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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION OF
BLACK HILLS POWER, INC. FOR AUTHORITY EL09-018
TO INCREASE ITS ELECTRIC RATES

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Transcript of Proceedings
June 29, 2010
Volume II, pages 188-369

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COMMISSION STAFF

- John Smith
- Karen Cremer
- Greg Rislov
- Bob Knadle
- Dave Jacobson
- Jon Thurber
- Tim Binder
- Terri Labrie Baker

APPEARANCES

- Lee A. Magnuson,
appearing on behalf of Black Hills Power,
- Todd Brink,
appearing as co-counsel on behalf of Black Hills Power,
- Sam Khorroosi,
appearing on behalf of the Residential Consumers
Coalition.

ALSO PRESENT

- Nicole Shalla

Reported By Cheri McComsey Wittler, RPR, CRR
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THIS TRANSCRIPT CONTAINS CONFIDENTIAL MATERIALS

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TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the South Dakota State Capitol
Building, 500 East Capitol Avenue, Pierre, South Dakota,
on the 29th day of June, 2010, commencing at
9 o'clock a.m.

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1 MR. SMITH: Good morning, everyone. My name is
2 John J. Smith. I'm the Commission counsel and serving as
3 the Hearing Examiner for this particular hearing.

4 We went into recess yesterday about 4 o'clock
5 or so, following the conclusion of the Applicant,
6 Black Hills Power's, case in chief. At least that's my
7 understanding. And, again, the matter at issue today is
8 Docket EL09-018, which is the application of Black Hills
9 Power for a rate increase.

10 Mr. Magnuson, does it still stand that you have
11 concluded your direct case?

12 MR. MAGNUSON: Yes, we have. We have concluded
13 our direct case subject to rebuttal.

14 MR. SMITH: Thank you. And based on discussions
15 yesterday, it's my understanding that the order of
16 presentation then would next devolve to Staff.

17 Is that correct, Ms. Cremer?

18 MS. CREMER: That's correct.

19 MR. SMITH: With that then, Ms. Cremer, are you
20 ready to proceed?

21 MS. CREMER: Staff is ready to proceed,
22 Mr. Smith.

23 MR. SMITH: Please proceed with your case.

24 MS. CREMER: Thank you. Staff and Black Hills
25 Power filed a Joint Motion for approval of the Settlement

1 Stipulation. We believe this Stipulation resolves all of
2 the issues in this proceeding in that the terms of the
3 Stipulation result in rates that are just, fair, and
4 reasonable, and consistent with South Dakota Law.

5 At this time Staff will be calling two
6 witnesses, Mr. Towers and Mr. Evans. Mr. Towers will
7 speak on behalf of the nine analysts that worked on this
8 Docket, and he will be advocating our support of the
9 Settlement Stipulation.

10 Our intention is that he will answer the
11 questions that he feels qualified to speak to and refer
12 those questions to the other analyst as appropriate.

13 My thinking is at this time is that we would
14 swear in the witnesses one at a time as they testify.
15 However, if you wanted to, you could swear them in as a
16 panel. That's up to you. I'm not sure what will lead to
17 less confusion.

18 The other witnesses that will be available
19 after Mr. Towers does an initial presentation would be
20 Tim Binder, Terri Labrie Baker, Jon Thurber,
21 Dave Jacobson, Bob Knadle, Dave Peterson, and
22 Basil Copeland.

23 Mr. Evans will then testify in support of his
24 prefiled rebuttal testimony.

25 At this time Staff will call Mr. Towers and ask

1 that he be sworn in.

2 MR. SMITH: Why don't we for now just take those
3 who are going to offer direct. And then if the
4 Commissioners decide they have questions of other
5 witnesses, we can determine that at that time.

6 Mr. Towers, because you're testifying over the
7 telephone, I'm going to ask you a couple of questions if
8 I might.

9 MR. TOWERS: Sure.

10 MR. SMITH: I guess, first of all, do you agree
11 that the testimony you're giving is given in the State of
12 South Dakota subject to the jurisdiction of both the
13 general laws of the State of South Dakota and the
14 statutes of South Dakota regarding the giving of
15 testimony and specifically the perjury statutes?

16 MR. TOWERS: Yes, I do.

17 MR. SMITH: Thank you. And with that then,
18 Chairman Johnson will swear you in.

19 (The witness is sworn by Chairman Johnson)

20 CHAIRMAN JOHNSON: Mr. Smith, there you go.

21 MR. SMITH: Thank you. Ms. Cremer, please
22 proceed with your case in chief.

23 MS. CREMER: Thank you.

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DIRECT EXAMINATION

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BY MS. CREMER:

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

A. Yes. Robert G. Towers. My address is 1698 Saefern Way, Annapolis, Maryland 21401.

Q. And who do you work for, Mr. Towers?

A. I'm employed by Chesapeake Regulatory Consultants.

Q. And can you briefly explain to us who Chesapeake Regulatory Consultants are and how CRC came to be involved with this Docket?

A. Yes. Chesapeake Regulatory Consultants was formed in 1986 and incorporated in the state of Maryland. Our principal office is at the address I just gave you in Annapolis, Maryland, which is where I am based. CRC has two other employee consultants, Basil Copeland and David E. Peterson.

Mr. Copeland maintains an office in Maumelle, Arkansas, and David Peterson has an office in Dunkirk, Maryland just a short distance away from Annapolis.

CRC, we go by the initials, provides consulting services on issues involved in public utility rate regulation. Usually that's in connection with rate proceedings before state public utilities commissions, municipal public utility boards, and the Federal Energy

1 Regulatory Commission.

2 Our clients have included a number of state consumer
3 advocate agencies, the state public utility commissions,
4 municipalities representing their constituents,
5 municipalities as purchasers of utility services from
6 investor-owned companies, industrial consumers of utility
7 services, and public utility companies.

8 Collectively, the three consultants, myself,
9 Peterson, and Copeland, have been involved in more than
10 450 public utility rate proceedings. For Mr. Peterson
11 and Mr. Copeland that's over -- their proceedings were
12 over a period of 33 years. For me, although I don't look
13 that much older, it's about 50 years.

14 Incidentally, Mr. Peterson actually began his career
15 right there in Pierre, South Dakota as an analyst for the
16 PUC back in 1977 to 1980.

17 Q. Thank you. Would you briefly describe your
18 educational background. And you have given us some of
19 your experience, but you can explain a little more if you
20 would like.

21 A. Yes. I received a Bachelor of Science degree in
22 economics from the University of Maryland in 1960.
23 Immediately upon advice of one of my professors who had
24 written one of the seminal texts of public utility
25 economics, I joined a consulting firm in Washington, D.C.

1 called Martin, Toscan, Bennett Associates. I was with
2 that firm until it disbanded in 1970 at which point I
3 joined Hess & Lim formed by two of the principal
4 consultants that had been with Martin & Bennett.

5 I then eventually became part owner of that
6 corporation until 1986 when I left that firm and formed
7 with others Chesapeake Regulatory Consultants.

8 I have testified in last count I think 200 -- more
9 than 200 rate proceedings in 28 states, the District of
10 Columbia, and at the Federal Regulatory Commission as
11 predecessor of the FCC.

12 I did a variety of things in these cases for
13 clients: Financial and accounting analysis, operational
14 reviews, rate design -- handled rate design issues.
15 Pretty much all of the issues that might be involved in
16 maybe a typical rate case.

17 I've been involved in proceedings in South Dakota
18 sometimes filing testimony, many other times assisting
19 the Staff in negotiating settlements. My career in
20 South Dakota began with the advent of statewide
21 regulation in South Dakota in I think it was 1975. I can
22 recall some -- the first case was an MDU electric case,
23 and at that time hearings were held in the service
24 territory. That hearing took place in the basement of a
25 bank building in Mobridge, South Dakota.

1 I think that's about all I need to say about it
2 unless someone has questions about my background.

3 Q. I think that's good. Thank you. Do you have a copy
4 of Staff's Exhibits 1, 2, 3, 4, 5, and 6 with you?

5 A. Yes, I do.

6 Q. And are these the Staff exhibits that you'll be
7 speaking in support of?

8 A. Yes.

9 Q. Thank you. Please summarize the content of these
10 exhibits and you've been speaking very slowly and I think
11 the court reporter has been able to track that. So if
12 you could keep speaking slowly, that would be
13 appreciated.

14 A. I'll keep that in mind.

15 As is explained in the Staff memorandum supporting
16 the Settlement Stipulation, members of the Commission
17 Staff and Staff consultants examined the company's rate
18 application when it was filed and engaged in extensive
19 formal discovery and informal discussions with the
20 Black Hills Power witnesses and other company personnel.

21 Our objective was to gain a better understanding of
22 the bases for the claims underlying the company's revenue
23 requirement determinations, to identify issues that might
24 not have been addressed in the rate filing, and
25 ultimately to make an independent assessment of the

1 utility's current revenue requirements.

2 Discussions with company representatives of
3 differences between the Staff's initial assessment and
4 the company's filing resulted in the agreement on revenue
5 requirements and tariffs described in the Settlement
6 Stipulation that the parties are Petitioning the
7 Commission to approve.

8 Staff submits that the rates that would be
9 established on the basis of the Settlement Stipulation
10 would be just and reasonable, balancing fairly the
11 interests of Black Hills Power and its customers. The
12 rates were established to recover no more than
13 Black Hills' current revenue requirements, including a
14 reasonable return to its stockholders commensurate with
15 its cost of equity capital.

16 Although the Commission has approved a separate
17 Settlement Agreement between Black Hills and the
18 Industrial Interveners, that Agreement has not affected
19 the costs to be recovered from Black Hills' other
20 customers under the Black Hills Staff Settlement
21 Stipulation.

22 Black Hills had proposed in its Application a
23 \$32 million 26.6 percent increase in present revenues,
24 inclusive of energy cost adjustment revenues which
25 recover the SDR fuel and purchase power cost. The

1 request was predicated on the total revenue requirement
2 of \$173.3 million derived from its operating experience
3 during the year ended June 30, 2009 adjusted from known
4 and expected changes in investments and operating costs
5 and reflecting a 9.27 percent return on rate base
6 including an 11 and a half percent return on common
7 equity capital.

8 The most significant change to its actual test year
9 experience was the expected completion and commercial
10 operation of the Wygen III power plant by April 1, 2010.

11 In contrast to the company's application now the
12 Black Hills Power Staff Settlement Stipulation is
13 predicated on an annual revenue requirement from all
14 customers of \$156 million, requiring an increase in
15 present revenues of \$15.2 million or 12.7 percent. And
16 that's about \$17 million less than the company's
17 request.

18 The Settlement Stipulation revenue requirement is
19 also based on the company's operating experience during
20 the year ending June 30, 2009 with adjustments for
21 investment and operating cost changes, including the
22 impacts of Wygen III power plant, which was certified to
23 be in commercial service as of April 1, 2010.

24 The rate of return applied to rate base in the
25 Settlement Stipulation is 8.26 percent, reflecting a

1 return on common equity capital that lies within the
2 range of equity costs supported by analyses of Staff
3 consultant Basil Copeland.

4 I will describe generally the adjustment differences
5 between the company's filing and the Settlement
6 Stipulation. But the differences are described in
7 greater detail in the Staff memorandum and supporting
8 exhibits.

9 Some Stipulation adjustments to the company's actual
10 base year operating costs reflect a more rigorous
11 application of the known and measurable standard than was
12 applied in the company's filing. The passage of time
13 between the filing and the Settlement Stipulation
14 permitted the projected adjustments to be limited to
15 those changes that actually have taken place by the rate
16 effective date and to the actual amounts of these
17 changes.

18 Plant adjustments are limited to plant that was
19 completed and in service. The combined effect of updates
20 and limit on plant adjustments reduce the claim rate base
21 by \$9.3 million, reducing revenue requirements by about
22 1.2 million.

23 Costs incurred that benefit shareholders or officers
24 such as incentive compensation payments related to
25 financial performance of about \$800,000 rather than

1 benefiting rate payers have been excluded from this
2 Settlement Stipulation revenue requirement.

3 Also affiliated costs allocated to Black Hills
4 reflect accrued allocations consistent with
5 determinations in Black Hills' last rate case. Worker
6 injury claims expense in the test year included an
7 atypical, nonrecurring item and an above average level of
8 recurring expenses. Eliminating these claim costs
9 reduced the Settlement Stipulation revenue requirement by
10 about 1.4 million.

11 Another approximately \$1.4 million in revenue
12 requirements was made to reflect the flow through of tax
13 savings generated by a recent IRS ruling expanding the
14 types of expenditures previously capitalized for tax
15 purposes but now can be deducted from taxable income as a
16 repair allowance.

17 Obviously the reduction in the rate of return on
18 rate base from the claimed 9.27 percent to the
19 8.26 percent applied in the Stipulation has a substantial
20 impact in reducing revenue requirements by about
21 \$6.1 million. That's calculated on the claimed rate
22 base.

23 Recognizing, as Staff did, that the propriety of the
24 company's decision to build coal fire Wygen III power
25 plant would determine the reasonableness of including the

1 plant's cost in the determination of rates in this case,
2 Staff consultant George Evans investigated the company's
3 underlying resource planning and concluded that
4 additional capacity which is now being provided by
5 Wygen III was indicated to be needed continuing in 2010
6 and is needed to an increasing extent thereafter.

7 Thus, the total Settlement Stipulation revenue
8 requirement was developed to include the South Dakota
9 portions of the plant investment and rate base and to
10 include the plant's annual operating expenses.

11 I should note that the portion of the plant included
12 in rate base is that portion which has been retained --
13 that portion of the capacity that's been retained for the
14 benefit of Black Hills customers and it's reflective of
15 various adjustments where accrued depreciation, deferred
16 taxes, and including materials and supplies,
17 inventories.

18 Now even though Wygen III is in the Settlement
19 Stipulation rate base and even though provision is made
20 for recovery of its annual operation and maintenance
21 expenses, its impact on the settlement rates is mitigated
22 in several ways.

23 First, as acknowledged in Black Hills' filing,
24 construction and completion of the plant on the company's
25 schedule qualified the investment for a bonus first year

1 tax depreciation deduction. This tax benefit is
2 recognized as a further income tax deduction from rate
3 base and that's in the amount of about \$18 million.

4 In addition, while Black Hills' filing used the
5 depreciation rate of 2.72 percent for Wygen III, the
6 Settlement Stipulation applies a rate of 2.35 percent,
7 reflecting a 50-year service life in lieu of the proposed
8 45-year life and eliminating projected additions from the
9 depreciation rate calculation that had been presented in
10 the company's filing, that's produced a reduction in
11 revenue requirements of about \$430,000.

12 The rate impact of Wygen III is mitigated further in
13 the Settlement Stipulation by establishing a South Dakota
14 surplus energy credit during the transition period from
15 2010 to 2013 as rate payer energy requirements are
16 expected to grow.

17 Initially in the first year the new rates are in
18 effect, that is April 1, 2010 through March 2011, this
19 provision will credit rate payers with \$2.5 million
20 through the annually modified energy cost adjustments,
21 and the remaining two years as customer requirements grow
22 the surplus energy credit is reduced to 2.25 million and
23 2.0 million, respectively.

24 Also and inasmuch as Wygen III is expected to
25 enhance the company's power marketing opportunities, the

1 Settlement Stipulation provides that 65 percent of pretax
2 power marketing income will be credited to retail rate
3 payers and that regardless of actual PMI, power marketing
4 income, rate payers would receive a minimum credit of
5 \$2 million.

6 Company's prior rates had no minimum credit
7 guarantee and moreover PMI in the past has been
8 calculated netted income taxes and PMI credits were
9 applied only when there were at issue above base
10 increases in fuel and purchase power costs.

11 Turning to another subject that is the distribution
12 of rate increase, in its rate filing Black Hills proposed
13 an equal percentage increase in existing revenues for all
14 rate classes, even though its cost of service analysis
15 indicated that the rate of return earned from large
16 general service and industrial customers were
17 substantially less than the returns earned from
18 residential small general service and lighting
19 customers.

20 The Settlement Stipulation reduces these disparities
21 by moving the large user classes halfway to their
22 allocated cost of service. This minimizes burdening the
23 small users with costs of which they are clearly not
24 responsible. But I would reiterate that the independent
25 settlement between Black Hills and its Industrial

1 Interveners does not affect its distribution of the rate
2 increase as reflected in the Stipulation between Staff
3 and Black Hills.

4 In addition, now the Settlement Stipulation contains
5 a three-year rate moratorium which provides that in the
6 absence of an extraordinary event, which are defined, no
7 filing shall be made to increase base rates effective
8 prior to April 1 of 2013. So there will be a period of
9 rate stability, base rate stability.

10 I should also add that in the Settlement Stipulation
11 Black Hills has agreed to I would say most -- certainly
12 many of the issues raised by the other Intervener in the
13 case concerning what the consideration should be in an
14 Integrated Resource Plan.

15 Black Hills has made specific commitments to
16 consider various things, including energy conservation,
17 demand side management, commitments regarding how CO2 tax
18 exposure is considered in all -- all of this in any
19 future Integrated Resource Plan.

20 I believe that pretty much summarizes the Settlement
21 Stipulation and the reasons why Staff supports it.

22 Q. Thank you, Mr. Towers.

23 MS. CREMER: That would conclude Mr. Towers'
24 portion of his direct, and he's available for
25 cross-examination.

1 MR. SMITH: Mr. Magnuson, do you have
2 cross-examination of Mr. Towers?

3 MR. MAGNUSON: I have no questions for
4 Mr. Towers.

5 MR. SMITH: Mr. Khorroosi.

6 MR. KHOROOSI: Thank you. I have no questions
7 for Mr. Towers at this time.

8 MR. SMITH: Okay. Commissioners and advisors.

9 COMMISSIONER HANSON: Good morning, sir. This
10 is Gary Hanson.

11 THE WITNESS: Good morning. And I must say I'm
12 having difficulty hearing over the phone. And I have the
13 internet on, but it lags. I don't know if that's always
14 the case.

15 COMMISSIONER HANSON: That is precisely what I
16 would say if I were giving testimony over the phone to
17 the Commission right now. Meant totally facetiously,
18 sir.

19 CHAIRMAN JOHNSON: Commissioner Hanson, do you
20 want to check with Mr. Towers to see if it's any better.
21 We made some adjustments.

22 COMMISSIONER HANSON: They just made some
23 adjustment. Are you hearing any better?

24 THE WITNESS: Yes. Yes, I am.

25 COMMISSIONER HANSON: Well, they'll continue to

1 make adjustments, and if for some reason you cannot hear,
2 please let me know.

3 THE WITNESS: Okay.

4 COMMISSIONER HANSON: I really appreciate your
5 information that you provided in working with Staff and
6 the information that you provided for us, the nutshell,
7 so to speak, this morning.

8 I may wish to expand just a little bit in some
9 of those areas, if I may. And I'm not certain if you're
10 the right person to ask some of the questions so if I ask
11 a question that is not in your bailiwick, please let me
12 know.

13 Staff on page 14 of the -- I have the
14 confidential version of the Settlement in front of me.
15 States that -- in the third paragraph that they explored
16 both the efficacy of the decision to build Wygen III and
17 the alternatives for the recognition of its costs and
18 benefits in retail sales.

19 There is a -- the remainder of that paragraph is
20 germane to my question. It states that Potentially
21 understated certain risks created with the Wygen III
22 alternative and wrongly evaluated the combined systems of
23 BHP and CLF&P rather than BHP alone observed that the
24 introduction of the Wygen III, et cetera.

25 Is that still a challenge that we need to

1 address here?

2 Am I asking the right person the question?

3 THE WITNESS: I think the analysis of the
4 Integrated Resource Plan was done by Mr. Evans, the Staff
5 consultant, and I -- at the risk of trying to answer for
6 him, you know, I think he would still express concerns
7 and would hope that similar concerns that might arise in
8 the future would be addressed in the future IRPs.

9 But it's my understanding of his testimony and
10 the basis for Staff's including the plant in the rate
11 base at this time that, nonetheless, it appeared that
12 plant -- the plant capacity, I should say, would be
13 needed and, in fact, provides that need capacity.

14 I'm struggling a bit to answer that. If -- I
15 would suggest that you might address that question to
16 Mr. Evans as well.

17 COMMISSIONER HANSON: Thank you. Appreciate
18 that. I wasn't certain whether -- as I stated, I wasn't
19 certain whether you were the right person to ask or not.
20 I appreciate your attempt to answer the question.

21 On page 4 under the Wygen III plant addition
22 there's a section 2 that says Adjust the accumulated
23 deferred income taxes related to the 50 percent bonus
24 depreciation to reflect actual costs incurred in the 2009
25 per the ARRA in lieu of the company's estimate. And

1 there's additional reference to that in the settlement
2 information as well.

3 We discussed that yesterday pertaining to that
4 as being a -- the ARRA funds as being a benefit at this
5 particular juncture. Should we be considering the
6 entire -- the entirety of the ARRA funds as being a
7 benefit, or are there in this instrument at least a
8 couple of adjustments to recognize that that was a
9 benefit?

10 In other words, are there adjustments in the
11 Settlement which take away some of those benefits that
12 they otherwise would have received?

13 THE WITNESS: No. Not that I am aware of. The
14 tax benefit from the bonus depreciation is normalized.
15 It's a deduction taken in this year, in the year 2009, I
16 guess, which will then preclude the company from again
17 deducting an equivalent dollar amount of depreciation in
18 the future.

19 In other words, it's a timing -- it's a timing
20 phenomenon that's produced by the bonus depreciation
21 legislation. Take the deduction now instead of taking it
22 later.

23 And that's a great help, I believe, when you
24 have new power plants coming online because inevitably
25 it's going to produce a significant increase and

1 immediate increase in revenue requirements because it
2 goes into rate base as undepreciated -- virtually it's
3 undepreciated costs.

4 COMMISSIONER HANSON: As a result of that
5 benefit I'm assuming and do I assume correctly then that
6 that translates into a favorable adjustment to the rate
7 payer?

8 THE WITNESS: Yes.

9 COMMISSIONER HANSON: Could you share with us on
10 page 5 under the test year plant annualization under
11 item 4 in that paragraph it states, "allocate a portion
12 of general plant additions to the nonjurisdictional
13 common use transmission system."

14 What's the effect of that adjustment?

15 THE WITNESS: The effect is to remove some of
16 that plant from the South Dakota jurisdictional rate base
17 and assign it to what we tend to think of as the Federal
18 Energy Regulatory Commission transmission rate
19 determination.

20 COMMISSIONER HANSON: Thank you. If you'll bear
21 with me just for a moment, I have a few other questions,
22 but I think some of them are for Staff.

23 Would you be the proper person to ask questions
24 pertaining to the new positions? Additional employees?

25 THE WITNESS: Yeah. I think they could better

1 be addressed by I believe it was Bob Knadle that handled
2 that.

3 COMMISSIONER HANSON: All right. Thank you.

4 THE WITNESS: Either Knadle or -- Knadle,
5 Jacobson, or Thurber. I forgot who did that issue.

6 COMMISSIONER HANSON: Thank you very much, sir.
7 I appreciate the conversation this morning. That's all I
8 have at this time.

9 MR. SMITH: Thank you, Commissioner Hanson.

10 Additional Commissioner or advisor questions of
11 Mr. Towers?

12 CHAIRMAN JOHNSON: Thanks, Mr. Smith. Morning,
13 Mr. Towers. Dusty Johnson here.

14 THE WITNESS: Morning.

15 CHAIRMAN JOHNSON: You know, we're getting back
16 a little buzzing when you're speaking. We've surmised it
17 might be the fact that you've got the web on. If you
18 turn the web off, will you still be able to participate
19 like you want to?

20 THE WITNESS: Oh, yeah. Yeah. Yes. I really
21 am not using the web because it lags.

22 CHAIRMAN JOHNSON: Oh, sure.

23 THE WITNESS: The audio lags. Okay. It's off
24 now.

25 CHAIRMAN JOHNSON: Well, we'll see if that makes

1 a difference. Probably won't. Do you have just a
2 general buzzing sound around you at all times?

3 THE WITNESS: That's what I'm hearing over the
4 phone, and I can't think of anything in my office that
5 might be producing that.

