South Dakota, or maybe fortunately, we're growing. And unfortunately for those folks in the Black Hills area they are going to experience the cost along with the benefits of economic development.

CHAIRMAN JOHNSON: Well, and I don't know -- I mean, I don't know whether the new generation is worth it or not yet. I mean, ultimately we'll figure that out by the end.

The question -- the Motion made by

Commissioner Hanson would be simply to allow Black Hills

Power to give up some of its absolute rights under state

law to impose its 26.6 percent. This allows -- our vote

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today, if they were majority vote, this would allow the
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2
     company to implement something less than 26.6.
              That's the Motion before the Commission. If
 3
     there's no further discussion, we will proceed to vote.
 4
 5
              Hanson.
 6
              COMMISSIONER HANSON: Aye.
7
              CHAIRMAN JOHNSON: Kolbeck.
8
              CHAIRMAN KOLBECK:
                                Aye.
              CHAIRMAN JOHNSON: Johnson votes aye.
                                                      The
10
    Motion carries 3-0.
11
              With that, there were no items put on this
     agenda for further discussion. I will draw people's
12
13
     attention to the announcements.
14
                     (Discussion off the record)
15
              MS. CREMER: You know, just Kyle White kind of
16
     said the same thing to Bob this morning about the anal
17
     stuff.
18
              But, anyway, we do have a question about tariffs
19
     and if the company is intending to file tariffs, then to
20
     reflect this.
21
              MR. MAGNUSON: Yes. The company does have
22
     tariffs prepared with regard to the 20 percent increase.
2.3
     We have those available, and we will be filing those
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     between now and April 1.
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MS. CREMER: Will the Commission want those

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1
     approved, or should we use -- as we have done in the
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     past, that staff will look at them, make sure they are in
     compliance, and if they're not, then we'll bring them
 3
 4
     before you. But, otherwise, those will be approved by
     the Commission?
 6
              CHAIRMAN JOHNSON: Yeah. And perhaps to make
7
     sure we've tied up all the loose ends, perhaps I would
8
     make a Motion that the rate cannot go into effect until
     tariff sheets have been received by this Commission and
10
     until we have received notification from the Applicant
11
     that Wygen III -- well, no. We'll go with the one.
12
     We'll go with the tariff filing.
13
              So any discussion on the Motion?
14
              Hearing none, we'll proceed to vote.
15
              Hanson.
16
              COMMISSIONER HANSON:
                                    Aye.
17
              CHAIRMAN JOHNSON: Kolbeck.
18
              COMMISSIONER KOLBECK: Aye.
              CHAIRMAN JOHNSON: Johnson votes aye.
19
     Motion carries 3-0.
20
21
             (The proceeding is concluded at 4:10 p.m.)
22
2.3
24
25
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:SS CERTIFICATE COUNTY OF SULLY) I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter, Certified Realtime Reporter and
COUNTY OF SULLY) I, CHERI MCCOMSEY WITTLER, a Registered
I, CHERI MCCOMSEY WITTLER, a Registered
Professional Reporter, Certified Realtime 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 9th day of
March, 2010, and that the attached is a true and correct
transcription of the proceedings so taken.
Dated at Onida, South Dakota this 22nd day of
March, 2010.
Cheri McComsey Wittler,
Notary Public and Registered Professional Reporter Certified Realtime Reporter
Certified Redictime Reporter

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