6 CHAIRMAN JOHNSON: Okay.

7 THE WITNESS: I can hear you. I can hear you
8 all right.

9 CHAIRMAN JOHNSON: Okay. Good. Wonderful.
10 Obviously with -- and now I'm looking at DAJ-1,
11 Schedule 1, page 1. And I think in general we all
12 understand the big picture, you know, what you're doing
13 with cash working capital. I mean, you're adjusting some
14 numbers to better reflect standard operating procedures
15 would be more beneficial to the rate payer.

16 But is there any -- are there any of these
17 adjustments -- I mean, they're pretty substantial
18 adjustments. Any that are unusual or should be pulled
19 out for specific Commission consideration, Mr. Towers?

20 THE WITNESS: I'm thinking. No. None come to
21 mind. I mean, the Staff I think feels pretty comfortable
22 that the adjustments being proposed are consistent with
23 the standards that have been applied by Staff and the
24 Commission in prior cases and consistent with sound
25 rate-making principles.

1 CHAIRMAN JOHNSON: Okay. Thanks. And then on
2 page 12 of the Staff memo there's reference to a flow
3 through tax treatment for repair. And I think I
4 understand that, but I probably would feel a little bit
5 better if you would just walk through that one time.

6 THE WITNESS: Under the internal revenue code
7 there are allowances for the immediate deduction of
8 certain types of expenses, and it applies to many
9 different kinds of taxpayers.

10 For example, Chesapeake Regulatory Consultants
11 is a small business. We're allowed to deduct so much of
12 what otherwise would be capital expenditures. I forgot
13 what the limit is. \$10,000. And not having to
14 capitalize those expenditures for tax purposes.

15 And in much the same vein, the repair allowance
16 deductions was established actually many years ago but it
17 was recently made much more liberal by the IRS in
18 defining what kinds of costs can be -- can be deducted
19 immediately by corporations like Black Hills Power.

20 Instead of having to capitalize them and
21 amortize those costs over the expected life of the
22 facility or in the case for taxes it's -- the IRS
23 establishes guidelines, lives and specific lives for
24 capital assets.

25 These amounts can now -- certain amounts can now

1 be deducted immediately, and there is no prohibition
2 against reflecting the tax reductions that are
3 experienced reflecting them immediately in public utility
4 rates.

5 As I'm sure you know, there are provisions in
6 the internal revenue code regarding other types of tax
7 deductions like accelerated depreciation. And you might
8 say this is sort of an accelerated depreciation. But
9 accelerated depreciation in general can't be -- those
10 benefits can't be flowed through. They have to be
11 deferred and flowed back to customers over the life of
12 the facility.

13 But in this case the repair allowance deductions
14 produce a benefit that can be immediately reflected in
15 public utility rates.

16 If you need more information on what the nature
17 is of those assets, I would defer to Dave Peterson. He
18 has addressed that issue in this case and in other
19 cases.

20 CHAIRMAN JOHNSON: Sure. And, of course, the
21 effect to rate base is sizable, more than \$1 million. I
22 mean, the effect to rate payers would just be the
23 authorized rate of return multiplied by that rate base.
24 So, I mean, obviously it's quite a bit smaller number; is
25 that right?

1 THE WITNESS: No. We're talking about flow
2 through treatment here where the benefit is flowed
3 through to operating income, and that produces -- that
4 produces a reduction in the revenue requirements.

5 The impact that you described is the impact of
6 normalization.

7 CHAIRMAN JOHNSON: Oh, sure.

8 THE WITNESS: Yeah. That's where the effect is
9 on rate base. And that's what happens with the bonus
10 depreciation. That can't be flowed through, but it can
11 be deducted from rate base.

12 CHAIRMAN JOHNSON: So you do get an impact on
13 both the operating side and the rate base side?

14 THE WITNESS: When it's flowed through -- no.
15 When it's flowed through there's no rate base effect.

16 CHAIRMAN JOHNSON: Well, I'm looking at the last
17 sentence of that paragraph that said this increased rate
18 base by approximately \$1,005,000.

19 THE WITNESS: See what's going on there. You're
20 on -- I lost the page you were on -- page.

21 CHAIRMAN JOHNSON: Page 12. Bottom of page 12
22 of the Staff memorandum.

23 And that's why I asked about this. Because that
24 didn't entirely make sense to me that --

25 MR. PETERSON: When it's appropriate -- this is

1 Dave Peterson. I can answer that question.

2 CHAIRMAN JOHNSON: We should probably swear you
3 in, Mr. Peterson.

4 MR. PETERSON: Okay.

5 CHAIRMAN JOHNSON: Mr. Smith, do we need to ask
6 the preliminary questions?

7 MR. SMITH: Let me ask you this, Dave. Did you
8 hear the questions I asked Mr. Towers?

9 MR. PETERSON: Yes, I did.

10 MR. SMITH: And are you amenable to the same
11 status as was outlined in those questions?

12 MR. PETERSON: Yes, I am.

13 MR. SMITH: Okay. Thank you.

14 (The witness is sworn by Chairman Johnson)

15 CHAIRMAN JOHNSON: Okay. Great. Go ahead and
16 answer.

17 WITNESS PETERSON: Yes. The rate base deduction
18 for the rate base adjustment that Staff shows in its top
19 sheets is merely reversing the deferred taxes that the
20 company had reflected in its cost study.

21 It reflected normalization approach, which would
22 include a deferred tax rate base amount. Since Staff is
23 proposing to flow through that tax deduction, we had to
24 reverse the deferred taxes that were included in rate
25 base.

1 CHAIRMAN JOHNSON: So that's just essentially an
2 offsetting -- I mean, the corresponding measured rate
3 base.

4 WITNESS PETERSON: We eliminated the deferred
5 tax deduction that the company had included in its
6 presentation and reflected the current tax benefit rather
7 than a deferred tax benefit.

8 CHAIRMAN JOHNSON: Okay. Then my next question
9 deals with on page 13 the allocation factors to the
10 service company.

11 WITNESS TOWERS: Dave Peterson as well. I
12 didn't know if you were asking me.

13 CHAIRMAN JOHNSON: If Mr. Peterson wants to
14 answer, that's fine.

15 Mr. Peterson, I understand exactly what Staff
16 and the company are trying to do here. They're trying to
17 shift a greater portion of the cost to the parent
18 company, which then reduces the amount of those service
19 company costs that the subsidiary, Black Hills Power,
20 pays.

21 This seems rather subjective, moving from
22 5 percent to 12.54 percent. Although the fact that the
23 new number is 12.54 percent makes me wonder were there
24 some guiding principles or measures that you all used to
25 determine what the appropriate allocation percentage

1 was.

2 WITNESS PETERSON: Yes. First of all, the
3 5 percent was completely arbitrary. That was an amount
4 pegged by the utility to assign to the parent company,
5 and then the rest was the 95 percent, would be subject to
6 allocation among the other operating affiliates using a
7 blended ratio which includes three items.

8 I believe they're labor costs and O&M expenses
9 or costs. Three different items that were blended
10 together to come up with an allocating factor.

11 Staff looked at that and said the 5 percent
12 that's allocated or assigned directly to the parent
13 company is an arbitrary number, and we came up with an
14 approach that was really a proxy for the three items in
15 that blended ratio and applied that to the parent
16 company.

17 So it looked just like one of the other
18 operating companies, and that's how the 12 percent was --
19 or 12 and a half percent was calculated. It was really
20 an allocated number using these proxy factors for the
21 parent company.

22 CHAIRMAN JOHNSON: So I suppose that begs the
23 question, I mean, theoretically someone could select -- I
24 mean, if it's a blended ratio, someone could select
25 characteristics that would shift perhaps an unfair cost

1 to the regulated business and away from the nonregulated
2 businesses.

3 Mr. Peterson, since you didn't raise any
4 concerns about it, I presume you don't think that's the
5 case with this allocation method?

6 WITNESS PETERSON: Unfortunately -- what you try
7 to do on these using these blended ratios is pick, you
8 know, measurements that reflect all types of business
9 activities.

10 Unfortunately, a utility is capital intensive,
11 and it's also labor intensive with respect -- or when
12 compared to the other affiliates. So just about every
13 objective measure that you use is going to -- going to
14 weigh heavily on the utility's operations.

15 If they have a lot of employees. They also have
16 a lot of capital. High O&M expenses. Just about every
17 measure, continuable measure, you could come up with
18 weights heavily against the utility company.

19 But that's why you use a blended ratio. You try
20 to pick a number of different methods that will try to
21 rope in all measurements of size or economic value in
22 affiliate operations.

23 CHAIRMAN JOHNSON: And, in your opinion, those
24 measures used did not unfairly shift costs to the
25 regulating utility?

1 WITNESS PETERSON: The measures that Black Hills
2 uses are ones that you typically find in other holding
3 company operations and other utilities across the
4 company.

5 CHAIRMAN JOHNSON: Okay. Thanks. Perhaps I
6 would turn to a discussion on incentive compensation.
7 I'm looking at JPT-3, Schedule 2, page 1 of 1. Who would
8 like to -- perhaps I'll just address them generally, and
9 whoever wants to pop up can do so.

10 MR. SMITH: Is that Staff Exhibit 3,
11 Commissioner Johnson?

12 CHAIRMAN JOHNSON: It is within -- I thought it
13 was Staff Exhibit 4. I thought all of the -- yeah. I've
14 got it labeled as Staff Exhibit 4.

15 MS. CREMER: It's both 3 and 4. One's public.
16 One's confidential.

17 CHAIRMAN JOHNSON: Oh, yes. Okay. So and then
18 specifically I'm looking at JPT-3, Schedule 2, page 1 of
19 1.

20 Okay. So --

21 THE WITNESS: I'm turning. JPT.

22 CHAIRMAN JOHNSON: JPT-3, Schedule 2. Page 1 of
23 1. And my question would be, I mean, I have seen what
24 Staff and the company have endeavored to do here, which
25 is remove all of those incentive plans or the portion of

1 incentive plans that are tied to financial performance.
2 And I think the Staff memo made it clear that those
3 financial measures overwhelmingly benefit shareholders
4 and not rate payers necessarily.

5 My question I think is a general one, which is,
6 I mean, how difficult is that to do? Are there measures
7 that are sort of hybrid measures or financial measures
8 that may indeed be to the benefit of rate payers
9 primarily as opposed to shareholders? Perhaps walk
10 through how we isolate and disallow costs here.

11 WITNESS TOWERS: I believe that this is a
12 question that should be addressed by Mr. Knadle. You're
13 referring to JPT-3, Schedule 2, isn't it?

14 CHAIRMAN JOHNSON: Yeah. Mr. Thurber's reaching
15 for the mic. And it's his initials on that sheet.

16 WITNESS TOWERS: That's his exhibit, yeah.

17 CHAIRMAN JOHNSON: At least I think they are.
18 Mr. Thurber -- well, Ms. Wittler can swear you in since
19 you're present here.

20 (The witness is sworn by the court reporter)

21 CHAIRMAN JOHNSON: I've asked the question,
22 Mr. Knadle, but your thoughts.

23 I'm sorry. Mr. Thurber.

24 WITNESS THURBER: Some of the measures that we
25 look at when we determine financial incentive-based

1 compensation goals would be earnings per share and net
2 income. And when the company meets those objectives the
3 primary beneficiary is overwhelmingly their shareholders.

4 There's other clearcut objectives -- objective
5 measures such as customer satisfaction, reliability
6 measures, plant availability, safety that clearly benefit
7 rate payers. And those are included in the cost of
8 service. But anything finance related should be excluded
9 from the cost of service.

10 CHAIRMAN JOHNSON: Okay. And I see for each of
11 the individual types of incentive plans what portion were
12 removed -- for instance, for the short-term incentive
13 plan it looks like 71 percent was disallowed because it
14 was financial based.

15 What I didn't -- I mean, what's the blended
16 number? What percentage of the total incentive
17 compensation was disallowed?

18 WITNESS THURBER: It really depends on the plan.
19 It was on a plan-by-plan basis, and I don't have
20 immediately available a blended rate. If you'd take a
21 look at the total incentive compensation.

22 CHAIRMAN JOHNSON: Okay. And, I mean, that
23 certainly looks like it's going to be -- well, let me ask
24 this: 100 percent of the financial-based incentives were
25 removed. Were there incentives other than financial

1 based that were disallowed or are proposed to be
2 disallowed?

3 WITNESS THURBER: No.

4 CHAIRMAN JOHNSON: Okay. Thanks. And then I
5 guess I would have a similar question dealing with
6 lobbying, which would be, again, Staff Exhibits 3 or 4,
7 specifically TLB-1. Schedule 1.

8 And my question -- I mean, I look at this, and I
9 presume that there's a rather large subjective component
10 to this. And I guess I'm curious how -- I mean, how
11 difficult it was to remove it. You're talking about bill
12 by bill.

13 I mean, did that kind of analysis take place and
14 in what depth?

15 (The witness is sworn by the court reporter)

16 CHAIRMAN JOHNSON: Maybe I'll ask it more
17 generally. Maybe just walk through the process by which
18 you determined how to disallow some of these costs.

19 WITNESS LABRIE BAKER: Sure. Black Hills Power
20 provided documentation of issues in which they lobbied.
21 Because of this documentation Staff was able to see what
22 type of issues specifically benefited shareholders only
23 and then came up with a way to make an adjustment for
24 those issues in which only the shareholders benefited.

25 Some lobbying expenses were allowed because they

1 were believed by Staff to benefit rate payers as well as
2 shareholders so an adjustment was made for those expenses
3 to reflect the 50/50 benefit.

4 CHAIRMAN JOHNSON: You know, when you look at --
5 I mean, you've got an integrated multistate system. I
6 mean, were there lobbying expenses in other states that
7 because they impacted the South Dakota system -- or I
8 shouldn't say the South Dakota system. The Black Hills
9 Power system were included here?

10 WITNESS LABRIE BAKER: No. Black Hills Power
11 provided South Dakota numbers only. And then we
12 adjusted.

13 CHAIRMAN JOHNSON: So that -- I mean, in that
14 respect South Dakota rate payers are a little bit of a
15 free rider? I mean, is that right?

16 If you've got lobbying expenses in other states,
17 certainly in those states -- I mean, even just the
18 Black Hills Power operating entity does business in
19 states other than South Dakota.

20 WITNESS LABRIE BAKER: Black Hills Power had
21 their lobbying expenses broken out by jurisdiction. So
22 when they provided us their expense -- their dollar
23 amount for their expenses for lobbying it was specific to
24 South Dakota dollar amount.

25 CHAIRMAN JOHNSON: Okay.

1 WITNESS LABRIE BAKER: And maybe I should add
2 that the issues that they lobbied were specifically for
3 South Dakota.

4 CHAIRMAN JOHNSON: Okay. You've spoken a little
5 bit about allocation factors as they dealt with the
6 service company. I guess I would turn to the Staff
7 memorandum page 12. And actually I don't think I would.
8 I think the better place to go is going to be JPT-3,
9 Schedule 5, page -- well, page 1 and 2.

10 These two pages walk through a series of
11 allocation adjustments that were made, and I was
12 curious -- and perhaps Mr. Thurber, I guess -- if there
13 were commonalities which move these numbers?

14 I mean, is every one a different story, or were
15 there two or three more significant drivers of the
16 changes in these allocations?

17 WITNESS THURBER: The driver of the changes were
18 the cumulative effect of all pro forma adjustments. But
19 there were a few key drivers. Specifically, Wygen III.

20 The City of Gillette was removed from the cost
21 of service as a result of the City of Gillette taking
22 ownership of 23 percent of Wygen III. And that was a
23 significant driver of the change in allocation factors.

24 Other changes, other of the major adjustments
25 that affected the allocation factors was the addition of

1 Wygen III into rate base and the associated O&M
2 expenses.

3 CHAIRMAN JOHNSON: So there isn't really
4 anything surprising here. I mean, this just flows
5 through based on other decisions.

6 WITNESS THURBER: Yeah. That's correct.

7 CHAIRMAN JOHNSON: Okay. I think my -- I've got
8 one more question, and then I'll pause and maybe gather
9 my thoughts, let somebody else hop in.

10 Page 9 of the Staff memorandum. And it seems
11 like with both the PMI coal costs and the coal price
12 adjustment, I mean, we're really normalizing, I mean,
13 trying to get five years worth of information. And it's
14 not just these two. I mean, it happens a number of other
15 times of other adjustments that were made.

16 I think these end up being rather significant
17 dollars in the end. I mean, is five years the right
18 number? I mean, I think it's five years that was used.
19 Is a five-year average the right number?

20 I mean, it sort of seems like that's industry
21 practice. Any thoughts about why that's a superior
22 number?

23 Maybe that's for Mr. Towers or Mr. Peterson.

24 WITNESS TOWERS: Well, it's a period -- you're
25 right. It's a period that's commonly used for

1 normalizing adjustments. But I should also point out
2 here that some of these items like coal, coal prices, and
3 pricing, it's not as perhaps important as it looks
4 because the company has a fuel cost and energy cost
5 adjustment that tracks actual fuel costs.

6 So my thinking is that one of the principal
7 effects of using -- of the numbers that here are a
8 five-year average is that it may have an impact on things
9 like the computation of working capital requirements,
10 indirect effects of the levels of coal prices.

11 If Staff members disagree with that, go ahead.

12 CHAIRMAN JOHNSON: Any dissenting opinions?
13 Mr. Jacobson, do you have a dissenting opinion? We can
14 swear you in.

15 MR. JACOBSON: No. I really don't. I can say
16 something about this if you want me to. If you want me
17 to swear in.

18 MR. SMITH: I think we better do that.

19 (The witness is sworn by the court reporter)

20 WITNESS JACOBSON: Yes. In this case for the
21 coal price adjustment what we did was, I mean, the
22 company had proposed an average of price over a four-year
23 period. But what we actually used was the actual prices
24 reflected in the most recent fuel cost filing, which was
25 EL10-001. And it's simply a matter of using the actual

1 most recent number as an improvement over a historic
2 average.

3 CHAIRMAN JOHNSON: But it wasn't necessarily a
4 rolling forward? I mean, it was adding the fifth year to
5 the end. I mean, to the --

6 WITNESS JACOBSON: Yes.

7 CHAIRMAN JOHNSON: Okay. I said that was my
8 last one for a while, but I told a little fib. I'll ask
9 one more.

10 Now I'm looking at Staff Exhibit 6 and whatever
11 the corresponding -- I'm actually looking at the -- the
12 public version so is that Staff Exhibit 7? 5. Staff
13 Exhibit 5.

14 And the first page of that, which is JPT-4,
15 Schedule 1, page 1 of 1. So I'll ask it of Mr. Thurber.
16 You look at that final column, and it gives a percentage
17 increase for each of the various customer classes.

18 To me, I'm looking at this, and this appears to
19 be the impact of two factors. Number one, the rate case,
20 and then also the ECA arrearages from last year.

21 Is that a proper assumption?

22 WITNESS THURBER: Yes. This is going to be the
23 increase that's going to take effect from April 1 of
24 2010 -- if the settlement's approved -- to the point in
25 time when the new fuel clause is implemented in 2011.

1 CHAIRMAN JOHNSON: This seems to me to be a
2 little misleading. And I understand what you're trying
3 to do here. But we really have two different regulatory
4 issues at play here.

5 And the only one that -- I mean, the FCCA
6 arrearage -- and I'm sure there's a better name for it.
7 That's what I call it in my mind. So correct me if
8 there's a better one. But that doesn't have anything to
9 do with this rate case; right?

10 I mean, let's presume the rate case had never
11 been filed. There would still have been an annual
12 true-up. I mean, that money is paid for. The company
13 paid for that. That regulatory deal was cut a few years
14 ago. The customers used those costs and need to pay for
15 them.

16 I've just found myself more than once, more than
17 twice confused by us blending those two numbers together,
18 two processes that, frankly, aren't linked in any way
19 other than timing.

20 Am I -- what am I missing?

21 WITNESS THURBER: Mr. Chairman, I don't think
22 you're missing anything. There is two parts of this
23 increase. There's the 12.7 percent increase that's
24 before you in the Settlement, and then there's the fact
25 that Black Hills Power is the only electric utility in

1 South Dakota that has an annual fuel clause. So when we
2 wrote the fuel clause into base rates there's going to be
3 a leg in terms of reflecting that change until the
4 following year.

5 So no. You're correct as viewing it as two
6 increases, one that you have control of today, the
7 12.7 percent, 12.7 percent or -- or in this hearing. Not
8 specifically today. And then there's the historical fuel
9 clause approved March 1 of 2011 that's already been
10 approved and in place.

11 So when you add the 12.7 percent and the
12 historical fuel cost, that's how you come up to the
13 19.4 percent.

14 CHAIRMAN JOHNSON: Well, I suspect there aren't
15 hundreds of rate payers listening. There probably aren't
16 even dozens. But I just -- I have thought recently, you
17 know, since this was filed a few weeks ago -- I mean, I
18 found myself confused on a few occasions.

19 And, you know, because we talk in terms of the
20 26.6. And then we talked in terms of the 20 percent
21 interim. And then I think the 12.7 is the right number.
22 I mean, if you're talking about 26.6 and 20, then the
23 analog to those numbers is the 12.7. Is that right?

24 That's the increase in base rates that this
25 Settlement envisions.

1 WITNESS THURBER: Yes. The correct comparison
2 is the 12.7 percent increase that is shown in the
3 Settlement compared to the 26.6 percent increase that was
4 in the original application of Black Hills Power.

5 Staff erred on the side of caution in these
6 exhibits because these are the rates that are going to be
7 in effect April 1, 2010 if the Settlement is approved.

8 So although you are correct that the revenue
9 increase that you would be approving in this settlement
10 is really the key -- it's really the key rate increase to
11 be reviewing, when customers receive their bill on
12 April 1 of 2010 we were concerned that they would be
13 looking at their bill and see more of an impact than what
14 we were representing here in these exhibits.

15 CHAIRMAN JOHNSON: And it just -- I mean, it's
16 almost unfortunate for this particular Applicant because
17 they're the only one that has this annual true-up. I
18 mean, with other folks, and I forget the breakdown, I
19 mean, you've got a rolling monthly, I think three or four
20 a year month, and then there are others that are
21 quarterly.

22 I mean, in many ways those adjustments are a
23 normal course of doing business that the consumers
24 understand just like the price of corn or the price of
25 gas fluctuates and gets passed on to the consumer. They

1 then understand that there are some -- although there are
2 some fixed rates in their bill, but there are others that
3 fluctuate because of market conditions rather than
4 company operations or management.

5 And it just -- in many ways I sort of wonder out
6 loud do we do the consumer a disservice with this annual
7 true-up?

8 And I won't put you on the spot and ask you that
9 question. I mean, the Settlement -- it's hard for me to
10 imagine I'm going to break apart the Settlement based
11 upon that. But for the next rate case down the road to
12 the extent that anybody cares what, you know,
13 Commissioner Johnson thinks, it does seem to me that
14 something other than an annual true-up is perhaps fairer
15 to consumers, at least from an understanding
16 perspective.

17 I had something else, but I got wound up a
18 little bit there so. Well, I'll just pause. It will
19 come to me.

20 Thanks, Mr. Thurber.

21 MR. SMITH: Commissioner Kolbeck, questions?

22 COMMISSIONER KOLBECK: I just have the one
23 question. On the depreciation rates, Black Hills Power
24 had proposed a 45-year lifespan and Staff with the
25 50-year lifespan. Could you explain your comfort in the

1 50 years?

2 I know that the plants -- some of the plants
3 aren't that old, and how confident are we that this plant
4 will last 50 years for the current environment?

5 WITNESS TOWERS: I'll respond to that.

6 Bob Towers. I looked at that issue, the depreciation
7 study that the company had submitted, and I looked at
8 their -- the lives that they were using for their other
9 power plants.

10 I'm trying to find the schedule that described
11 that. But most, if not all, of the other plants started
12 out -- they started out using lives perhaps less than --
13 maybe even less than 45 years. I didn't study the
14 ancient history. But I kept moving the -- keeping those
15 plants online and gradually increasing the service lives
16 so that I don't think there's any other plant that they
17 have for which they are using a service life of less than
18 50 years.

19 If you want specific numbers, I'll have to find
20 my --

21 COMMISSIONER KOLBECK: That's fine.

22 WITNESS TOWERS: -- analysis. But basically I
23 was looking at their experience with the other power
24 plants and concluded that 50 years was a -- seemed to be
25 a reasonable assumption.

1 And I would have pointed out if I had testimony
2 on this that the company uses what we -- what is referred
3 to as remaining life method of computing depreciation
4 rates so that if there should be a shortfall in the
5 recovery of plant investment -- not that we expect it or
6 would hope for it. We hope it wouldn't happen, but if
7 there should be a shortfall, the rates are periodically
8 adjusted and those -- the adjusted rates take into
9 account what has been recovered and what remains to be
10 recovered.

11 COMMISSIONER KOLBECK: Okay. That answers my
12 question. I think my other questions have all been
13 covered so that's all I have.

14 CHAIRMAN JOHNSON: I'm back on the trail so --
15 on this same issue.

16 I think, Mr. Thurber, I figured out one of the
17 things that bothered me. Again, I'm looking at JPT-4,
18 Schedule 1.

19 Ideally exhibits would show the impact of --
20 exhibits of this proceeding would show the impact of
21 decisions in this proceeding. And, you know, you look at
22 that far column, and it doesn't really show the impact of
23 the rate case that was filed alone.

24 And because the ECA -- that true-up is an
25 annually changing thing, changes far more often than

1 rates, I just don't feel like this gives a very accurate
2 representation of the proceeding that's before us.

3 What are your thoughts on that?

4 WITNESS THURBER: The exhibit may not give an
5 accurate description of the proceeding before you, but it
6 does give an accurate description of the rates that are
7 going into effect April 1, 2010, and that is what the --
8 in my opinion what the customers are primarily concerned
9 with.

10 If I could forecast the fuel costs that are
11 going to take -- be in effect in 2011 in the next ECA and
12 come up with a projection in terms of next year's rates
13 after the historical fuel costs get flowed through the
14 customers, I would. But I can't.

15 So as far as making an exhibit after these fuel
16 costs flow through, I'm sorry. I can't.

17 CHAIRMAN JOHNSON: No. I understand that. It
18 just seems to me that I wonder if we aren't selling
19 customers a little short here.

20 I just think in another part of our regulatory
21 realm on telecommunications -- I mean, I think about how
22 many people really want that granularity in their bill.
23 I think myself I open up my bundled package bill, and if
24 it's 122 rather than 110, I kind of know something's
25 going on.

1 And so I dig through there and, you know, what
2 were the driver of those costs. And I think consumers
3 really can be differentiating about what are the major
4 drivers and major components of a rate -- not a rate. I
5 guess, a bill.

6 And so I agree with you. I think we need to --
7 we need to provide information and exhibits that do show
8 the total impact. But I don't think -- I think perhaps
9 the exhibits would have been more on target had they
10 explained -- and you did in the narrative -- in the memo
11 you did, but not necessarily in the exhibits. Show the
12 bifurcated nature of that impact.

13 So now I'm just not even asking questions so I
14 better move on.

15 It did seem like that ECA arrearage, that
16 true-up, was a much bigger number than we normally see.
17 I know we can't predict the future. I mean, is that the
18 new in normal? Do we have any reason to think that was
19 the new outlier? Any thoughts for perspective and
20 context?

21 WITNESS THURBER: The 6.7 percent or
22 approximately 7 percent has accumulated over three years
23 since the last rate case. I feel fairly safe to assume
24 that next year's fuel costs will be significantly lower
25 than 7 percent.

1 There are some changes to the fuel clause in
2 terms of power marketing, and those will have significant
3 benefits to customers. So all I can assume is that fuel
4 costs -- the ECA effective in 2011 will be significantly
5 lower than the ECA effective currently.

6 CHAIRMAN JOHNSON: And I know you do that with a
7 little bit of trepidation because nobody wants to put
8 themselves in a position of guessing what fuel costs are
9 going to be some months down the road. But I do think
10 that's also helpful context that the numbers we see in
11 JPT-4 frankly are probably a little bit of an anomaly and
12 that if -- if we were to conduct some sort of stochastic
13 model of what future fuel prices would be over the course
14 of the next year, we would likely see in almost all
15 scenarios a lower number in customers' bills over the
16 next year.

17 Is that a right assumption?

18 WITNESS THURBER: That's correct.

19 CHAIRMAN JOHNSON: Okay. Great. Thanks very
20 much.

21 That's all, Mr. Smith.

22 MR. SMITH: Thank you. Other Commissioner
23 questions or advisor questions?

24 COMMISSIONER HANSON: Mr. Smith, I have some, if
25 I may.

1 MR. SMITH: Please.

2 COMMISSIONER HANSON: Whenever I have watched
3 Congress in action I get a little bit disturbed when I
4 see the Congress people coming in and out during the
5 committee hearings and asking the very same questions
6 that were asked by the previous Congress person, and I
7 find myself possibly doing the very same thing right now.

8 As we were going from one section to the next I
9 started rereading some things and questions were asked,
10 and I will apologize if I ask a question that may have
11 been asked previously.

12 On page 5 and also on page 12 there is some
13 dialogue pertaining to renewable energy credits. And for
14 the most part the first four sentences or so of each of
15 those is identical. Each of those paragraphs. It ends
16 with different net effects. One approximately 9,000 and
17 the other \$14,000.

18 Could you tell me why we're working on renewable
19 energy credits in two different sections of this?

20 (The witness is sworn by the court reporter)

21 WITNESS KNADLE: What you're looking at is a
22 couple different items. The 90 percent is going -- the
23 sharing mechanism is going to get flown through the fuel
24 clause adjustment beginning on April 1, 2010. And the
25 other part of the adjustment is they sold some renewable

1 energy credits prior to that date.

2 COMMISSIONER HANSON: Okay.

3 WITNESS KNADLE: So what we're doing is
4 amortizing them out that's allocated to South Dakota over
5 three years with one half the amount reflected in the
6 rate base as a reduction. If that answers your question.

7 COMMISSIONER HANSON: It does. Thank you.

8 WITNESS KNADLE: I thought my name was going to
9 be -- kept getting asked here and I wasn't going to get
10 sworn in. So I don't feel quite so bad now.

11 COMMISSIONER HANSON: Well, perhaps we can
12 rectify that by asking you some more questions in a
13 moment.

14 Mr. Binder I believe is the proper person to ask
15 the question on demand side management, I think.

16 (The witness is sworn by the court reporter)

17 COMMISSIONER HANSON: Mr. Binder, on page 11
18 under the removal of demand side management paragraph it
19 states that Staff proposed to remove the test year DSM
20 expenses of approximately 280,000 from the cost of
21 service.

22 Not that I'm looking out for the utility in this
23 respect, but I am curious. Were there any benefits of
24 DSM that were ascertained, and were those adjusted in
25 this process?

1 Meaning if there were -- if they had already
2 implemented, already -- have they -- well, I guess first
3 of all I should ask, have they implemented any form of
4 DSM at this juncture?

5 WITNESS BINDER: It was our understanding that
6 they have some programs in operation. However, I think
7 the difference is, is the DSM that we've seen as a
8 Commission has been separate proceedings that actually
9 have rate recovery.

10 COMMISSIONER HANSON: Correct.

11 WITNESS BINDER: These programs are ones that do
12 not follow that process.

13 COMMISSIONER HANSON: So there would not have
14 been benefits then that -- or any need for any adjustment
15 on their side if we remove the \$280,000 --

16 WITNESS BINDER: I'm not sure what you mean by
17 benefits. Are we talking energy, or are we talking --

18 COMMISSIONER HANSON: Well, if you remove
19 \$280,000 from the test year and they had implemented a
20 DSM which had actually resulted in what I call benefits,
21 a reduction in electricity usage so that it has
22 accomplished its goal, it means that they then as a
23 utility are selling less electricity and we're taking
24 away their expense on one side but they're expensing on
25 the other as well and we're not recognizing the quid pro

1 quo, so to speak.

2 WITNESS BINDER: Yeah. It's our understanding
3 that the programs that are in effect right now will
4 continue to be in effect.

5 The other half of it is, as we are with other
6 utilities, we're working on a workshop we just held last
7 week. I believe there was testimony on this yesterday.

8 So those programs it is our understanding are
9 continuing today with the shareholder or nonrate payer,
10 rate-based funds, and the understanding that the company
11 will be coming in with a separate filing for a more
12 robust program in the future.

13 COMMISSIONER HANSON: Thank you.

14 Well, there's quite a bit on transmission
15 expenses, and I'm not even certain I can formulate my
16 question at this point.

17 But on page -- however, on page 5 under
18 transmission plant it -- at the last sentence it talks
19 about Staff's case starts with the South Dakota
20 jurisdiction. Certainly.

21 And so Staff's case does not have a specific
22 adjustment for the removal of the CUS plant and related
23 expenses in revenues. I'm curious about -- I don't mean
24 to make this a compound question, but I guess I'm going
25 to.

1 I'm curious about the need for that and then how
2 that -- whether or not there's still a need and how that
3 affects -- in the next portion on page 5 on test year
4 plant annualization, Subsection 3 talks about accumulated
5 deferred income taxes related to a 50 percent bonus
6 depreciation for projects in the ARRA. I'm wondering if
7 those are related at all.

8 Perhaps I should stop there before I start
9 asking a third question.

10 Mr. Knadle.

11 WITNESS KNADLE: Thank you. When the company
12 allocates costs, you know, amongst the jurisdictions they
13 do allocate the costs specifically to what's regulated by
14 FERC in totally company amounts. And then when they
15 allocate it to South Dakota they don't carry those
16 amounts over to South Dakota.

17 So when you start with the South Dakota amounts
18 related to plant revenues and expenses we don't include
19 those -- we start with South Dakota per books amounts.
20 Okay? So none of those costs would be reflected by
21 what's regulated by FERC, if that answers your question.

22 COMMISSIONER HANSON: It does. And it relates
23 actually to the next question that I was going to ask on
24 page 8 pertaining to transmission expense and the
25 settlement determination, how it's modified and reflected

1 with the current FERC approved rate.

2 I believe that you answered all of them and
3 quite succinctly. I appreciate that.

4 WITNESS KNADLE: Thank you.

5 COMMISSIONER HANSON: I believe, Mr. Knadle,
6 you're also the person to ask about additional employees
7 on page 7.

8 WITNESS KNADLE: That would be Mr. Thurber.

9 COMMISSIONER HANSON: All right. I was hoping I
10 could ask him a question.

11 Mr. Thurber, on page 7 under additional
12 employees I note that the company proposed nine
13 positions, and the Staff decided that three of those
14 positions should be filled? Is that correct?

15 WITNESS THURBER: Yes. That's correct.

16 COMMISSIONER HANSON: And those positions all
17 relate to Wygen III?

18 WITNESS THURBER: As a result of the addition of
19 Wygen III, there are additional employees needed at the
20 Neil Simpson Energy Complex. So, yes, Wygen III drove
21 the work force needs.

22 COMMISSIONER HANSON: Are there any employees
23 that are directly -- I know it's going to sound strange
24 after the last question, you answering it, because I'm
25 not going to phrase it very well.

1 Perhaps I can do better. The Wygen III plant
2 itself being in another state and its operating costs
3 including employees I believe is all accounted for
4 without any additional expenses having to be considered
5 by us. Is that correct, or have I confused the
6 question?

7 What I'm concerned with is the O&M costs of the
8 plant. And if we're considering additional employees
9 here, did you in any way consider the employee factor in
10 out of state?

11 WITNESS THURBER: The labor costs related to
12 Wygen III, there's a portion allocated to South Dakota.
13 These are in addition to the workers actually working at
14 the plant. There's more than three employees working at
15 the plant. And that's taken into account in another
16 adjustment.

17 COMMISSIONER HANSON: Thank you. Okay. Great.
18 Appreciate that. And on rate case expense on page 5 it
19 states that "Although BHP requested rate base treatment
20 for two-thirds of the unamortized balance, the settlement
21 includes one-half of the amortized costs."

22 I recognize it says that that represents the
23 average unamortized balance over a three-year period, but
24 can you give me a little bit better idea, though? Is
25 there a better explanation for why half?

1 WITNESS THURBER: Well, the amortization period
2 for rate case expense is set up so that it's amortized
3 over the period that rates are supposed to be in effect
4 before the next rate case.

5 During that period of time the average balance
6 over those three years would be half of the total rate
7 case expense amount.

8 COMMISSIONER HANSON: Thank you for rephrasing
9 it in a different fashion. I appreciate that. I'm just
10 struggling with why -- and maybe it's just too terribly
11 obvious why it would be one-half the amortized costs.

12 I recognize it's an average. It just doesn't
13 blend well for me.

14 In a previous question on the coal costs on
15 page 7 there's a paragraph, Wygen III Forecasted Coal
16 Costs. On page 9 there's a coal price adjustment. And
17 page 8 there's a -- well, that's on purchase power. And
18 I believe that's all pertaining to natural gas. And
19 there was another energy cost adjustment, revenue
20 adjustment on page 10.

21 Could someone sow those together for me,
22 please.

23 WITNESS JACOBSON: Yes. Yes, Commissioner
24 Hanson. As alluded to in the memo -- let's see. The
25 first one you've pointed out was page 6?

1 COMMISSIONER HANSON: Page 7 at the bottom of
2 the page. I'm on the confidential version. It starts
3 out Wygen III forecasted coal cost. And that deals with
4 price per tonnage.

5 WITNESS JACOBSON: Yes.

6 COMMISSIONER HANSON: That's immediately
7 followed by what I believe just all pertains to natural
8 gas, and you don't really need to discuss that one, I
9 don't believe.

10 WITNESS KNADLE: This is Bob Knadle. I may be
11 able to help you out. Basically all of those coal
12 adjustments, the main driver is changing the estimated
13 cost for 2010 for coal to what was actually -- what the
14 Commission approved for the 2009 fuel adjustment charge.
15 So we'll have an actual cost in lieu of an estimated
16 cost.

17 And as Bob Towers stated before, is these costs
18 are going to get flown through the fuel clause, and so
19 they will get trued up in the next filing that the
20 company files with the Commission.

21 COMMISSIONER HANSON: Why three different coal
22 costs adjustments?

23 WITNESS KNADLE: Well, the first one for
24 Wygen III is is we had to, you know, use a tonnage that
25 would anticipate what Wygen III was going to use. And we

1 priced that at -- you know, it's a new plant that just
2 came online.

3 One of them's related to power marketing. And
4 they have to assign coal costs to power marketing. And
5 the other ones are existing coal plants besides
6 Wygen III.

7 And then on existing plants we have some history
8 on it. That's why Mr. Jacobson used average on those.
9 We've seen power marketing used, you know, an average of
10 I think five years, I believe.

11 And we don't have any history on Wygen III at
12 this point in time. But, you know, we would anticipate
13 using somewhat of an average when they file the next rate
14 case for Wygen III. So they would be consistent, how we
15 calculate, you know, the coal price adjustments.

16 WITNESS JACOBSON: The other thing I would add
17 to that is that you're separately identified coal based
18 on -- for instance, for the revenue adjustment on page 10
19 you're separately identifying coal that's going to the
20 contractual sales to Montana-Dakota Utilities Company and
21 the Municipal Energy Agency in Nebraska.

22 In the other instance you're identifying coal
23 that's removed -- or included but identified with power
24 marketing activities. So in each case there's separate
25 amounts of coal being identified with each function that

1 it's serving and then priced according to the way that
2 Mr. Knadle just explained, replacing estimated costs with
3 actual updated, known costs.

4 COMMISSIONER HANSON: Thank you. Appreciate
5 that.

6 On page 14 at the bottom again on the
7 confidential version there's a little bit of a statement
8 about IRP. I'm not certain who to ask the question of.

9 But is -- asking you, basically each one
10 individually, are any of you uncomfortable with or,
11 phrasing it another way, would you be more comfortable
12 with a more recent IRP?

13 Do you believe that we need to pursue an IRP
14 sooner rather than later?

15 MS. CREMER: Mr. Towers, do you want to address
16 that, and then we can always have Mr. Evans once he
17 testifies also address that? Or do you just want to not?

18 WITNESS TOWERS: I don't mind, I guess, to
19 address that. I guess I would have a question there
20 about the question. That is, you know, for what purpose?

21 I think there would be no purpose in this case
22 for a new IRP to justify the inclusion rates of
23 Wygen III. I think the Wygen III decision was made, an
24 IRP was prepared, and a decision was based on that IRP
25 back in the year 2007, and I think it would be

1 unreasonable to do another IRP and from that try to
2 conclude that Wygen III plant should never have been
3 built, some alternative source of power should have been
4 selected.

5 I don't -- I don't know what the current
6 thinking is on how often IRPs should be conducted or
7 prepared. It seems to me that any utility would
8 continuously be observing what's happening in the demand
9 for their power, what is anticipated in the near and
10 medium-term future and would be continuously studying
11 what the alternatives are for satisfying the future
12 needs.

13 Whether that would require that a full-blown IRP
14 be conducted every two years or not, I don't know. It
15 seems to me that would be -- that would depend on the
16 magnitude of the anticipated ages or the magnitude of the
17 anticipated alternatives to continue doing what you're
18 presently doing.

19 But I don't know if that really answers your
20 question. I don't think IRPs should necessarily be on
21 any regular -- done on any regular schedule, but I think
22 the utility should be continuously looking at its
23 planning and the changes that would affect those plans.

24 COMMISSIONER HANSON: Thank you, Mr. Towers.
25 Yes, it does -- your first two sentences answered my

1 question, but I appreciate your -- the dialogue after
2 that and the information. Thank you.

3 Thank you, Mr. Smith.

4 MR. SMITH: Other Commissioner questions?

5 CHAIRMAN JOHNSON: Qualifying question for
6 Mr. Thurber. You had said that that 6.7 ECA had been
7 accumulated over three years. I may have misunderstood
8 you here because I thought there was an annual true-up of
9 the lagging ECA costs.

10 WITNESS THURBER: It gets trued up annually, but
11 the 6.7 percent is the total amount over the three years.
12 I don't know what the breakdown was over the three years
13 that led to the total amount of, you know, 6.7 or
14 approximately 7 percent. But it's -- it's a cumulative
15 effect.

16 CHAIRMAN JOHNSON: But my presumption would be
17 that the vast majority of those costs would have been
18 underpaid by consumers in the test year. Because there
19 would -- I mean, this is really our first opportunity to
20 true up those costs.

21 I mean, the costs in year one and year two would
22 have been trued up in the next calendar year; is that
23 right?

24 WITNESS THURBER: Yes. Those costs are trued up
25 on an annual basis, but I think where the confusion lies

1 is what the role in -- what the adjustment rolls in --
2 the fuel costs into base rate does is, is it looks at the
3 difference between what was included in base rates in the
4 last rate case, EL06-019, and what the fuel costs were in
5 this rate case, what was the fuel cost during the test
6 year with known and measurable adjustments.

7 CHAIRMAN JOHNSON: Okay. A couple of questions
8 for Mr. Towers. I'm looking at page 15 of the Staff
9 memorandum. And we talked with Mr. White yesterday a
10 little bit about two components. First off, the split of
11 the power marketing income with almost two-thirds of the
12 benefits accruing to rate payers -- or flowing to rate
13 payers. And then the surplus energy credit.

14 Taken together, I mean, I view these as strong
15 components of the settlement that really provide a
16 substantial and robust benefit to rate payers. But
17 you've got a lot more experience with rate cases across
18 the country than I do, Mr. Towers.

19 I mean, how do you view those components?

20 WITNESS TOWERS: Well, I view them as a very
21 significant benefit to rate payers. And I think -- I
22 don't know if you've mentioned the minimum credit -- PMI
23 credit of \$2 million. That's in addition to the surplus
24 energy credit, initially 2 and a half million. The
25 2 million minimum credit applies whether or not the

1 company earns any income from power marketing.

2 65 percent is certainly significant. Obviously,
3 the Staff would like to see that number even higher if --
4 and the company would prefer it to be somewhat less. So
5 it in a way is -- it's kind of a judgment call, a
6 negotiating number, negotiated by Staff certainly in
7 light of what other utilities in the State of South
8 Dakota are doing.

9 We had some numbers on that. The arrangements
10 are quite different. Some utilities distinguish between
11 different types of power marketing activities. So it's
12 hard to come up with a number that corresponds exactly to
13 the 65 percent.

14 But certainly during these power marketing
15 profits I think is a significant benefit to rate payers.
16 The \$2 million minimum credit, which is paid regardless
17 of what's earned from power marketing, and the \$2 and a
18 half million declining surplus energy credits are
19 together very significant components of the Stipulation
20 agreement.

21 CHAIRMAN JOHNSON: So --

22 WITNESS TOWERS: I don't know of any other
23 instance -- certainly I know of no other instance of
24 anything like a \$2 and a half million surplus energy
25 credit. \$2 million minimum, I don't know if that exists,

1 anything like it exists in any other tariff or not. I'm
2 not familiar with any tariff that has it.

3 CHAIRMAN JOHNSON: You had mentioned in response
4 to a question from Ms. Cremer the number of years you've
5 been in the regulatory industry.

6 Can you remind me how many that was?

7 WITNESS TOWERS: I hate to, but 50 years. But
8 power marketing such was not -- has not been a
9 significant issue over that lengthy period.

10 CHAIRMAN JOHNSON: No. And I had heard the 50.
11 I just didn't know if I had heard it right. So I won't
12 continue to call attention to it.

13 But I do think that kind of perspective is
14 helpful for my final question. And this really gets at
15 the whole question regarding this Settlement Stipulation.
16 I mean, the Commissioners have asked a lot of detailed
17 questions on individual components, but the big question
18 that I want to ask you is given your experience, does
19 this Settlement Stipulation -- would it result in fair
20 and reasonable rates to consumers?

21 WITNESS TOWERS: Yes.

22 CHAIRMAN JOHNSON: Thanks, Mr. Towers.

23 MR. SMITH: Any additional Commissioner
24 questions?

25 Hearing none, Mr. Magnuson, do you have any

1 follow-on questions in response to what's occurred with
2 the Commissioner questions?

3 MR. MAGNUSON: I have no questions. Thank you,
4 Mr. Smith.

5 MR. SMITH: Mr. Khorroosi.

6 MR. KHOROOSI: I have no questions. Thank you.

7 MR. SMITH: Thank you.

8 CHAIRMAN JOHNSON: Do you want to give
9 Ms. Cremer an opportunity to redirect?

10 MR. SMITH: Pardon me. Pardon me, Ms. Cremer.
11 Any redirect?

12 MS. CREMER: Staff has no redirect.

13 MR. SMITH: What do you think, Karen? Should we
14 take a little break and give Cheri a break here.

15 MS. CREMER: Yeah. I think Cheri's the only one
16 that needs a break. So we should probably give her that.

17 MR. SMITH: Well, I would assume the recording
18 with some of the sound quality we've had here may not be
19 that easy. Thanks.

20 What should we take? Until 11:00? We'll be in
21 recess until 11 o'clock. Thank you.

22 (A short recess is taken)

23 MR. SMITH: Again, we're reconvening the hearing
24 in Docket EL09-018, application of Black Hills Power for
25 a rate increase. We were in the midst of Commission

1 Staff's case in chief, and I'll turn it back over to you,
2 Ms. Cremer, to proceed with your case.

3 Call your next witness.

4 MS. CREMER: Thank you. Staff would call
5 George Evans to be sworn.

6 MR. SMITH: And, Mr. Evans, you heard the
7 exchange I had with the other two witnesses who have been
8 sworn.

9 Are you agreeable to those same terms?

10 MR. EVANS: Yes, I am.

11 MR. SMITH: Thank you.

12 (The witness is sworn by Chairman Johnson)

13 CHAIRMAN JOHNSON: Thanks.

14 DIRECT EXAMINATION

15 BY MS. CREMER:

16 Q. Thank you. Would you please state your name, your
17 address, and your employer for the record.

18 A. Yes. My name is George W. Evans. I'm currently a
19 vice president with Slater Consulting. My mailing
20 address is Post Office Box 2449, Robbinsville,
21 North Carolina 28771.

22 Q. Would you briefly explain what Slater Consulting is
23 and how you came to be associated with this Docket.

24 A. Sure. Slater Consulting is a group of eight
25 consultants. The company was founded back in 1990 by

1 Mr. Ken Slater. Each of the consultants operate out of
2 their own office around the country. We have consultants
3 in New York and Baltimore, North Carolina where I am,
4 Atlanta, and a few other locations.

5 Our expertise is in computer modeling of electric
6 utilities, the integrated resource planning, and
7 forecasting for electric utilities.

8 I became involved in this docket when I discussed
9 the need for an IRP consultant with Mr. Jon Thurber of
10 Staff back in February of this year. I made a proposal,
11 and Staff accepted my proposal and contracted me to look
12 into the Integrated Resource Plan that the company filed
13 as a part of this docket.

14 Q. Would you briefly describe your educational
15 background and experience.

16 A. Sure. I have both a Bachelor's of Science and a
17 Master's of Science in Applied Mathematics from
18 Georgia Tech. I've been involved in the electric utility
19 industry since 1980. So about 30 years. And for about
20 21 of those years I've been a consultant in the electric
21 utility industry.

22 I've testified in 36 different proceedings. Of
23 those 36, 11 involved integrated resource planning. And
24 back in 1995 I presented prefiled testimony here in
25 South Dakota on the Integrated Resource Plan of

1 Black Hills Power at that time.

2 Q. Do you have a copy of Staff Exhibit 7? And that's
3 your rebuttal testimony; is that correct?

4 A. Yes, I do.

5 Q. And do you also have a copy of Staff Exhibit 7A?

6 A. Yes, I do.

7 Q. And are those exhibits that you will be speaking in
8 support of?

9 A. Yes, they are.

10 Q. Would you please summarize the content of those
11 exhibits. And then just remember to speak slowly for the
12 court reporter.

13 A. Sure. My rebuttal testimony discusses certain
14 portions of the direct testimony of Mr. Christopher James
15 who has testified for the Residential Consumers
16 Coalition.

17 In his testimony he claims that Black Hills Power
18 could have met its 2010 capacity needs solely through the
19 implementation of additional demand side measures such as
20 energy efficiency measures, load control programs, and so
21 forth.

22 In other words, he's claiming that Wygen III would
23 not have been needed had Black Hills Power implemented
24 additional demand side measures instead of building
25 Wygen III. This claim is both unrealistic and

1 unsupported.

2 In his testimony Mr. James does not dispute Black
3 Hills Power's claimed capacity need in 2010, which totals
4 77 megawatts, but he presents no information at all that
5 would show that Black Hills could have reduced its peak
6 demand by that 77 megawatts in 2010 with additional
7 demand side measures. It is simply unrealistic to assume
8 that such a thing could occur.

9 He talks in his testimony about what he calls a
10 modest demand side program that would achieve savings
11 equivalent to 1 percent of electricity sales. But such a
12 program would only reduce 2010 peak demand by about
13 6 megawatts, not approaching 77 megawatts that's needed.

14 He also presents in his testimony recent results
15 from other utilities in the area of peak demand savings
16 from demand side programs. But the largest of those that
17 he presents is only 2.9 megawatts, and that's from Xcel,
18 which is quite a bit larger than Black Hills Power.

19 Finally, Mr. James claims that Black Hills could
20 reduce its peak demand by some 128 megawatts. I think in
21 the year 2020, although it's a little unclear from his
22 testimony, besides the fact that this wouldn't address
23 the 2010 capacity needs, it would mean that Black Hills
24 would have to achieve a peak demand reduction through
25 demand side programs of about 17 percent by 2020.

1 But looking at other utilities around the country
2 and what they've been able to do, a national average of
3 peak demand reduction through demand side programs is
4 only 4 percent of peak demand. It's just not realistic
5 to believe that Black Hills could reduce their peak
6 demand by 17 percent when other utilities who have been
7 doing significant demand side programs for years have
8 only been able to achieve about 4 percent.

9 But I do agree with one aspect of Mr. James'
10 testimony, and that is that Black Hills Power should
11 investigate additional demand side measures and implement
12 those that they find to be cost effective.

13 And that concludes my summary.

14 Q. Thank you.

15 MS. CREMER: Mr. Evans is now available for
16 cross-examination.

17 MR. SMITH: Mr. Magnuson.

18 MR. MAGNUSON: I have no questions for this
19 witness.

20 MR. SMITH: Mr. Khorroosi.

21 MR. KHOROOSI: I have no questions for this
22 witness.

23 MR. SMITH: Commissioners.

24 COMMISSIONER KOLBECK: Yes. This is
25 Commissioner Kolbeck. I have just a couple of questions.

1 THE WITNESS: Okay.

2 COMMISSIONER KOLBECK: Mr. Evans, am I correct
3 in saying that you feel that Mr. James' testimony said
4 that Black Hills Power would have to cut their
5 consumption by 17 percent, not 1 percent?

6 THE WITNESS: Well, he claims in his testimony
7 that Black Hills could reduce its peak demand by 120 some
8 odd megawatts, which is equivalent to a 17 percent
9 reduction.

10 COMMISSIONER KOLBECK: Okay. That's what I
11 thought.

12 THE WITNESS: I'm just saying that that's
13 unrealistic. I don't believe that anyone's ever achieved
14 that or really can achieve that.

15 COMMISSIONER KOLBECK: Well, and your expert
16 testimony that you've given in other states is quite
17 lengthy. What would you believe is reasonable?
18 1 percent?

19 THE WITNESS: No. I think something in the
20 range of 4 percent is reasonable, but it would -- it
21 wouldn't occur in just a few years. It would take, I
22 would say, at least five years to implement the programs
23 to get that sort of reduction.

24 COMMISSIONER KOLBECK: Which would leave
25 Wygen III necessary in the end ultimately anyway?

1 THE WITNESS: Correct. Yes.

2 COMMISSIONER KOLBECK: Okay. Thank you.

3 MR. SMITH: Other Commissioner questions?

4 COMMISSIONER HANSON: Mr. Evans, good morning.

5 THE WITNESS: Good morning.

6 COMMISSIONER HANSON: This is Gary Hanson. I
7 have just -- well, I'm not going to tell you how many
8 questions I have because every time one of us says how
9 many we have, we have more.

10 THE WITNESS: Oh, that's fine.

11 COMMISSIONER HANSON: Could you turn to -- I
12 assume that you have Mr. James' testimony with you?

13 THE WITNESS: Yes, I do.

14 COMMISSIONER HANSON: That is not -- the pages
15 aren't numbered. And I think anyone who numbers those
16 may have a little bit of a different methodology.

17 I started numbering the pages I think just after
18 the list of exhibits and started with his actual
19 testimony and started numbering it. And if you get to
20 page 24, and that is -- there's no number on it at all.
21 It begins with -- well, it's the page just following the
22 question "What specific benefits could South Dakota
23 receive from energy efficiency and demand side management
24 programs?"

25 THE WITNESS: I see that page.

1 COMMISSIONER HANSON: On that page there's an
2 answer and then 1, 2, 3. And on the following page
3 about -- well, on the -- it addresses Scenario A and
4 Scenario B for energy efficiency programs for options for
5 saving energy.

6 And in the next paragraph Mr. James discusses
7 the nuances of those two scenarios and the methods that
8 he used for calculating the amount of energy savings.

9 In reading your testimony it seems quite logical
10 and one would certainly look at -- on page 5 of your
11 testimony and see Otter Tail Power with .4 megawatts'
12 savings through their DSM program and Mid-America with
13 .6 and Xcel Energy with 2.9 and hardly imagine how
14 128 megawatts' capacity savings could be accomplished.

15 However, when I read the testimony from
16 Mr. James in this area, especially under Scenario A, at
17 first it seemed like an upsidedown or a backdoor method
18 to calculate, but then when I saw his methodology it
19 actually -- well, one can play with statistics to an
20 extent, but it seemed realistic.

21 Help me with this, please, because it -- from my
22 perspective, both of your arguments have a lot of
23 strength. And when I see his methodology on Scenario A,
24 when you're taking the entire -- it works with gigawatt
25 hours, and then it changes that to megawatts as opposed

1 to hours so there's a little bit of challenge for me in
2 jumping from one to the next.

3 And there are some assumptions. He assumes the
4 ratio of potential savings with Black Hills Power
5 territory is the same as the proportion of Black Hills
6 Power's share of total statewide electricity sales. So
7 perhaps that's where there's a bit of a challenge.

8 But yet when he -- when I calculate this and
9 when I checked all of the math it comes up with a
10 Black Hills Power 14 percent share of the 920 megawatts
11 would be 128 megawatts. So it makes sense to me.
12 Although yours makes sense to me as well.

13 So I'll give you a chance to explain why yours
14 makes more sense.

15 THE WITNESS: Okay. Well, one thing I talk
16 about in my testimony is national averages. I took some
17 data from the Energy Information Administration on
18 nationally what has been the peak demand reduction, you
19 know, for all electric utilities.

20 And the national average comes out to only
21 4 percent or a little over 4 percent. So I think that
22 says immediately that Mr. James' numbers could not really
23 be correct. And I'm not 100 percent certain how he came
24 to his results.

25 I haven't seen work papers or detailed

1 assumptions for this. But I believe what he's done is
2 accumulate from year to year total energy savings and
3 then after a period of some 10 years or so taken that
4 total energy savings over 10 years and said, look, this
5 is equivalent to 920 megawatts of capacity.

6 But the problem with that -- the problem with
7 that is is that you cannot do it that way. You're not
8 getting an additional energy reduction every year for
9 10 years. You might be getting a small increase from
10 year to year, but to add the energy savings up in all of
11 those 10 years and then saying that equates to
12 920 megawatts of capacity is just incorrect.

13 What you have to do is look at the last year and
14 say what were my energy savings in 2020 or whatever your
15 last year is and try to convert that to a capacity. And
16 you would get something much, much smaller than what he's
17 gotten here.

18 Did that get to the crux of your question?

19 COMMISSIONER HANSON: Well, I think the crux of
20 it is exactly how much could be saved in energy savings?
21 Because he's using the 14 percent as -- which I think is
22 logical to use if, in fact, Black Hills Power's share of
23 the total electricity in South Dakota is 14 percent --

24 THE WITNESS: I don't disagree with that.

25 COMMISSIONER HANSON: And then the one challenge

1 that I struggle a little bit with is his statement that
2 statewide an energy efficiency program that achieved a
3 level of 1 percent of annual energy savings by 2012 and
4 then continued in subsequent years. That's where my
5 question with him will come.

6 And years would provide capacity equivalent to
7 twice the annual output from Otter Tail. I'm -- jumping
8 that particular chasm or crevasse might -- is a
9 challenge.

10 THE WITNESS: You're fading out on me.

11 COMMISSIONER HANSON: Okay. That's my fault.
12 I'm just trying to figure out from your perspective where
13 the -- where you would think the holes are in Mr. James'
14 testimony. And I guess you and I have different
15 perspectives on it.

16 If, in fact, his testimony is accurate that the
17 subsequent years would provide capacity equivalent to
18 twice the annual output from the Otter Tail Big Stone
19 plant, that is based upon -- I don't know how many years
20 for sure and what percentage, but it certainly would make
21 sense mathematically and I just want to give you an
22 opportunity to see if there were other areas of his
23 presentation that you disagreed with.

24 THE WITNESS: Yeah. What I disagree with is
25 taking and adding up for 10 years the energy savings from

1 the DSM programs and then comparing that to basically a
2 one-year number.

3 You don't -- it's apples and oranges is what
4 he's doing here. He's taking accumulated savings across
5 10 years and then saying, well, that's equivalent to what
6 Big Stone could produce in one year.

7 Well, it may be, but that does not say you get
8 that much capacity after 10 years. You get much, much
9 less capacity than that.

10 COMMISSIONER HANSON: I believe that's similar
11 to Ms. Tietjen's testimony as well.

12 I appreciate the opportunity to chat with you.
13 Thank you.

14 THE WITNESS: Yep.

15 COMMISSIONER HANSON: Thank you, Mr. Smith.

16 MR. SMITH: Other Commissioner questions.

17 CHAIRMAN JOHNSON: I have none. Thank you.

18 MR. SMITH: Commissioner Kolbeck.

19 COMMISSIONER KOLBECK: Yes. Mr. Evans, could
20 Mr. James' testimony be correct if you started 10 years
21 ago? I mean, in other words --

22 THE WITNESS: No. You would still only arrive
23 at a savings of capacity of around 4 percent, even if you
24 started 10 years before 2010.

25 COMMISSIONER KOLBECK: Okay.

1 THE WITNESS: In other words, it's sort of like
2 saying, well, I saved 4 percent on capacity in each year
3 for five years. Therefore, I've saved 20 percent. Well,
4 no, you haven't. At the end of the five years you've
5 only saved 4 percent.

6 COMMISSIONER KOLBECK: All right. Perfect.
7 Thank you.

8 MR. SMITH: Mr. Rislov.

9 MR. RISLOV: Good morning. This is Greg Rislov.

10 THE WITNESS: Good morning.

11 MR. RISLOV: I have a couple of questions. As I
12 listened to what was being asked, we're talking about
13 energy savings versus capacity savings; is that correct?

14 THE WITNESS: Talking about both, I think. He
15 does talk with energy savings and goes from that to
16 derive some capacity savings.

17 MR. RISLOV: My question is on an annual basis
18 from year to year -- and I know there's not a whole lot
19 of experience even nationwide, but over a 10- or a 15- or
20 a 20-year cycle, but what do you expect for the growth of
21 capacity savings on a year-to-year basis starting with
22 year one?

23 THE WITNESS: You would expect something in the
24 range of 1 percent on the first year. You could grow to
25 2 in the next, possibly 3, and then 4. And then you're

1 going to level out. You're going to stay around 4.
2 Getting to 5 would be excellent.

3 MR. RISLOV: That's a cumulative total you're
4 talking about? It's not that you would save 1 percent in
5 year one and then add 2 more percent. It's 1 percent a
6 year total.

7 THE WITNESS: Right.

8 MR. RISLOV: Additive. With regard to
9 Black Hills and where their fuel source is located, how
10 does that factor into your risk analysis when looking at
11 an IRP, considering that the plants are all mine mouth?

12 THE WITNESS: Yeah. The fact that the plants
13 are even mine mouth plants makes it from an energy point
14 of view a much more economic plant than your typical coal
15 plant, which you have to rely on usually rail
16 transportation to carry the coal quite a long ways for
17 the plant.

18 So Wygen III on an energy basis is a very cheap
19 plant. And listening to the discussion yesterday on CO2
20 taxes, I think that explains why in the case of Wygen III
21 even under some very high CO2 tax assumptions, Wygen III
22 still turns out to be the most economic choice. That
23 along with the fact that the plant -- the construction
24 costs of the plant are quite low.

25 MR. RISLOV: You touched upon another subject.

1 When you go through your IRP analyses at what point must
2 carbon taxes reach, roughly speaking, before coal is
3 kicked out as being a least cost base load option?

4 THE WITNESS: I have not developed that number
5 for you.

6 MR. RISLOV: You've not done any sensitivity
7 analyses that way?

8 THE WITNESS: I'm sorry. I couldn't hear that
9 part.

10 MR. RISLOV: You haven't done any sensitivity
11 analyses on the amount of carbon tax that would eliminate
12 coal as a consideration?

13 THE WITNESS: In other jurisdictions, yes. Not
14 here in this particular case.

15 MR. RISLOV: And I know we're comparing apples
16 with oranges, but could you give us some rough idea of
17 where that number would be?

18 THE WITNESS: I would hate to give you a number
19 off the top of my head. I could go look up some previous
20 cases and tell you, but I'm afraid it would be wrong if I
21 gave you a number off the top of my head.

22 MR. RISLOV: Okay. I would like to go again to
23 Mr. James' testimony. And on my computer it's page 12 of
24 35. I don't know how helpful that is, but let me direct
25 you a little better.

1 At the top of the page the first question would
2 be what assumptions should BHP have included in its IRP
3 that could have better accounted for these future
4 policies and programs that will influence BHP's demand
5 and associated economics.

6 THE WITNESS: I see that page.

7 MR. RISLOV: Do you have that page?

8 THE WITNESS: Yes, I do.

9 MR. RISLOV: Okay. I'm going to move down that
10 page. And there's a numerical list, 1, 2, and 3.

11 THE WITNESS: Right.

12 MR. RISLOV: The question I have to ask is do
13 you consider Black Hills Power & Light's construction of
14 this plant to be to fulfill a base load need?

15 THE WITNESS: Yes.

16 MR. RISLOV: With that in mind, how do you
17 evaluate what Mr. James has stated in numbers 1, 2, and
18 3? How does that resolve the issue?

19 THE WITNESS: Well, I can't see that energy
20 efficiency programs could replace the need for Wygen III
21 under any circumstance.

22 I could see if it were possible to find a large
23 industrial facility that needed combined heat and power,
24 that could possibly fulfill the need that Wygen III
25 fills. But I understood in talking with the company that

1 that opportunity really does not exist in their service
2 territory right now.

3 MR. RISLOV: What about number 2?

4 THE WITNESS: Renewable energy is generally not
5 base load. You're right about that. Wind energy is
6 great in some respects. No fuel costs.

7 In other respects, it causes problems because
8 the wind may not blow when you actually need the power.
9 Hard to consider the base load resource. You just can't
10 count on the wind blowing when you need it.

11 Certainly solar is even worse in that respect.
12 It's only going to work the hottest days in the summer.
13 If there were an opportunity for geothermal, I think
14 geothermal could serve as base load, but I don't know
15 that that exists in the territory.

16 MR. RISLOV: We do regulate at least with regard
17 to the South Dakota jurisdiction Xcel Energy, and I
18 believe their peak is, you know, in that 9,000 megawatt
19 range.

20 THE WITNESS: Right.

21 MR. RISLOV: And Xcel does perform IRPs, you
22 know, on a consistent timetable.

23 THE WITNESS: Yeah.

24 MR. RISLOV: And that issue has come up with
25 Black Hills. And while we don't have any specific law in

1 state about the filing of IRPs, it's certainly been an
2 issue that's been on the Commission's mind for at least
3 two decades.

4 But what do you see -- and I make a comparison
5 between Xcel, who's likely to add several hundred
6 megawatts possibly a year of new capacity of one sort or
7 another, and then Black Hills.

8 What should the timetable be for Black Hills in
9 preparing IRPs?

10 THE WITNESS: I would recommend a three-year
11 cycle, that they would file an IRP every three years.

12 MR. RISLOV: I think that's all I have. Thank
13 you.

14 THE WITNESS: You're welcome.

15 MR. SMITH: Any additional Commissioner
16 questions?

17 Commissioner Kolbeck?

18 COMMISSIONER KOLBECK: No.

19 MR. SMITH: I have one quick question. I
20 haven't asked a single question yet so I better do that.

21 If you would, Mr. Evans, many, if not
22 universally, systems in a world of economics are subject
23 to the law of diminishing returns.

24 THE WITNESS: Yes, indeed.

25 MR. SMITH: Is the quest for capacity reduction

1 through DSM subject to that law?

2 THE WITNESS: Yes. I would say it definitely
3 is.

4 MR. SMITH: Thank you.

5 MR. RISLOV: John, can I ask one more?

6 MR. SMITH: Mr. Rislov.

7 MR. RISLOV: I'm sorry, but I did want to ask
8 one more question. And I asked it of the witness
9 yesterday so it's only fair I bring it up today.

10 But in reading through the testimony, it appears
11 that in some cases there's an assumption that there will
12 be no growth in energy consumption, that with E -- energy
13 efficiency or demand side measures that there will be
14 a -- a net negative trend in the amount of capacity
15 needed.

16 And perhaps, you know, I ask that question
17 because I have been participating with a group within the
18 Midwest ISO and we had looked at various futures. But
19 looking at all the new applications for electricity and
20 what appears to be growing applications, we did not pick
21 a reference case with negative capacity growth.

22 And it appears to me that's -- it seems to be
23 intuitive after looking at all of this that we're just
24 going negative with these various programs. And even
25 with energy efficiency savings do you see the need for

1 capacity increasing in the Black Hills service area?

2 THE WITNESS: Yes. I believe it will continue
3 to increase. Energy efficiency programs will, I think,
4 help to reduce the growth rate, but I don't believe they
5 will remove the growth rate completely. At least that's
6 been my experience.

7 And I don't -- I don't see a reason that
8 Black Hills' territory would be different. Especially in
9 the area of peak demand. Peak demand is a difficult
10 thing to get ahold of.

11 There are programs that can address directly
12 peak demand such as interruptible rates and such as real
13 time pricing of power to encourage people to shift their
14 usage into off-peak hours. Load control programs.

15 But to actually send peak demand growth into the
16 negative area, I couldn't see that happening. I suppose
17 it's possible, but I think it's very unlikely.

18 MR. RISLOV: Thank you.

19 MR. SMITH: Any other Commissioner questions of
20 Mr. Evans?

21 With that, I usually allow a follow-on
22 opportunity for additional cross following the
23 Commissioner questions, and then I'll turn back to Staff.

24 Any questions?

25 MR. MAGNUSON: No questions on behalf of

1 Black Hills Power.

2 MR. SMITH: Mr. Khorroosi?

3 MR. KHOROOSI: No questions. Thank you.

4 MR. SMITH: Thank you. Ms. Cremer.

5 MS. CREMER: Staff would have no redirect. And
6 I would note that that concludes Staff's presentation of
7 evidence.

8 MR. SMITH: Okay. Thank you.

9 At this point then I take it where we are at,
10 Mr. Khorroosi, is your time to call your witness. Is that
11 where we're at?

12 MR. KHOROOSI: Yes, sir. That's my
13 understanding.

14 MR. SMITH: Okay. Thank you. Please proceed at
15 your convenience then.

16 MR. KHOROOSI: Thank you. We call
17 Don Frankenfeld.

18 (The witness is sworn by the court reporter)

19 DIRECT EXAMINATION

20 BY MR. KHOROOSI:

21 Q. Good morning, Mr. Frankenfeld.

22 A. Good morning.

23 Q. Could you briefly introduce yourself to the
24 Commission.

25 A. Let me know if I overmodulate. Sometimes I get

1 excited.

2 My name is Don Frankenfeld. I am an economist
3 living in Rapid City, South Dakota.

4 Q. Okay. And what is your company called?

5 A. Frankenfeld Associates.

6 Q. Have you -- have you testified before this
7 Commission before?

8 A. I have never testified before this Commission.

9 Q. Okay. Have you ever testified about economic
10 issues?

11 A. I have done that often, yes.

12 Q. Okay. Could you give a brief summary of your
13 education and work experience?

14 A. I grew up here in South Dakota, graduated from
15 Rapid City High School and attended Yale and graduated in
16 1970 with a National Merit Scholarship. Worked
17 intermittently as -- well, for a while as an economist
18 and an investment analyst in Connecticut.

19 Then moved to Los Angeles and did the same thing,
20 investment analysis, portfolio management, and
21 economics.

22 And in 1973 Senator -- Commissioner Hanson called me
23 Senator yesterday and I enjoyed that but it's making me
24 feel awfully old and so too is this resume.

25 In 1973 I attended Harvard Business School and

1 graduated in 1975 with a master's in business
2 administration.

3 There was an interval of several years during which
4 I worked as an economist or as a portfolio -- well, as a
5 stockbroker for Piper Jaffray E.F. Hutton. During that
6 time Commissioner Hanson and I served together in the
7 State Senate.

8 In 1987 I received a Bush Foundation Fellowship, a
9 leadership fellowship it's called, and used that to
10 return to Harvard to the Kennedy School of Government
11 where I received a master's in public administration.

12 And while I was there I had already been testifying
13 for some time as an economic expert, and I studied
14 additional programs or courses in economics as well as
15 economics in law and finance.

16 You asked for education. I think you asked also for
17 experience, did you?

18 Q. Yes, I did.

19 A. Okay. I have worked as a consulting economist or a
20 testifying economist for about 30 years now. Initially
21 it was part time. Of late it's become essentially full
22 time.

23 I did start South Dakota's first venture capital
24 company, also probably its smallest, called Dakota
25 Ventures. That took a lot of time and a lot of effort

1 without very much to show for it. But aside from that
2 activity, most of my recent activity has been as a
3 testifying expert.

4 I've testified, oh, I suppose 200 times in -- well,
5 not in venues exactly like this but testified under oath.
6 And about half of my work is outside the State of South
7 Dakota.

8 I spent a lot of time -- and this would take us down
9 a rabbit hole you're probably not interested in
10 pursuing -- testifying as an expert before the
11 September 11 Federal -- Federal September 11 Victim
12 Compensation Fund.

13 It turns out that I testified before that
14 organization more than any other person, lawyer or
15 economist. Most of my cases, of course, are less
16 dramatic and less tragic than that. But in every case
17 I'm testifying about economics and the consequences of
18 economic decisions.

19 Q. Thank you. And did you file prefiled testimony in
20 this case?

21 A. I did.

22 Q. And are those -- and is your testimony and CV
23 admitted into evidence as RCC Exhibits 17 and 18?

24 A. I presume that that's the case, yes.

25 Q. And do you adopt those exhibits as part of your

1 testimony today?

2 A. I do.

3 Q. Mr. Frankenfeld, have you had the opportunity to
4 review both the direct testimony and rebuttal testimony
5 of Dr. Avera?

6 I'm sorry. I knew I was going to mess it up once.

7 A. And forgive me if I mess it up. The hospital is on
8 my mind. So, yes, I have read those documents and
9 listened yesterday to the testimony of Dr. Avera.

10 Q. Okay. And could you outline where you primarily
11 disagree with Dr. Avera's criticism of your analysis?

12 MR. SMITH: Mr. Frankenfeld, I'm just going to
13 step in for just a second. I just want to remind both
14 you, Mr. Khoroosi, and Mr. Frankenfeld to be cognizant if
15 you proceed down the road of getting into those things
16 which thus far at least are subject to the
17 confidentiality filing rule here, and just so we think
18 about that as we're going into it. And let us know
19 before we step into that, okay, so we can take the
20 necessary steps.

21 MR. KHOROOSI: We will. Thank you.

22 MR. SMITH: Okay. Thank you very much.

23 A. Yes. As I listened to Dr. Avera by telephone
24 yesterday, I had three principal objections to what he
25 said. And, of course, I have a number of concerns about

1 his rebuttal testimony.

2 First, Dr. Avera was rather roundly critical of my
3 analysis, and I assume there will be an opportunity to
4 discuss that in more detail. But among the criticisms
5 was that my analysis was submitted -- my testimony was
6 submitted I think in late April and that a great deal
7 of -- not a great deal. He said time has passed and
8 there have been some dramatic changes in our economy
9 since then. And the implication was I think the work
10 I've done a couple of months ago was no longer
11 appropriate or relevant.

12 And I just wanted to make it clear that in that
13 two-month period of time, yes, there's been a lot of
14 economic turmoil. The net result of it is that interest
15 rates have declined modestly. Long-term treasuries are
16 down several basis points from where they were. And I do
17 not believe that those changes justify changes in my
18 testimony.

19 I do believe that they make my testimony very
20 modestly more conservative than it was. That is to say
21 that declining interest rates would reduce the calculated
22 costs of capital that would otherwise be part of my
23 analysis. So I wanted to correct the concern that he
24 expressed there.

25 Secondly, Dr. Avera in his initial testimony, in his

1 rebuttal, and yesterday in his verbal testimony spent a
2 lot of time on the distinction between objective and
3 subjective. And I believe it is -- well, I don't want to
4 use a barnyard epithet, but I think the distinction is
5 inappropriate. That my analysis is indeed subjective.
6 So too is his.

7 There's nothing wrong with looking at guide stars,
8 looking at information that is available from other
9 sources, in particular, return on investment or cost of
10 capital to other entities that may be regarded as similar
11 to Black Hills Corporation. So there's nothing wrong
12 with assembling that data.

13 But there is a great deal wrong with suggesting that
14 the analysis that arises from that is objective.
15 Dr. Avera's analysis is not objective. And his continued
16 use of that phrase and the continued distinction between
17 objective on the one hand and subjective of the other is
18 flat wrong.

19 He made an objective judgment about -- a subjective
20 judgment about what was an appropriate range of rates of
21 return. I'll be cautious not to cite those returns right
22 now.

23 I made an analysis of appropriate ranges of rates of
24 return, and so did the Staff. In every case those were
25 sophisticated analyses and they were subjective analyses

1 and ultimately you will be making your own subjective
2 decision about what is reasonable and fair.

3 So I take great exception to his characterization of
4 my work as cursory. Perhaps he was searching for another
5 word and meant concise. Sometimes being concise and
6 right is better than being prolix and wrong. And I
7 suggest that he was a little harsh in his suggestion that
8 my work is cursory or superficial.

9 Finally, Commissioner Hanson asked a question that
10 to me cuts to the heart of the case yesterday. And it
11 had to do with the rating on -- the credit rating of
12 Black Hills Corporation, which is BBB-.

13 Commissioner Hanson asked Mr. Avera whether that
14 somewhat deficient credit rating, at least not a stellar
15 credit rating, affected the cost of capital and whether
16 it, in fact, reflected in some measure a bad regulatory
17 environment for Black Hills Corporation. I'm making
18 inferences here, Commissioner, but it seemed to me that
19 that was your question.

20 And, furthermore, then if the Commission were to
21 allow a higher rate of return on equity and on debt,
22 would that not restore the bond rating to something
23 higher than BBB-? And if that were the case, wouldn't
24 that ultimately be a benefit both to rate payers and to
25 shareholders? That was the thrust of the question, as I

1 understood it.

2 And Dr. Avera jumped on that and said, oh, yes, it
3 would make a big difference. And I think potentially it
4 would. I agree with that part of it. But he also said
5 that the BBB rating arises I think he said exclusively
6 from the regulatory environment that he said in looking
7 at the reviews that had been written by the rating
8 agencies he saw no mention of the nonregulated activities
9 of the utility.

10 That's wrong. I was not able to see a Moody's
11 report. If there was one, I've overlooked it. But in
12 the voluminous exhibits here there are reports from
13 Standard & Poor's and from Fitch's that talk about the
14 credit rating of Black Hills Power and talk, among other
15 things, about the risk and the volatility of the
16 nonregulated utilities -- nonregulated businesses.

17 Not at all surprising. When a company invests, as
18 Black Hills did once, in fiberoptic network and it, well,
19 to use a technical term, it goes to hell, that reflects
20 upon the value of the company. It reflects on the risk
21 that the company has taken. It reflects on the credit
22 rating of the company.

23 So to ignore the effect that occasional missteps --
24 every company makes occasional missteps -- that the
25 company made with respect to its nonregulated entities,

1 that has had an effect -- we can't quantify it -- on the
2 bond rating. And so simply to raise the rate of return
3 so as to restore the bond rating is, at best, a partial
4 solution.

5 So those were the three fundamental concerns I had
6 from listening to Mr. -- Dr. Avera's testimony
7 yesterday.

8 Q. Thank you. I'd like to get a little bit into
9 Dr. Avera's selection of the various proxy groups that he
10 used to determine what he believes to be a reasonable
11 rate of return -- or return on equity.

12 Let's start with looking at the nonutility proxy
13 groups. In your opinion, how -- how accurately do those
14 proxy groups compare with -- or how closely do they
15 compare with Black Hills Power from an investment
16 standpoint?

17 A. I don't think they compare at all. I will
18 acknowledge, however, that it is appropriate to look, as
19 Dr. Avera did, at alternate seekers of capital. That's
20 what he's doing. He's looking at the 16 proxies that are
21 utility companies.

22 And then he's looking at a broader universe, which I
23 think was, if I remember right, 61 nonutility proxies.
24 And he's saying, in essence, or did say in his sworn
25 testimony that those nonutility companies are a

1 reasonable representation of the same risk profile that
2 Black Hills Power is facing and, therefore, they are a
3 reasonable measure of what the appropriate return on
4 capital ought to be for Black Hills Power.

5 He's wrong. He's not wrong that there are companies
6 out there that have a risk profile comparable to Black
7 Hills Power. In this group of 61 -- and I printed out
8 charts and I looked at betas and I did a lot of analysis
9 really in the last 24 hours looking at this, I think
10 the -- I think UPS is a reasonable match in terms of its
11 risk profile with Black Hills Power. I think there was
12 one other there that also was close. I don't remember it
13 right now.

14 But 3M Company is not a good proxy to measure
15 Black Hills Power against. In particular, number 32 on
16 his list, Intel. It's ridiculous to think that Intel and
17 Black Hills Power are competing in the same marketplace
18 for capital. They both are looking for capital, but the
19 investor who is considering Intel is not an investor who
20 is easily going to be lured into investing in Black Hills
21 Power and vice versa.

22 So this proxy group, interesting idea, poorly
23 executed, not objective, not useful. I'm talking now
24 about the nonutility proxy group.

25 We might as well -- I presume we may talk about this

1 more when we talk about the 16. But look, please, if you
2 have it in front of you, at the cost of equity estimates
3 he makes for these 16 companies. And look at the huge
4 variation.

5 Just looking at the first company arbitrarily, 3M,
6 Value Line accords them a cost of equity of 7 and a half
7 percent. IBES says, no, no. It's 13.8 percent, almost
8 double. And First Call says, no. It's 14 percent. Even
9 higher.

10 You'll find that kind of disparity -- and it's an
11 erratic disparity. It's not that Value Line is
12 consistently the lowest and Zacks is consistently the
13 highest. It's that they run all over the gamut, which is
14 to say they're not statistically useful for the analysis
15 and, therefore, that part of Dr. Avera's conclusion
16 doesn't hold -- it doesn't hold water in my opinion.

17 Q. Thank you. And what is your opinion of his utility
18 proxy group?

19 A. Well, I'm -- if I were to give him a D- for his
20 nonutility proxy group, I would give him a higher grade
21 for his utility proxy group but not a lot higher.
22 Probably a -- I'll give him a B-.

23 Once again, we're at this question of objectivity.
24 And he makes a great deal of the fact that he has taken
25 this from -- this list of 16 from a Value Line, among

1 others, and he gives Value Line a lot of credit for their
2 objectivity.

3 Let's talk just briefly what that means. If --
4 Value Line uses a proprietary, so we don't really know
5 what's behind the screen, computer program to develop the
6 ratings that it uses. It has five ratings, and at least
7 allegedly those ratings have some predictive value.
8 Although Value Line's own mutual fund over the last
9 several years has vastly outperformed the rest of the
10 market. So one might wonder whether their ratings are
11 useful or not.

12 But whether or not they are, they are subjective,
13 not objective. They're objective in this respect. If I
14 wanted to invest in companies that began with the letter
15 C, I could do a computer screen, and I could get a list
16 of 100 companies that begin with the letter C. And
17 because it was generated by computer, I guess I could say
18 that it was objective.

19 But, of course, it depends upon the criteria that
20 you input into the computer in the first place. Those
21 criteria, whether done by Value Line or by you or by me,
22 are subjective. And, therefore, we're not getting rocket
23 science here. We're not getting something upon which we
24 should rely very heavily.

25 I said I gave him a higher grade. The higher grade

1 is these are utilities. Utilities do tend to work
2 generally together. There's a fair degree of you would
3 call it correlation or covariance. So that's better than
4 nothing. And he's using companies that are BBB rated or
5 BBB- rated. That's also a useful criterion.

6 But, once again, we're left with a great range as we
7 look at the return on equity estimates or cost of capital
8 estimates from the agencies, Value Line, Zacks, IBES, and
9 the other. I don't remember right now. There's great
10 variation.

11 And, once again, it tells us, I think, that this is
12 not very useful to the Commission in determining what
13 should be an appropriate rate of return.

14 Q. Now you heard Dr. Avera criticize your treatment of
15 floatation costs.

16 A. Yes.

17 Q. What is your response to that criticism?

18 A. Well, score one for Dr. Avera. My analysis did not
19 directly take into account what he refers to as
20 floatation costs, the costs of actually placing equity or
21 placing debt.

22 I looked at the net cost to the company by some
23 measure that would include floatation costs. But it's
24 possible that I've overlooked it, and it's appropriate
25 that floatation costs should be included.

1 The magnitude of that figure is not high, but we're
2 talking about millions of dollars here. So it's about
3 19 basis points, I think.

4 Bear in mind that when he talks of floatation costs,
5 it's a range. So I need to be fair. It's 19 to some
6 higher number, perhaps 58 or something. That he
7 implicitly is implying -- is applying floatation costs to
8 the entire measure of the cost of capital to the company.

9 And most of the capital for this company has been
10 raised already. It's imbedded, in other words. So you
11 need to look at the incremental costs of incremental
12 capital. And they will raise incremental capital in the
13 future. And so it's, I believe, appropriate to include
14 floatation costs but not to apply it to the entire
15 capital base, which I think Dr. Avera -- it appears
16 that's what he does.

17 So am I a little low in my central analysis?
18 Perhaps I am. I came up, of course, with a range and so
19 did the Staff and so did Dr. Avera. But within my range
20 I think it's reasonable to think that probably a 19-point
21 basis point increase in what I consider fair and
22 reasonable might be a fair concession.

23 Q. Have you had an opportunity to review the Settlement
24 between Black Hills Power and the PUC Staff?

25 A. I have.

1 Q. And perhaps at this point we should go in camera
2 because there will be discussion of some confidential
3 information.

4 CHAIRMAN JOHNSON: Mr. Smith, I would just --
5 again, to the extent the questions can be asked in a
6 general way, I mean, we all can know the specific numbers
7 you're referring to, and we can still ask the questions.
8 You don't think you can ask the questions without a
9 general reference, Mr. Khoroosi?

10 MR. KHOROOSI: Well, Mr. Chairman, we will be
11 discussing specific numbers. And so I would hesitate
12 to -- I would hesitate to proceed on the chance that we
13 may stumble into some confidential information.

14 CHAIRMAN JOHNSON: Okay.

15 MR. KHOROOSI: I will try to make it brief.

16 CHAIRMAN JOHNSON: Yeah. Let's keep the in
17 camera as brief as you reasonably can.

18 We're off.

19 (The following proceedings are confidential)

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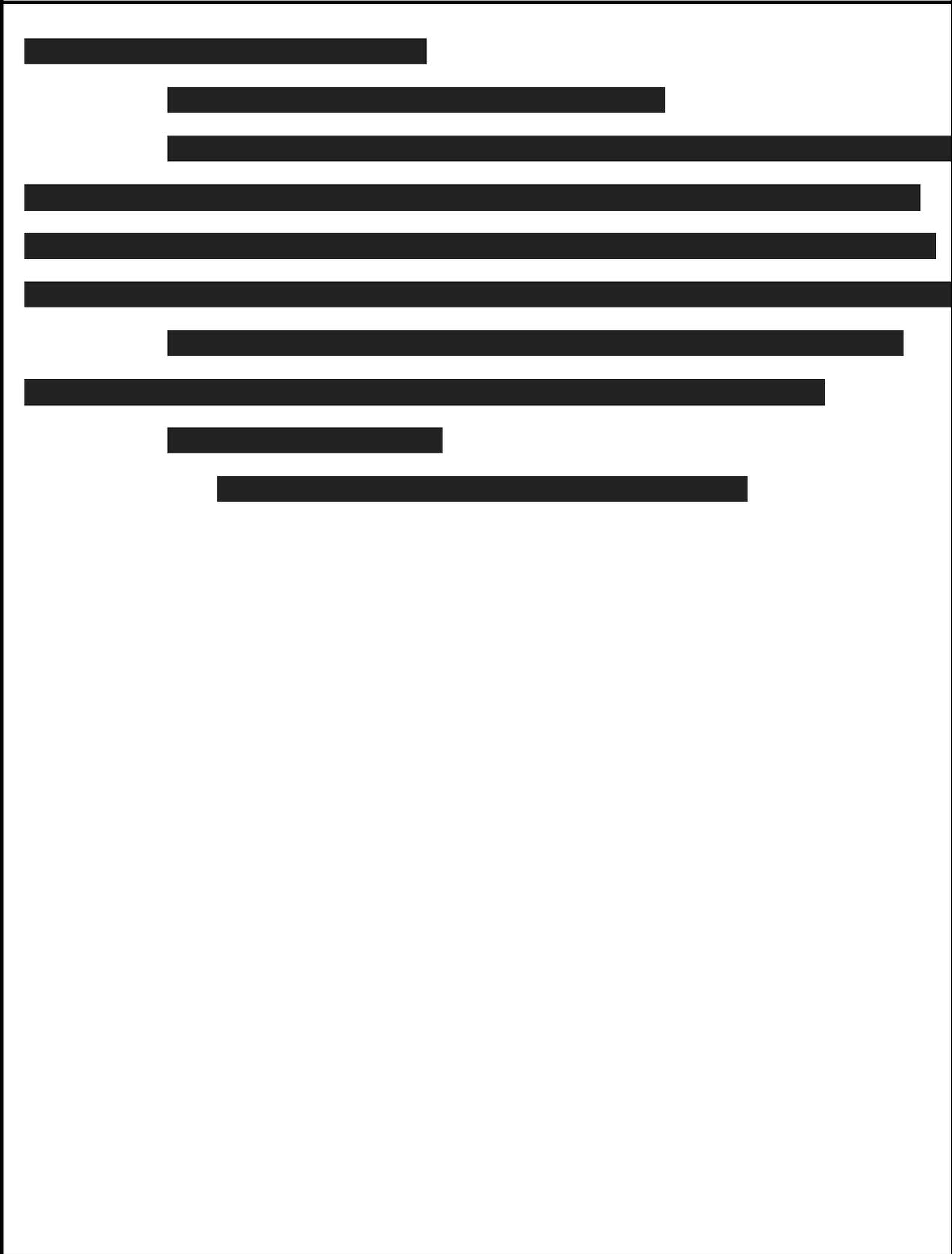
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1 CHAIRMAN JOHNSON: We're back on the internet.
2 We haven't actually had any questioning of any witness.
3 We're still trying to work to get the phone lines squared
4 away.

5 MR. SMITH: Okay. We have verified that there
6 are no persons on the line other than those people who
7 are subject to appropriate protective order here. So we
8 can go in camera then.

9 (The following proceedings are confidential)

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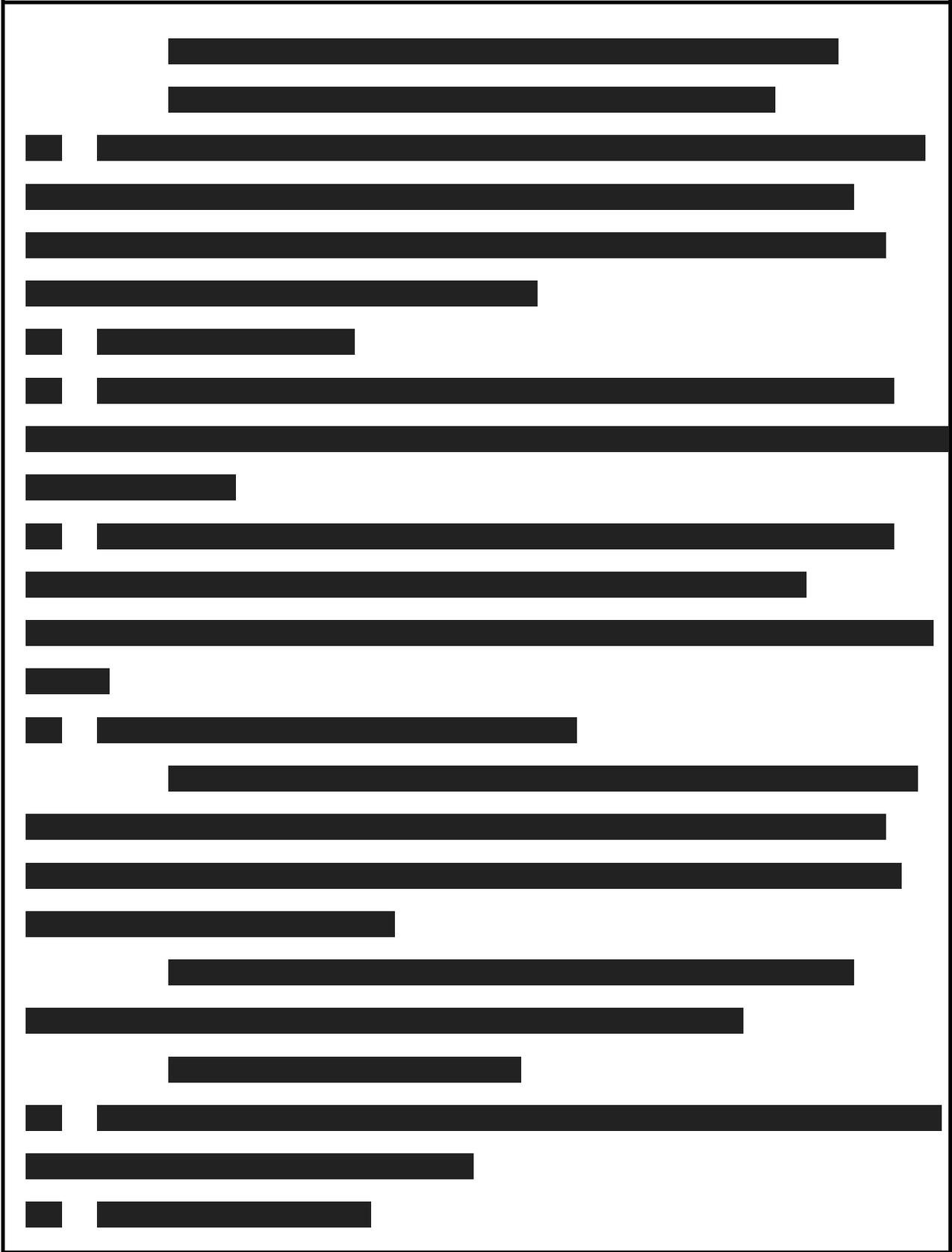
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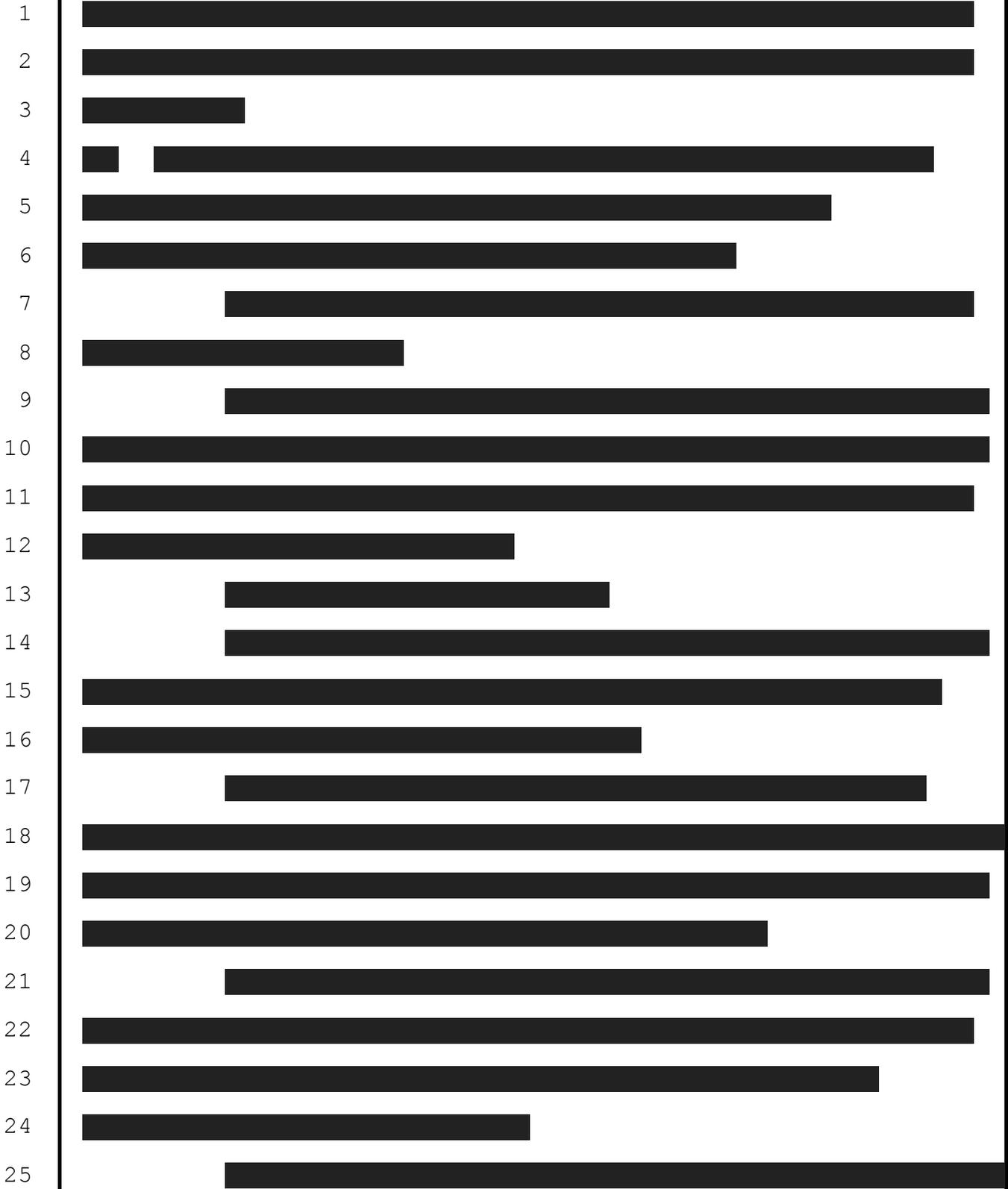
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1 MR. SMITH: Go ahead. And we're no longer in
2 camera. And, again, the only numbers that are subject to
3 the confidentiality are the settlement ROE number and the
4 capital structure; is that correct?

5 MR. MAGNUSON: There are some other portions of
6 the documents that are confidential, but in so far as
7 this witness --

8 MR. SMITH: Relative to this topic.

9 MR. MAGNUSON: Relative to this witness's
10 testimony, I believe it's just those two.

11 MR. SMITH: Okay. Thank you.

12 MR. KHOROOSI: Okay. I believe that's all the
13 questions I have for this witness. Thank you.

14 MR. SMITH: Thank you. Mr. Magnuson -- and I'm
15 going to assume that it's the pleasure of -- is it the
16 wishes of the Commission that we plow ahead and let
17 Mr. Frankenfeld conclude and head on his way back home
18 and not worry about breaking for lunch right now?

19 Okay. Please proceed, Mr. Magnuson.

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

21 CROSS-EXAMINATION

22 BY MR. MAGNUSON:

23 Q. Mr. Frankenfeld, my name is Lee Magnuson. I
24 represent Black Hills Power.

25 Now you indicated that you did listen to Dr. Avera's

1 testimony over the internet yesterday; is that correct?
2 Or by telephone?

3 A. By telephone, yes.

4 Q. You would agree with me, wouldn't you, that this
5 Commission should go with their own recollection of what
6 Dr. Avera said or with the transcript of this proceeding
7 as compared to your recollection?

8 Would you agree with that?

9 A. The transcript, yes.

10 Q. Now you used the word "sufficient" when you
11 described your testimony, what you thought an appropriate
12 ROE should be; is that correct?

13 A. That's correct.

14 Q. And the word "sufficient" is not in the statutes
15 that are to be applied by this Commission, are they?

16 A. I understand that. I believe the word "sufficient"
17 is a useful way of determining the meaning of fair and
18 reasonable.

19 Q. But you will agree with me that the word
20 "sufficient" is not in the statute; is that correct?

21 A. To my understanding, that's right.

22 Q. Would you agree with me that return on equity is
23 just when -- one component of a settlement agreement that
24 may cover a myriad of additional subjects?

25 A. I would.

1 Q. Now did I understand your testimony that you have
2 never previously testified before this Commission; is
3 that correct?

4 A. I'm a virgin.

5 Q. So I would assume then you have not previously
6 testified before this Commission in any utility rate
7 case; is that correct?

8 A. That's correct.

9 Q. You haven't testified before this Commission in any
10 utility rate case to discuss ROE; is that correct?

11 A. That's correct.

12 Q. You haven't testified before this Commission with
13 regard to capital structure; is that correct?

14 MR. KHOROOSI: I'll object. This has been asked
15 and answered.

16 MR. SMITH: Overruled.

17 A. I have not testified before this Commission or any
18 predecessor Commission in South Dakota or any other
19 Public Utilities Commission.

20 Q. That's my next question. Because that did not come
21 out during your direct testimony. Have you testified
22 before any other regulatory commission within the
23 United States?

24 A. Well, Mr. Magnuson, that would depend a little
25 bit --

1 MR. SMITH: Mr. Frankenfeld, could you pull the
2 mic in a little bit? We're kind of losing you here, and
3 for the folks listening on the internet.

4 CHAIRMAN JOHNSON: Just as a suggestion. You're
5 going to want to turn and face him. So rather than move
6 closer to the mic, move the whole mic so you still --

7 THE WITNESS: Good idea. Thank you. Is that
8 better?

9 A. Mr. Magnuson, there would be some definitional
10 question, I suppose, about whether an arbitrator's group
11 is a commission or whether the Victim Compensation Fund
12 is a commission.

13 I don't think of either of them as commissions in
14 the way I think of the Public Utilities Commission. So
15 making allowance for that, I have not testified before
16 another regulatory body.

17 Q. I'll further define my question. Have you
18 previously testified before any regulatory commission
19 that oversees utility rate cases?

20 A. No.

21 Q. So you have not testified in any proceedings before
22 a regulatory commission that deals with utility rate
23 cases on return on equity; correct?

24 A. Or on any other matter, that's correct.

25 Q. Okay. Now you have in your testimony what I would

1 refer to a methodology to arrive at an ROE; is that
2 correct?

3 A. Yes.

4 Q. Can you point me to any regulatory case within the
5 United States or this Commission that has accepted the
6 methodology that you used in determining your ROE number
7 for Black Hills Power?

8 A. Of course, I won't be able to cite a case to you. I
9 can cite Graham and Dodd, which I brought with me, which
10 talks about the way in which return on equity is
11 calculated.

12 And, of course, the Commission, this Commission or
13 any other, would look at return on equity pretty much the
14 way a common citizen would look at return on equity.
15 It's not a -- it's not an element of calculation that is
16 within the sole purview of a commission.

17 And it's certainly something that I as an analyst or
18 a portfolio manager would be very interested in, and so
19 too would the people to whom I deliver my investment --
20 delivered, past tense, my investment reports. It's not a
21 strange concept.

22 Q. Well, I appreciate your answer. Now I'm going to
23 ask the same question again and ask you to answer the
24 question yes or no. Okay.

25 Has the methodology that you used in determining the

1 ROE here been accepted by any regulatory commission with
2 regard to the ROE number that you determined?

3 Can you point us to any regulatory commission that
4 has accepted your methodology?

5 A. I cannot.

6 MR. MAGNUSON: Thank you. No further questions.

7 MR. SMITH: Commission Staff.

8 MS. CREMER: Staff has no questions.

9 MR. SMITH: Okay. Well, then we'll turn to
10 Commissioner/advisor questions.

11 CHAIRMAN JOHNSON: Mr. Frankenfeld, good
12 morning.

13 THE WITNESS: Good morning. Good afternoon.

14 CHAIRMAN JOHNSON: Oh, yes. Absolutely. Good
15 afternoon.

16 You gave a range in your testimony, and that
17 range was in confidential.

18 I think it was 9.38 to 9.78; is that right?

19 THE WITNESS: Not 9.38. I think it was 7.38.

20 CHAIRMAN JOHNSON: I'm sorry. That's right.
21 7.38 to 9.78.

22 THE WITNESS: Yes.

23 CHAIRMAN JOHNSON: I'm making allowance for your
24 19 basis points for floatation and so I'm adding on the
25 low end 7.38 to .19 and I'm getting 7.57.

1 Are you aware of that authorized return on
2 equity for any investor-owned utility in this country?

3 THE WITNESS: I'm not aware of it, and I -- I
4 think it would be at least in part, Commissioner, a
5 function of when a rate proceeding was filed. In other
6 words, that rate, as I have already acknowledged, is by
7 historical standards low.

8 But interest rates and competing investments are
9 also much lower than they have been historically. The
10 answer to your question is I'm not aware of one, and I
11 wouldn't expect to see a number at that level except for
12 a recent rate case.

13 CHAIRMAN JOHNSON: And you're not aware of any
14 recent rate case that has allowed a return that low?

15 THE WITNESS: I have not looked at the record,
16 no.

17 CHAIRMAN JOHNSON: Understanding, of course,
18 that you're giving a range there, I will take your
19 midpoint, which I think you focus much of your testimony
20 on 8.35. Again, then making an allowance for your 19
21 basis points and floatation, that gives us 8.54 percent,
22 I think.

23 THE WITNESS: Yes, sir.

24 CHAIRMAN JOHNSON: Are you aware of any rate
25 case in recent history that has allowed an 8.54 percent

1 return on equity for an investor-owned utility in this
2 country?

3 THE WITNESS: The answer is I'm not, nor would I
4 expect to be aware of such things.

5 CHAIRMAN JOHNSON: Then I'll go to your high
6 end, which was in your testimony listed as 9.78. Making
7 allowance for the 19 basis points for floatation, that
8 brings me to 9.97.

9 Perhaps, Mr. Smith, at this time it would be
10 appropriate to go in camera.

11 MR. SMITH: I think so. And do you think we can
12 have relative confidence on the phone line since we just
13 checked them? I think we can.

14 MR. MAGNUSON: That's acceptable with us. Thank
15 you.

16 MR. SMITH: Okay. I'll ask my question now, and
17 then we'll go off camera for your response.

18 My question is going to be given that your high
19 range is 9.97 and then I'm going to be asking about that
20 compared to the ultimate rate that the Settlement calls
21 for. And we'll go in camera.

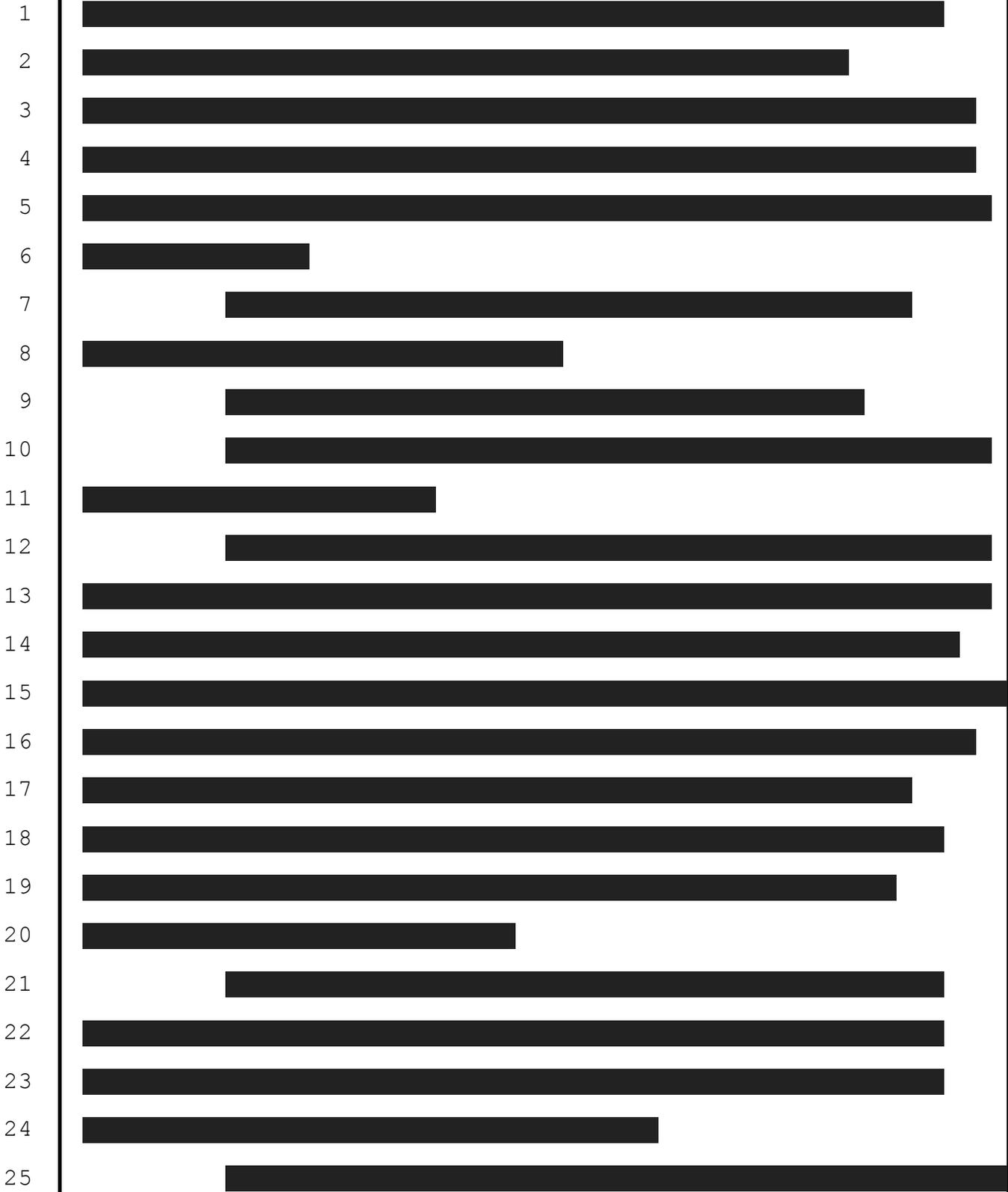
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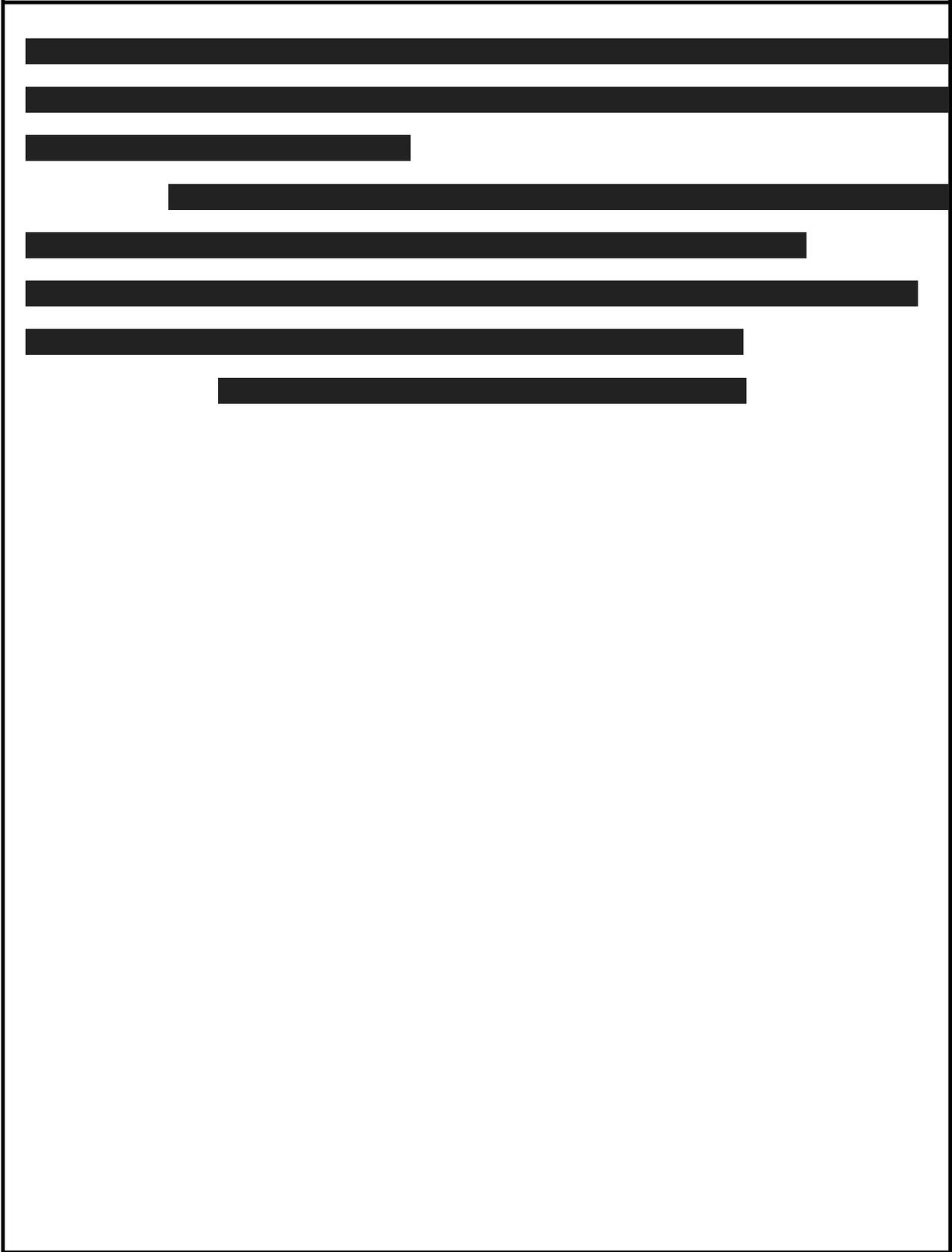
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1 CHAIRMAN JOHNSON: We're out of camera.

2 My question to Mr. Frankenfeld I think is of
3 general enough nature we don't need to be in camera.

4 The question is to what extent did you review
5 the authorized rate of returns that other commissions
6 have allowed for other investor-owned utilities?

7 THE WITNESS: And forgive me. As you were
8 reading the question I was reminded that I have, in fact,
9 found a few authorized rates of returns in the course of
10 my research. And they are higher than the figures that I
11 used, and they are much older than the figures that I
12 used. And that was just because I was not able.

13 Apparently, other commissions are secretive
14 also. They don't want people to know, I guess, what the
15 rate of return is. I'm not saying it's not somewhat
16 available, but I wasn't able to find a recent case that
17 had a rate of return. And I was about to explain why I
18 didn't think that was the most relevant information.

19 One is because the passage of time deeply clouds
20 the value of those sorts of decisions. Another is that
21 the environment for regulatory authorities varies greatly
22 from one part of the country to the next.

23 It used to be that northeast utilities had to
24 deal with regulators in Connecticut and Massachusetts who
25 I think would perhaps find 2 or 3 percent to be a really

1 good rate of return. Whereas, if you went to Arizona or
2 Florida, the commissions there tend to be more -- one
3 wouldn't want to use the word "liberal" but more
4 accommodating to the needs of utilities than would be the
5 case elsewhere.

6 CHAIRMAN JOHNSON: Well, just to clarify, I
7 mean, I think you were using numbers for illustrative
8 purposes, but, I mean, are you suggesting that there
9 were -- that there have been utility commissions in
10 New England that have allowed 2 or 3 percent as a rate of
11 return?

12 THE WITNESS: I'm not suggesting that, sir. I'm
13 suggesting that in my experience New England regulators,
14 and perhaps there are some exceptions, tend to be rather
15 draconian in their view of what's fair and reasonable to
16 a public utility company.

17 CHAIRMAN JOHNSON: Given that your experience
18 has indicated that those authorized rates of return in
19 New England have been more draconian, even understanding
20 some of the other returns you've looked at have been
21 older, I mean, have even the draconian authorizations
22 allowed a return on equity that is near your midpoint?

23 THE WITNESS: I don't know.

24 CHAIRMAN JOHNSON: That's all I have, Mr. Smith.

25 MS. CREMER: I do have a question that -- I

1 mean, I can go back later and ask it, but as long as
2 we're in confidential.

3 CHAIRMAN JOHNSON: We're not.

4 MS. CREMER: Oh, we went out. Thanks. Never
5 mind.

6 MR. SMITH: Other Commissioner questions? And,
7 again, we will have to remember the capital structure and
8 settlement rate are confidential numbers.

9 Thank you.

10 COMMISSIONER KOLBECK: Mr. Frankenfeld, you had
11 mentioned -- I have actually different questions on the
12 Intel. You had mentioned to throw that out, that they
13 weren't different.

14 But could you explain to me why they shouldn't
15 be compared, Black Hills Power and Intel? Could you
16 explain that to me again?

17 THE WITNESS: Sure. I'll try.

18 First, one of the measures of return on capital
19 that Mr. Avera employs involves beta. Beta is
20 controversial and it's not very reliable, in my opinion,
21 but it's one of the measures of comparability.

22 You'd expect a utility -- I should define beta,
23 I guess, but I'll finish my sentence. You would expect a
24 utility to have a beta of 1 plus or minus 10 percent,
25 let's say. You would expect Intel to have a beta that's

1 much higher than that, perhaps 2 or 3. And now I should
2 define beta.

3 Beta is a measure of the -- it's done through a
4 regression analysis, and it's a measure -- a theoretical
5 measure of the way in which a given stock responds to a
6 change in the stock market.

7 So a company -- if beta were truly predictive
8 and truly measurable, a company with a beta of 1, if the
9 stock market was up 10 percent, you would expect that
10 company to be up 10 percent.

11 If the company had a beta of 1.5, you would
12 expect the company to -- when the market is up 10, you
13 would expect the company to be up 15 percent, 1.5 times
14 the number.

15 Beta or the general question of volatility,
16 which is what beta tries to get at, is a reasonable thing
17 to take into consideration. Volatility is another word
18 for risk. And Intel is a great company. I love it.
19 It's much riskier and also potentially much higher return
20 than Black Hills Power & Light. Its cost of capital is
21 multiples of the cost -- I don't know what it is. I
22 guess there are numbers here.

23 Its cost of capital is much higher than the cost
24 of capital of Black Hills Power & Light, and that's
25 because it's a growth company. So if you're running

1 Intel and you need capital, you're going to want to try
2 to get that capital through the debt market because if
3 you sell stock, you're giving people a continuing forever
4 ownership in that stock, and because you're growing, the
5 cost of that stock -- if you're growing 30 percent a
6 year, it's going to be 30 percent higher next year.

7 That's not the case with Black Hills Power &
8 Light. Its beta varies from -- well, a Value Line
9 measure, which is Avera's favorite, I guess. It's .8.
10 It also, according to Standard & Poor's, is 1.5. It
11 doesn't compare to Intel.

12 COMMISSIONER KOLBECK: But wouldn't that prove
13 the point for a higher return on equity? If they're both
14 competing for capital, as you said, wouldn't that mean
15 just the opposite, that people would buy the Intel
16 instead of the Black Hills Power if they're both
17 competing for the same capital?

18 Wouldn't you need to be a little bit closer to
19 that?

20 THE WITNESS: My argument is that only in the
21 most abstract sense are they really competing for the
22 same capital. It's a little bit like an eyedropper in
23 the ocean. It does create arguably ripples, and the
24 ripples of an Intel equity offering or debt offering will
25 have some trivial, immeasurably small effect,

1 infinitesimal effect, on utilities.

2 But by and large the person, the investor and
3 both Intel and Black Hills are institutional investments.
4 An institutional investor who is considering Black Hills
5 Power & Light is considering as alternatives other
6 utilities, is also considering as alternatives income
7 investments, perhaps even treasury securities.

8 That person is at the very conservative end of
9 the spectrum, and when he or she reads that Intel has
10 done a stock offering, they're interested in that. But
11 it doesn't meet the same needs of the portfolio.

12 So if you want Black Hills Power to try to
13 compete against Intel for capital -- it wouldn't make
14 sense -- you could do it by tripling or quadrupling
15 Black Hills' return on investment. That would allow a
16 return. That would make your rate payers really angry.
17 But it would excite investors perhaps to the point where
18 they would consider it as an alternative.

19 Barring that sort of really extreme kind of
20 decision, which I think is -- I think we would agree is
21 absurd. I don't think you're likely to do that. Barring
22 that, they're in different markets. Different capital
23 markets.

24 COMMISSIONER KOLBECK: Are you familiar with the
25 term "ring fencing"?

1 THE WITNESS: Rena?

2 COMMISSIONER KOLBECK: Ring. R-I-N-G. It's
3 about a utility and risk.

4 I noticed at the end of your testimony you
5 encourage the company to maybe take more risk, which
6 would increase their earnings.

7 I guess I have a little concern with that, given
8 the history of bankruptcy in South Dakota and utilities.
9 What would you -- just give me your opinion how -- is
10 60 percent compared to a 50 percent -- is 75 too high?
11 What's the highest you would go?

12 THE WITNESS: Well --

13 COMMISSIONER KOLBECK: Can you give me a range?
14 You gave us a range on the --

15 THE WITNESS: Sure. And the unsatisfactory
16 answer is it depends. I'm sorry. But -- and what I was
17 trying to say is not that I think Black Hills should
18 increase their leverage. What I was trying to say is if
19 they really feel the need for a higher rate of return,
20 whatever it is you allow them, they can jack up their
21 return by using more leverage.

22 And what would be an appropriate level -- I have
23 not -- I need to be careful in what I say. I have not
24 quarreled with the decision -- the capitalization
25 decision that has generally been agreed to. I think it's

1 generally in the -- it's in the right range.

2 Would the company be able to sustain more
3 leverage on the utility part of its operations? Yes, it
4 would.

5 And why do I say that? Because the utility part
6 of the operations are comparatively stable, secure,
7 predictable. It's a cash cow. It's a cash cow that the
8 company is currently using that's throwing off cash. The
9 cash is being used to make acquisitions and to get into
10 other riskier ventures. Nothing wrong with that.

11 And they could, if they chose, increase their
12 leverage by let us say 10 percent. And, again, I don't
13 think I'm violating anything because these are my own
14 numbers in my own testimony. They could go to 60 percent
15 if they chose.

16 And historically utilities were much higher than
17 that. 65, 70. Some uncontentionally got to 80 or 90.
18 That's not prudent. They ought not to do that.

19 COMMISSIONER KOLBECK: Now on -- with whatever
20 the return on equity was in this rate case, you had
21 mentioned years ago maybe it might not have been -- you
22 would have been okay with a number.

23 Rate cases cost a lot of money. To do this what
24 we're doing right now, they cost a lot of money.

25 Would you consider it a prudent thing for a

1 company to continue their rating, their bond rating --
2 that the return on equity might not be as low as it could
3 be today but it might be too low in five years? It might
4 be --

5 How would you balance that as far as the bond
6 approval or the rating of a company? How can you make
7 that last five years?

8 THE WITNESS: Well --

9 COMMISSIONER KOLBECK: By taking the low number.
10 I shouldn't -- do you think it would be prudent to take
11 the lowest number? How long do you think that would
12 last?

13 THE WITNESS: I have -- I have no way of
14 knowing. I acknowledged to you and to the utility that
15 the world changes sometimes dramatically in short periods
16 of time. That's why the Public Utilities Commission
17 exists.

18 And if circumstances change dramatically, an
19 unregulated company would make changes of its own to
20 accommodate the change in environment. In the case of
21 Black Hills they'd have to come to you and say, look,
22 things are different. We need a higher rate of return.

23 We don't have information now that tells us
24 Avera -- Dr. Avera thinks interest rates are going to be
25 higher, but nobody knows. We don't have information now

1 that allows us to protect ourselves. So it seems to me
2 the appropriate decision -- I realize you're the one
3 who's going to make it -- is what is sufficient today and
4 what is reasonably likely? That's not a very good
5 measure, but that's all you can do. What's reasonably
6 likely to adequately compensate the utility for what we
7 foresee?

8 We don't want to overcompensate. We don't want
9 rate payers to pay any more than they have to. If times
10 change and they need more money, that's when rate payers
11 should shoulder that burden.

12 COMMISSIONER KOLBECK: So and correct me if I'm
13 wrong, but I understand that as saying that you're not
14 necessarily saying the high or the low is your number.
15 Would you be more reticent to go with your mean or --

16 THE WITNESS: No. I'm not reticent to go
17 with -- it's my midpoint, not my mean. I think my mean
18 is -- let's put it in quotes. It's the right number.
19 And I've already conceded a few decimal points here and
20 there.

21 COMMISSIONER KOLBECK: Yeah.

22 THE WITNESS: I might be wrong. But I'm not
23 that wrong.

24 COMMISSIONER KOLBECK: All right. Thank you.

25 THE WITNESS: Yes, sir.

1 MR. SMITH: Other Commissioner/advisor
2 questions?

3 COMMISSIONER HANSON: Thank you, Mr. Smith.
4 Senator Frankenfeld.

5 THE WITNESS: Senator Hanson.

6 COMMISSIONER HANSON: It's good to see you
7 again.

8 THE WITNESS: Thank you. Good to see you.

9 COMMISSIONER HANSON: Three decades ago.

10 THE WITNESS: My hair is gray.

11 COMMISSIONER HANSON: On page 4 of your
12 testimony, direct testimony, you stated that "especially
13 in the context of current economic conditions," and you
14 were making that statement in regards to what the fair
15 rate of return should be.

16 Would not uncertain economic times mean that a
17 utility industry in order to compete for those dollars
18 would necessarily have to have a higher percentage?

19 THE WITNESS: Commissioner, I think I'm sorry to
20 phrase all of my questions -- my answers contingently,
21 but it depends. You're saying uncertain economic times,
22 and the question is what is the nature of that
23 uncertainty.

24 We do face, I think it would be fair to say,
25 uncertain economic times. We have for a while, and we

1 will for a while longer. But the consequence of those
2 uncertain economic times is, in general, a flight to --
3 two things have happened, and they're kind of working in
4 the same direction.

5 A sharp decline in interest rates. A sharp
6 decline in the return on investment to an outside
7 investor from a conservative investment. If I'm a
8 conservative investor, I don't have very many choices
9 today. And that means I'm willing to take a lower -- if
10 I go to the bank, I used to get a 7 or 8 percent return.
11 Now I might get a half percent or 1 percent on a CD.
12 Uncertain economic times have driven me to consider other
13 alternatives that might be safer.

14 Likewise, again, I don't want to recur to that
15 Intel question because I don't think that's a reasonable
16 measure. But people who are already invested in the
17 stock market -- the South Dakota Retirement Fund, which
18 has been hit pretty hard and has recovered, has
19 generally -- retirement funds generally are moving their
20 money away from the high risk, high potential return
21 investments and into more conservative investments. That
22 means a flood of capital lowers the cost of capital.

23 So tomorrow's uncertain times might justify a
24 higher rate. But today's uncertain times justify a lower
25 rate.

1 COMMISSIONER HANSON: However, within the
2 context of your answer you discussed -- well, let me
3 phrase it this way: As I did with Mr. -- I believe --
4 I'm trying to remember who the gentleman was. I think it
5 was Mr. Avera.

6 Mr. Khorroosi had made a point that the rating
7 was BBB-. And my question was, and you alluded to this
8 in your opening remarks, would that require the utility
9 to provide a higher rate of return to attract capital?
10 Because it would seem that it would.

11 And in your answer just now you seemed to allude
12 to that fact, that the flight of capital is such that
13 interest rates are being lowered more and more to attract
14 people to purchase products basically. That product
15 might be a CD. It might be a mortgage on the refinancing
16 of their home. But it's an attempt to attract that
17 capital.

18 THE WITNESS: Uh-huh.

19 COMMISSIONER HANSON: Quite vice versa, there
20 has to be a higher rate of return in order to attract
21 that capital to a business, especially a business that
22 has a lower bond rating.

23 So the question to you is the same. Would
24 that -- would that require the utility to provide a
25 higher rate of return to attract capital?

1 THE WITNESS: It was a great question yesterday.
2 It's a great question today.

3 The answer is yes. And I hope I'll be able to
4 explain that a little bit.

5 There are two things going on, and they're
6 certainly related to each other, but they are
7 differential. One thing that's going on which we've just
8 discussed is a flight to conservative investments. Okay.

9 The other question is among conservative
10 investments, which has to pay more for -- to entice an
11 investor? And the answer is a BBB- bond, somebody who is
12 selling that bond, has to pay more than somebody who's
13 selling a AAA bond.

14 And, in fact, the spread between the two is
15 probably higher now than it has been in the past. The
16 difference -- you don't just have to pay more. You have
17 to pay comparatively even more than you would have had to
18 pay a couple of years ago.

19 That's true. It's also true, I believe, that if
20 the company becomes sounder financially -- it's not
21 unsound, but if it became sounder financially, would that
22 mean that it would likely get a higher credit rating than
23 a BBB-? And the answer is yes, it would.

24 And then the question is how do we restore the
25 company to a greater sense of financial health? And one

1 way to do that is to provide a higher return on equity in
2 the regulated business. Okay. That makes rate payers
3 pay for restoring the company to financial integrity.

4 Another way is to say to the company, well, the
5 reason you're BBB- -- I don't want to say that this is
6 100 percent of the reason, by the way. The reason --
7 part of the reason that you're BBB- is not that you're
8 not getting a high enough rate of return from the
9 Public Utilities Commission. It's because you've made
10 some investment mistakes outside your regulated
11 utilities.

12 You've lost money. You've lost some
13 confidence of your investors. And that is why the rating
14 is down.

15 And that is a problem. Not of rate payers. Not
16 a legitimate problem of rate payers. It's a problem of
17 stockholders. They should take a hit. And in the real
18 world there's a Solomonic decision to be made here. I
19 understand that. And probably the answer is part of the
20 restoration to financial health is probably something
21 that rate payers are going to have to shoulder, and part
22 of it is something that investors are going to have to
23 shoulder.

24 Then, of course, the question is how do you draw
25 that line, and what number is the right number? And I've

1 already told you I think the right number is
2 8.35 percent. I think that's more than enough for the
3 utility part of this business to attract the capital it
4 needs to be financially healthy.

5 COMMISSIONER HANSON: Thank you. You were asked
6 a number of questions pertaining to your knowledge of
7 actions by this Commission or other commissions.

8 If you knew what the rate of return was that was
9 granted by every single commission in the United States
10 for every single rate case, would that change your
11 testimony at all?

12 THE WITNESS: Well, it might. One -- if I just
13 saw a number that the North Dakota Public Utilities
14 Commission has said X is the right number, that would not
15 be very useful to me.

16 But if in a judicial decision the utility were
17 to say -- or the Commission were to say X is the right
18 number and here's why, sure. That would be useful.
19 There's a rationale to it. And it's at least in theory a
20 dispassionate rationale.

21 You know, Dr. Avera has an ax to grind. Perhaps
22 the Staff does. I don't know. Perhaps somebody here
23 thinks I do. You don't. You've got an ax to grind, but
24 your ax is to try to balance the needs of rate payers
25 against the needs of shareholders.

1 And I think if you provided a rationale for your
2 rate of return, it would be useful. And it might change
3 my testimony.

4 COMMISSIONER HANSON: Mr. Avera cited three
5 areas in which he felt you needed to make adjustments.
6 One of them was the floatation, which we've discussed,
7 and you agreed to make an adjustment.

8 Other ones pertained to interest rates and
9 taxes, that you should not have taken out some taxes.

10 Do you have any comment on either of those?

11 THE WITNESS: Well, I think I've already
12 commented on the interest rate question.

13 COMMISSIONER HANSON: Yes.

14 THE WITNESS: To the extent I understand your
15 question, there's nothing -- no required change in my
16 calculation of interest rates as a result of what's
17 happened over the last two years. And I'm sorry. The
18 other --

19 COMMISSIONER HANSON: He spoke of taxes.

20 THE WITNESS: Taxes. Yeah. That's important.
21 And I think there's probably a little bit of a
22 misunderstanding between the two of us as to what I mean
23 when I'm talking about tax treatment.

24 He has suggested, I think, that my treatment of
25 taxes was wrong because the Commission takes into account

1 taxes when it determines allowable revenue. Okay.
2 That's fine.

3 But if I'm the chief financial officer of
4 Black Hills Power, Black Hills Corporation, and I need
5 money, I'm going to choose between debt and equity. And
6 equity doesn't provide me any tax benefits. If I sell
7 you stock for \$29 a share, it's a straight up
8 transaction.

9 If I borrow money from you at 6 percent, we'll
10 say, that is tax deductible. And my tax deduction
11 depends upon my tax rate, and in Black Hills' case it's
12 in the range of 30 percent. And it reduces my net cost
13 of borrowing from 6 percent to 70 percent of 6 percent is
14 4.2 percent.

15 So debt, all other things being equal, is
16 cheaper than equity. And that was my point. And it
17 doesn't bear, I don't think -- or at least I don't see
18 how it bears on this separate question of how taxes are
19 treated in the calculations that you folks make to permit
20 revenue.

21 So I think in that area not -- sometimes I think
22 he was kind of mean to me, but I don't think he was being
23 mean to me. I think he just had a different
24 understanding of what I was trying to put together there.

25 COMMISSIONER HANSON: I'll refrain from

1 commenting about my fellow Commissioners and how they
2 treat me.

3 THE WITNESS: Sounds like it was like the
4 Legislature.

5 COMMISSIONER HANSON: Not at all. We're much
6 more congenial.

7 On page 8 you state on line 17 and 18 "but
8 dividends current and future are the only ultimate source
9 of value to an investor." Now being an investor, that
10 threw me for a loop.

11 Are you just exclusively talking about
12 institutional investors, persons in charge of large
13 portfolios of --

14 THE WITNESS: No.

15 COMMISSIONER HANSON: The average Joe is just
16 looking at dividends current and future?

17 THE WITNESS: Well, probably not looking at
18 dividends current and future, but that's the only way the
19 average Joe ultimately is going to get a return. Either
20 he or she will receive dividends, or he or she will sell
21 stock to somebody else, sell his stock or her stock to
22 somebody else and they will receive dividends.

23 This I think can be a complicated issue and
24 probably because we tend -- I do too. When we talk about
25 valuing a stock we say what's the price to earnings

1 ratio. We look at the earnings, and we try to look at
2 the earnings growth.

3 I'm still a Graham and Dodd guy, and Graham and
4 Dodd would say, and I think rightly, a company that
5 doesn't pay dividends and will never pay dividends is
6 valueless. There is no way for you to achieve any value
7 unless you can find the so-called greater fool who is
8 willing to buy your value of the stock from you for
9 something.

10 Dividends are the only source of value to an
11 investor. And if you have a company -- Microsoft, which
12 for many years did not pay dividends. It didn't for the
13 reason it was a very profitable company. And rather than
14 sell more stock, which is very expensive, they used their
15 profits and reinvested them in the business so the
16 business would grow. Didn't pay dividends.

17 But now they're paying dividends. And
18 eventually at least in terms of economic theory every
19 company will pay a dividend. That's the only way that an
20 investor is going to get a return.

21 Now, of course, when you're dealing with
22 utilities you don't have to be so abstract or theoretical
23 about it because people are investing for dividends,
24 principally dividends and dividend growth. But my
25 fundamental argument here is I think Mr. Avera applies an

1 approach called DCF.

2 DCF stands for discounted cash flow. Earnings
3 do not provide cash. See, you've got to -- you've got to
4 discount dividends, not the earnings. It's just
5 methodologically and philosophically wrong to ignore
6 dividends and look at earnings instead.

7 COMMISSIONER HANSON: That's an interesting
8 discussion you provide. I'm still very challenged with
9 the -- I understand how you're placing it within the
10 context of a utility company.

11 But when we're speaking more broadly of
12 investors I can think of companies that exist in
13 Sioux Falls, businesses that are multimillion dollar
14 companies that people have invested in. I'm not going to
15 mention them, but they've never paid a dividend. And
16 people are still buying and selling their stock on the
17 basis of the value of the stock.

18 THE WITNESS: Well, I misspoke but I think only
19 in an inconsequential way. There are two ways for an
20 investor to get a return. Well, there's three ways, but
21 one of them doesn't count.

22 One way is through dividends. Another way is
23 through earnings. That's the one that doesn't count.
24 And the other is through the liquidation of the company.
25 The question is is the company worth more dead or alive.

1 Sometimes it's worth more dead and it is liquidated and
2 distributions are paid. I think that's an extreme cases
3 and not one most of us have in mind when we invest.

4 But I insist, Commissioner, that if you own
5 stocks that do not pay dividends, you're owning those
6 stocks because you or somebody else has bid up the price
7 because they expect some day to reap a harvest and
8 dividends will be paid. Barring dividends or
9 liquidation, there's no value to you as an investor.

10 I mean, consider it. Consider any company.
11 Microsoft. If Microsoft said -- hey, they might, given
12 Bill Gates' eleemosynary inclination. If Microsoft said
13 we are not going to pay dividends now or ever, we're
14 going to lock the door, we're going to keep on trucking
15 and make a lot of money, would you like to invest in us,
16 nobody would invest. No potential for return on
17 investment.

18 COMMISSIONER HANSON: Does not those arguments
19 bring out the challenge that a utility company then has?
20 The fact that that stock's value is, in that particular
21 instance, not based upon the fact that there's going to
22 be a huge surge of equity? It's going to be a nice,
23 safe, level business.

24 THE WITNESS: Yep.

25 COMMISSIONER HANSON: And you're not going to

1 expect them to all the sudden invent something that's
2 going to make their stock skyrocket. So, therefore, if
3 I'm going to invest in that company, I have to solely
4 look at what my return is in this case, that dividend,
5 and I want it as high as I possibly can. And, therefore,
6 in order to attract funds they have to have as high rate
7 of return as they can.

8 THE WITNESS: There's no doubt that if I were
9 the corporate manager, I would try to get the highest
10 possible return for myself and for my investors. Even if
11 I had to do that at the expense of rate payers.

12 COMMISSIONER HANSON: So in that instance then
13 why would we look -- on page 6 why would we look at what
14 is the minimum rate sufficient to attract capital as
15 opposed to in that bell either the higher portion or at
16 least in the higher portion of that bell?

17 THE WITNESS: Well, because it's a zero some
18 gain, that every dollar that you give to Black Hills
19 Power that is more than they need to attract capital is a
20 dollar that comes from your rate payers.

21 That's why you want the lowest. It's why when
22 you go to a store and you see two things for -- one --
23 identical, one for a lower price, you're going to buy the
24 lower price one. You want to conserve capital. I think
25 that's intelligent and appropriate.

1 And do I mean rock bottom lowest? No, I don't.
2 What I've tried to do in this part of the page is to look
3 at companies, which according to Mr. Avera are able to
4 raise capital, and to say why do we want to pay the
5 highest rate necessary? Let's look at the lowest.

6 Let's look at I said the five companies who are
7 raising capital at the lowest cost, and let's use that as
8 a basis for -- for what might be an appropriate return on
9 investment -- an appropriate return on equity. I'm
10 sorry.

11 COMMISSIONER HANSON: All right. We'll conclude
12 it there. Thank you very much. Thank you, Mr. Smith.

13 CHAIRMAN JOHNSON: If I might, Mr. Smith.

14 MR. SMITH: Uh-huh.

15 CHAIRMAN JOHNSON: I'm looking at the first page
16 of Staff Exhibit 4. And you don't have to dig it out,
17 but I'm just looking at what the settlement defines as
18 the adjusted test year revenue deficiency of more than
19 \$24 million. And I want to make sure that I get this
20 financial picture right.

21 I mean, you were talking about Black Hills Power
22 as a cash cow. I mean, do you have information that
23 would help the Commission put this revenue deficiency in
24 better context?

25 I mean, the financials we're reviewing as part

1 of the evidence don't necessarily paint the same picture
2 you do.

3 THE WITNESS: Well, I disagree, but I understand
4 your question. The Staff report suggests not that
5 they're not a cash cow but that they're not earning
6 enough today to attract capital.

7 And when I speak of cash cow I don't mean that
8 in a diminishing way at all. And I'm not speaking about
9 today. I'm speaking about the nature of a public utility
10 over time is -- I mean, it's a trade-off. A public
11 utility over time doesn't have much risk. That's the
12 bad -- I mean, I guess it's the good news.

13 But they also have not a guarantee but they have
14 something close to a guaranteed throw off of cash. It
15 comes from earnings. It comes from depreciation. And
16 it's -- it's -- if I'm a utility manager, it's a
17 comparatively tempting thing to take that cash and to put
18 it to more exciting uses. Nothing wrong with that. And
19 I think that's what they do.

20 So when I use that word "cash cow," again I'm
21 not trying to be critical. I am saying, though, that it
22 has and is likely I think to continue to supply a
23 substantial -- one can argue about what substantial
24 means -- flow of cash that comes comparatively
25 inexpensively and comparatively reliably to the managers

1 of the utility and that they can use for the future.

2 So what we're arguing about, I suggest, is not
3 whether they're a cash cow. It's how heavy -- how heavy
4 the cow is and how much milk is being given.

5 CHAIRMAN JOHNSON: So I think I understand now.
6 Your use of the term "cash cow" doesn't refer to anything
7 specific about how Black Hills Power operates but just
8 more generally how almost all lower risk ventures are
9 operating.

10 THE WITNESS: Yes.

11 CHAIRMAN JOHNSON: Okay. And then I'm going to
12 try to ask this question in a general enough way so we
13 don't need to go in camera. But certainly, you know,
14 counsel is forewarned.

15 There's been a lot of discussion about how
16 Intel -- about how Black Hills Power isn't competing with
17 Intel for capital. I wonder if -- I wonder if we haven't
18 taken that argument a little further than it was intended
19 to, and I want to make sure I understand that.

20 When I look at Dr. Avera's testimony he notes
21 that on page 39 -- and I suppose I should get an exhibit
22 number. It's BHP 28, and I'll read from it.

23 He says that "The DCF model resulted in cost
24 of common equity estimates generally trending toward
25 12.8 percent." Again I'll ask my question generally.

1 We're not -- this Settlement -- does this Settlement
2 Stipulation call for a return -- a return on equity
3 anywhere near 1.8?

4 THE WITNESS: It's substantially less than 12.8.

5 CHAIRMAN JOHNSON: And so comparing those two
6 numbers, really we're not talking about BHP and Intel.

7 Those rates would not suggest that they would
8 be competitive for the same capital dollars; is that
9 right?

10 THE WITNESS: Well, I think that's right. Which
11 is to say I think the Avera testimony about which we're
12 talking right now is wrong. And it sounds like we might
13 agree on that, that 12.8 percent is not a reasonable
14 figure.

15 CHAIRMAN JOHNSON: 12.8 percent isn't what the
16 Settlement Stipulation calls for. And so I think what
17 everybody would agree is as you reduce the risk profile,
18 you reduce what a rate of return should be.

19 THE WITNESS: Yes.

20 CHAIRMAN JOHNSON: I just wouldn't want anybody
21 to think that those two numbers are close. Now maybe
22 they're not far enough. Maybe the gap is not large
23 enough.

24 But certainly, Mr. Frankenfeld, there is a
25 rather substantial gap; is that right?

1 THE WITNESS: It is right. And I think the
2 Staff recommendation is deficient but superior to the
3 Avera recommendation.

4 CHAIRMAN JOHNSON: Great. Thanks.

5 MR. SMITH: Mr. Rislov, questions?

6 MR. RISLOV: Thank you, John.

7 Mr. Frankenfeld, I want to touch upon that Intel
8 thing too because I think it's been way overemphasized
9 and way overstated.

10 But Dr. Avera had two comparison groups, didn't
11 he?

12 THE WITNESS: Yes, he did.

13 MR. RISLOV: And Intel was just one of one of
14 the groups which consisted of 61 companies.

15 THE WITNESS: That's correct.

16 MR. RISLOV: So in terms of pure weighting --
17 not that I disagree with your points with regard to
18 Intel, but the weighting factor was extremely small in
19 that analysis, wasn't it?

20 THE WITNESS: Indeed it was.

21 MR. RISLOV: And with that said, you know, going
22 through these things for way too many years, likely the
23 16 utility companies factor a bit more significantly when
24 he's doing his comparable earnings analysis, won't they?

25 THE WITNESS: They ought to, and I think they

1 do, yes.

2 MR. RISLOV: Now there's a couple of things and
3 it hasn't come up but having been here at a time when we
4 actually did have our cases appealed to Circuit Court
5 Staff always was looking at what they do. With that in
6 mind, that's going to have to pass a court test.

7 And when it comes to rate of return there are
8 always two cases that pop out. And one's Blue Field, and
9 the other's the Hope Natural Gas case.

10 Are you aware of those?

11 THE WITNESS: I'm aware of them but only
12 derivatively because I've heard Dr. Avera testify to
13 them -- about them, and he has cited them here.

14 MR. RISLOV: I found your testimony very
15 interesting, but I also found that perhaps we go to court
16 and these courts tend to focus on those two cases, that
17 perhaps maybe your testimony could have been a bit
18 stronger in comparing the requirements of the Hope
19 Blue Field case as to what utility commissions normally
20 go through every time they go to court.

21 Would you have any response?

22 THE WITNESS: I don't have a useful response. I
23 understand what you're saying, and I would acknowledge,
24 frankly, that I spent quite a bit of time and quite a bit
25 of Plains Justice's money on doing the research.

1 I didn't have infinite funds -- well, they
2 didn't have infinite funds available so I didn't have
3 infinite time available. I made some decisions that
4 perhaps in retrospect perhaps I shouldn't have made. I
5 wish I had investigated those cases more carefully.

6 I don't think it affects what I was trying to
7 arrive at, which is I was trying to discover what was
8 wrong, if anything, with Avera's testimony and what was a
9 better measure of return on equity.

10 But I would acknowledge to you that one always
11 benefits from -- well, one always benefits from more
12 billable hours, I guess, but I don't mean it quite that
13 way. One always benefits from more information.

14 MR. RISLOV: And I'll restate it. I found your
15 testimony very interesting, but there's no question
16 Dr. Avera's testified --

17 THE WITNESS: 300 times.

18 MR. RISLOV: I was going to say 30,000 times. I
19 couldn't remember the number. But that is kind of a
20 hallmark of all the testimony I've seen from cost of
21 equity witnesses that they pay extreme homage to those
22 two cases.

23 And with that said, in looking at the DCF
24 analysis, which from the time I started many years ago to
25 now that was the standard then, it's still the standard

1 now, though it's been tweaked over the years.

2 But talking about again -- going back to the
3 dividends -- and I think there's a variety of reasons,
4 and I understand your point. But in computing the growth
5 rate and the FPC and subsequently the FERC, and I should
6 not admit I go back that far either, when looking at
7 growth rates I think there were a variety of motives on
8 their part. But, frankly, you know, if a utility chose
9 to or not paid dividends, they were still going to take
10 account of what they determined to be the growth rate,
11 and maybe speaking out of turn that by looking at both
12 factors it avoided manipulation.

13 Would you agree to that, that that's possible?

14 THE WITNESS: Yes.

15 MR. RISLOV: Over the years and -- I think
16 Staff's been eminently fair. I used to be a member of
17 the Staff. But some people think our returns because
18 they are the lowest among returns granted in the nation
19 are perhaps unfair. I think those people are called
20 utilities. But I think we're still -- you know, the
21 recommendations we've seen I don't know if Staff's ruined
22 that reputation in this case.

23 Frankly, do you see their range to be
24 unreasonable?

25 THE WITNESS: I see the top of their range as

1 unreasonable. And I have acknowledged, I think, from the
2 beginning of my testimony there's judgment involved.
3 There's subjectivity involved.

4 I believe the Staff came up with a range which
5 is higher than mine. And I think the lower end of that
6 range, as I think it was -- I can't remember now, I
7 guess. Mr. Johnson mentioned is -- yeah. Mr. Johnson
8 was the lower end of their range is very close to the
9 upper end of my range. So it's not outrageous, but it's
10 more than -- more than necessary.

11 MR. RISLOV: And I know you've been in this
12 position before as a legislator and various points in
13 your career, but this Settlement involves -- I think I
14 counted up the adjustments. There were over 60 rate base
15 and cost of service adjustments.

16 Is it possible that through the settlement
17 process that rate of return which still I think
18 nationally is low would likely appear a bit more
19 reasonable if one were to look at all the elements of
20 this case?

21 THE WITNESS: And, sir, I -- I feel like it's
22 beyond my competence to address that. I've looked at the
23 rate of return. I have some conviction about rate of
24 return, and I acknowledge there are other issues to this
25 case that are really beyond my competence.

1 MR. RISLOV: Well, there's no question when you
2 testify in a rate case you hold your issues near and
3 dear. That's the way it always is.

4 Just one last thing. I wanted to get back to
5 that tax treatment on the interest cost. And through the
6 years, you know, you're probably familiar with it's in
7 the same field?

8 THE WITNESS: Very much so.

9 MR. RISLOV: And I think when one was looking at
10 those risk premiums that, you know, the standards that
11 were set up which have been used by very many, not
12 necessarily by this Commission, at least not in whole,
13 perhaps in part. When they were looking at the spread
14 between equity and debt that was pretax?

15 THE WITNESS: Wow. I'm embarrassed to say that
16 I don't -- I don't recall. I looked a lot -- I worked a
17 lot with Ibbotson Sinquefield so much, I guess, that I've
18 lost track of their methodology. I thought they were
19 talking -- their comparison was with the after tax cost
20 of debt, but I can't swear to that.

21 MR. RISLOV: And I agree 100 percent. When one
22 goes into an analysis of costs and leverage one looks at
23 the after tax cost.

24 But in terms of the strict regulatory view where
25 you're doing a rate case is it possible that those

1 spreads are normally looked at among the industry on a
2 pretax basis because the interest cost is recovered in
3 the revenue requirement and not part of the cost of
4 capital?

5 THE WITNESS: You've asked a question I can't
6 answer. I don't know.

7 MR. RISLOV: I guess that's -- that's it. Thank
8 you very much.

9 THE WITNESS: Thank you.

10 MR. SMITH: Any last Commissioner questions?
11 Seeing no one grabbing for the mic, then -- with the same
12 order we've done before, Mr. Khorroosi, I'm going to give
13 the two -- so then you get the last bite of the apple
14 since it's your witness.

15 Mr. Magnuson.

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

17 RECROSS-EXAMINATION

18 BY MR. MAGNUSON:

19 Q. Mr. Frankenfeld, did you undertake to determine what
20 the authorized return on equity that was allowed Black
21 Hills Power in the -- before the Wyoming Public Service
22 Commission?

23 A. I did undertake to do that. And I'm guessing you've
24 got the number at your fingertips, but I don't.

25 Q. Well, did you undertake to determine what it was?

1 A. I did.

2 Q. And you don't recall that as we sit here today?

3 A. I don't.

4 Q. Okay. So the number 10.5 percent as recommended by
5 the Office of Consumer Advocate in Wyoming does not --
6 does that ring a bell?

7 A. It doesn't. I don't remember.

8 MR. MAGNUSON: Mr. Smith, at this time and for
9 the record we're going to make a Daubert Motion that
10 Mr. Frankenfeld's testimony be excluded from the record
11 and not be considered by this Commission.

12 I did not have an opportunity to depose
13 Mr. Frankenfeld in advance of this hearing, but I think
14 it's very obvious from the record and based on Daubert
15 that he has to qualify as an expert. And while
16 Mr. Frankenfeld may qualify in certain nonutility rate
17 cases, particularly civil litigation, he does not qualify
18 as an expert here for several reasons.

19 First, under Daubert there has to be a generally
20 accepted methodology in the field in order for somebody
21 to testify as an expert. There's been no demonstration
22 by Mr. Frankenfeld that his methodology has been accepted
23 in the field. In fact, his testimony was he can't point
24 us to any Public Utilities Commission that has accepted
25 his methodology for determining return on equity.

1 As Mr. Rislov appropriately pointed out, the two
2 seminal cases in this matter are the Blue Field case and
3 the Hope case. And as came out during this hearing --
4 and, by the way, those are the cases that set forth the
5 general rules for determining what return on equity
6 should be in utility rate cases. It was determined that
7 Mr. Frankenfeld has not read those cases, is not familiar
8 with those cases; therefore, has no understanding of
9 what the requirements are when he determines return on
10 equity.

11 And so for those various reasons I would make
12 the Daubert Motion that his testimony should be excluded
13 and not considered in this matter.

14 MR. SMITH: Mr. Khorroosi.

15 MR. KHOROOSI: Thank you, Mr. Smith. The
16 utility had ample time and never made a single request to
17 depose Mr. Frankenfeld before or after his testimony was
18 filed in April for months now.

19 As for his generally accepted methodology, I
20 think Mr. Magnuson through his Motion has illustrated
21 precisely what the utility is attempting to do. They're
22 trying to change the burden. They're trying to shift the
23 burden away from them.

24 Mr. Frankenfeld was retained to analyze the
25 testimony and to analyze the methodology that Dr. Avera

1 used. He has done that. And he's offering testimony.
2 The rules of evidence require that a witness have -- in
3 order to qualify as an expert, demonstrate that he has --
4 that he or she has the skill, knowledge, education,
5 training, and experience to testify before these matters.

6 Mr. Frankenfeld has submitted a CV. There was
7 no prehearing Daubert Motion. There was -- he has
8 demonstrated that he has had a great deal of experience
9 in forensic economics and economics in general and in
10 analyzing companies as potential investments.

11 Moreover, I would object strongly to settling
12 this matter or to excluding Mr. Frankenfeld's testimony
13 without a chance to adequately brief and argue these
14 issues. Mr. Magnuson has made a serious challenge, and
15 if he is serious about it, I would request permission to
16 brief on the issue and, therefore, more time.

17 However, I don't think that's necessary. I
18 think Mr. Frankenfeld has demonstrated that he does meet
19 the requirements of the rules of evidence and his
20 testimony should be considered.

21 MR. SMITH: Ms. Cremer, Commission Staff's
22 position.

23 MS. CREMER: Thank you. This is Karen Cremer
24 of Staff.

25 I can appreciate the Motion that Black Hills has

1 made here. However, I believe the Commission can give
2 Mr. Frankenfeld's testimony the weight it deserves when
3 it weighs the evidence in this matter.

4 MR. SMITH: Do you have thoughts, Commissioners,
5 or should I determine it on my own?

6 I'm going to deny the Motion and allow the
7 testimony which has already been received in evidence to
8 remain there.

9 Thank you, though, Mr. Magnuson. Do you have
10 additional cross-examination following --

11 MR. MAGNUSON: I have no further questions.
12 Thank you, Mr. Smith.

13 MR. SMITH: Ms. Cremer, do you have any further
14 questions?

15 MS. CREMER: I do. Thank you.

16 RECROSS-EXAMINATION

17 BY MS. CREMER:

18 Q. Mr. Frankenfeld, are you familiar with Staff
19 Exhibit 1, which is our Staff memo wherein we discuss the
20 South Dakota surplus energy credit?

21 A. Can you direct it to me? It's Exhibit 1?

22 Q. It's Exhibit 1. It would be page 15.

23 A. I'm not sure how to answer your question. I've
24 examined this document and read it. Your question was am
25 I familiar with it? I guess to that extent I am, yes.

1 MS. CREMER: Okay. Thank you. I really would
2 need to go in camera and really have just two questions
3 to ask him about that.

4 MR. SMITH: Mr. Chairman, at this point do we
5 need to do another phone check? It's been a while. I
6 don't know how anybody would even know the call-in
7 numbers, honestly, I don't know, to get on the phone
8 but --

9 MR. MAGNUSON: We're okay. We're satisfied with
10 the way that it has been.

11 MR. SMITH: Okay. Then, Mr. Chairman, we've got
12 a request to go in camera. Thank you.

13 (The following proceedings are confidential)

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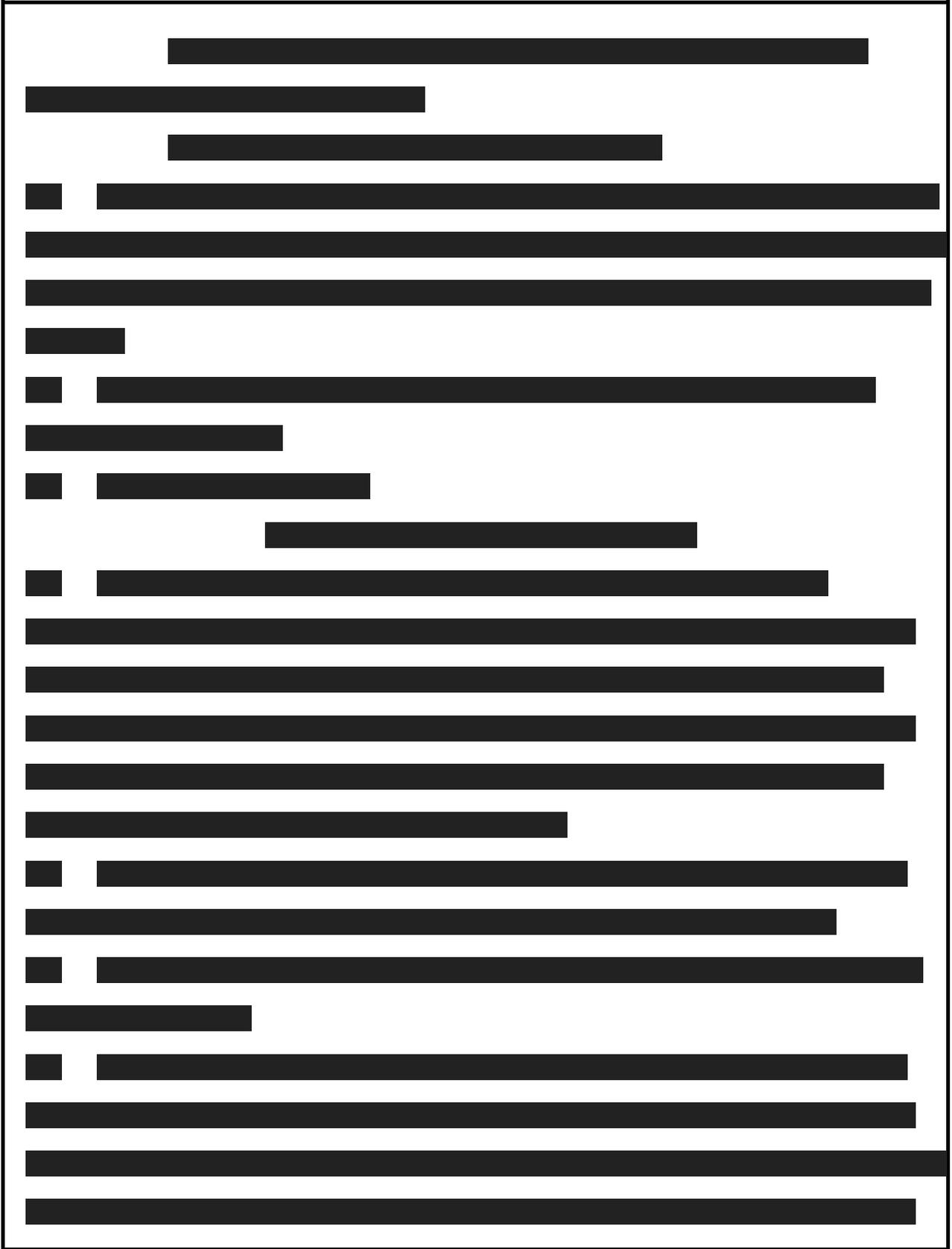
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1 MR. SMITH: And that concludes Staff's
2 additional cross-examination?

3 MS. CREMER: Yes. That would be it for Staff.

4 MR. SMITH: Mr. Khorroosi, do you want to proceed
5 immediately, or have we gone on enough now that you would
6 like a short break before your final redirect?

7 MR. KHOROOSI: Actually I would appreciate about
8 a five-minute break before redirect.

9 MR. SMITH: Okay. We've been going on -- this
10 has been a long stretch here. Maybe give everybody --
11 why don't we take a 10-minute break. That realistically
12 gives people enough time to get up and take a stretch.

13 (A short recess is taken)

14 MR. SMITH: We've taken a 10-minute recess. And
15 now we're back in session at 25 to 2:00. Again, the case
16 is Docket EL09-018, application of Black Hills Power for
17 a rate increase.

18 Cross-examination of the Residential Consumers
19 Coalition's witness, Mr. Don Frankenfeld, had concluded.

20 And at this time we'll call upon Mr. Khorroosi to
21 proceed with his redirect, if he has any.

22 MR. KHOROOSI: Thank you, Mr. Smith. We have no
23 redirect.

24 MR. SMITH: Okay. Mr. Frankenfeld, then you're
25 excused and may step down.

1 THE WITNESS: Thank you.

2 MR. SMITH: Mr. Khorroosi, do you have any other
3 witnesses you intend to call today?

4 MR. KHOROOSI: No. Not today.

5 MR. SMITH: With that then, Mr. Magnuson, do you
6 have any rebuttal evidence that you intend to put on
7 today?

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

9 First we do not have any rebuttal evidence that
10 we will be putting on today. We have and would like to
11 continue to reserve the right to put on rebuttal evidence
12 after the final witness of South Dakota Peace & Justice,
13 which I understand is going to be next week.

14 Before I forget about it, we should talk about
15 when that is going to be. And I meant to touch base with
16 you during the break to advise you of this, but I will
17 just say it now.

18 We do have one additional matter we would like
19 to address to the Commission. If now would be an
20 appropriate time, we would like to do that.

21 MR. SMITH: Sure. It's an appropriate time.

22 MR. MAGNUSON: Mr. Kyle White on behalf of
23 Black Hills Power will address that issue.

24 MR. WHITE: Good afternoon.

25 MR. SMITH: Is your thing on there, Kyle?

1 MR. WHITE: It is. It has been common in
2 situations where the Staff and the utility company have
3 reached a settlement in rate cases that the Commission
4 has at times issued a Bench Decision.

5 We recognize that this proceeding is not
6 complete at this point. However, we wanted to indicate
7 that in the event that the Commission is unable for
8 reasons that may result from the continuation of this
9 proceeding beyond next week that we do have interim rates
10 in place today.

11 Those interim rates are higher than the
12 settlement rates, and it would be our recommendation that
13 if the Commission is unable to issue a Bench Decision,
14 that we would offer that the Commission consider issuing
15 a decision next week that would make the settlement rates
16 the new interim rates and provide us instructions with
17 regard to how to refund to customers any difference and
18 the appropriate interest rate with which we would refund
19 that difference.

20 We will be in a position where we could make
21 the settlement rates effective for service on and after
22 July 12. And because we're not certain as to how that
23 might proceed because interim rates are not common in
24 this state, we wanted to give you an opportunity to think
25 about it.

1 And we also wanted to give you an opportunity --
2 if we need to make an application or a motion to do that,
3 we would want to have that done before this proceeding
4 completes next week.

5 We believe that our customers should have the
6 benefit of the settlement rates. They are higher than
7 the interim rate. We are in, for many of our customers,
8 their highest use period during the year, and we believe
9 it would be unfair to them if we did not at least offer
10 the settlement rates as the interim rates effective
11 July 12.

12 So with that, I'm available for any questions,
13 and we would be available if there were a discussion by
14 the Commission to receive some instruction from Mr. Smith
15 as to how we may proceed if that may be your desire to
16 have that option available to you next week as these
17 proceedings conclude the hearing process.

18 MR. SMITH: Okay. Thank you, Mr. White. Do you
19 have anything then to add to that, Mr. Magnuson?

20 MR. MAGNUSON: I do not, Mr. Smith. Thank you.

21 MR. SMITH: Other parties, comments on the
22 suggestion of Mr. White?

23 Mr. Khorroosi, do you have a --

24 MR. KHOROOSI: I don't believe we would have an
25 objection to that, sir.

1 MR. SMITH: Okay. Ms. Cremer.

2 MS. CREMER: Staff has no objection. Thank you.

3 MR. SMITH: Okay. In terms of then procedure, I
4 mean, to me you've made the request. We're on the record
5 here. We're on a transcript. This is a formal hearing
6 proceeding. In my opinion I don't believe a
7 particular -- that we would need a formal motion.

8 I mean, I think if we want to consider what you
9 just said, Kyle, to be a formal motion to that effect,
10 I'm willing to stipulate right now that we'll so consider
11 it.

12 I want to ask you this: You've discussed, you
13 know, setting it up to where we minimize the period of
14 overcollection, assuming the Commission did elect to
15 approve the settlement rates; right?

16 MR. WHITE: Yes.

17 MR. SMITH: And reduce the -- going on any
18 further with overcollecting and further building up a
19 refund obligation on your part.

20 Are there any other matters that the Commission
21 should know? And maybe we could hear those next week,
22 you know, following the case concerning, for example,
23 your proposal as to interest rate, and perhaps other
24 parties may weigh in on that as well.

25 And so maybe there's a few things like that, if

1 there are some detail things like that, that you think we
2 should be aware of, you may want to put those in the form
3 of a filing so we know what the parties' positions are,
4 for example, on an acceptable interest rate to be applied
5 to refund amounts, if they're, in fact, approved.

6 MR. WHITE: We will work with Staff and see if
7 we can reach an agreement with specific -- to our
8 recommendation as to what an acceptable interest rate
9 would be to those refunds.

10 Specifically, we can put new rates into effect
11 by July 12. The refund period would be beginning with
12 the service as of April 1, 2010 when the original interim
13 rates went into effect. And we'll consider any other
14 matters that we should advise the Commission as to what
15 needs to happen in order for additional interim rates to
16 become effective.

17 MR. SMITH: Okay. Any other comments by any of
18 the other parties or Commissioners?

19 MR. KHOROOSI: Just that we would suggest -- I
20 don't think a formal obligation, but we would request to
21 be a part of the discussions involving any sort of
22 interest rates or anything of that nature.

23 MR. SMITH: You're a party to the case so I
24 think that's reasonable.

25 Do you agree, Mr. Magnuson?

1 MR. MAGNUSON: We will keep them in the loop
2 with regard to all the discussions that we're having with
3 Staff in trying to come up with an acceptable interest
4 rate.

5 MR. SMITH: Okay. Thank you.

6 With that then, should we turn to the issue of
7 next week? And I know some discussion occurred late in
8 the day yesterday among the parties about schedule and
9 timing and the methodology for taking additional evidence
10 next week.

11 Who wants to lead that off? I guess I'm not
12 sure who kind of is carrying the ball. Your witness was
13 the one who was to testify on direct next week,
14 Mr. Khorroosi, so maybe we'll start there. And then we'll
15 have to factor in, of course, the potential that you'll
16 want to put on rebuttal too.

17 But fire away, Mr. Khorroosi.

18 MR. KHOROOSI: Thank you, Mr. Smith. I think in
19 light of -- I think in light of the fact that the
20 Commission has made a great deal of accommodation, I
21 think we owe it to the Commission and I think it would be
22 best for our clients and for the benefit of all the other
23 parties that Mr. James testify personally. And so he
24 will be present next week to testify.

25 MR. SMITH: And with that then, keep us on the

1 original schedule, which would be Wednesday?

2 MR. KHOROOSI: Yes. I believe it would.

3 MR. SMITH: The 7th of July.

4 MR. KHOROOSI: Yes. That's correct. Unless the
5 Commission was thinking of another date. I guess I was
6 unaware.

7 MR. SMITH: I had heard some talk about moving
8 it to Tuesday. But again for the reasons we talked about
9 before, particularly if he were going to be physically
10 here, I think maybe we're better off sticking with the
11 schedule that we had originally set up.

12 Is that objectionable to anyone?

13 MR. MAGNUSON: By what -- when you say the
14 "original schedule," if I understand that to mean on
15 Wednesday, July 7 that is acceptable to Black Hills
16 Power.

17 MR. SMITH: Okay. That's what I did mean.
18 Staff.

19 MS. CREMER: Yes. I think the Tuesday morning
20 only came up -- if Mr. James were going to testify by
21 phone, we were looking to do it earlier. But if he's
22 going to be here in person, then I believe it has to be
23 Wednesday.

24 MR. SMITH: Right. And with the possibility
25 that we would have rebuttal testimony, that way if things

1 proceed longer than maybe we might hope for ideally, we
2 will have sufficient time with a full day too to deal
3 with all of that on that date.

4 Okay. With that -- and, as I recall, the
5 commencement time on that day I believe was 9 o'clock,
6 was it not? 9 o'clock on Wednesday.

7 With that then, Applicant, do you have anymore
8 business to come before the Commission before we go into
9 recess until next Wednesday at 9 o'clock?

10 MR. MAGNUSON: We have nothing further at this
11 time.

12 CHAIRMAN JOHNSON: Sorry, Mr. Smith. I wanted
13 to talk a little bit more about scheduling, if it's
14 appropriate.

15 I mean, what does the way forward look like? I
16 mean, Black Hills Power has kind of asked for perhaps a
17 decision on that interim rate and how to begin a refund.
18 Should the Commission then schedule a meeting and notice
19 it for a decision? We haven't noticed that issue.

20 MR. SMITH: We haven't noticed it except that is
21 the matter at issue here. That is the issue.

22 CHAIRMAN JOHNSON: Well, I mean, I think they
23 have suggested a new interim rate, which is not the
24 matter here. He said if you're not going to issue a
25 Bench Decision, then perhaps we should talk about --

1 MR. SMITH: Well, we can certainly put a notice
2 out, if the Commission is so inclined. To me, this is a
3 public hearing. We're on the public record. And we have
4 an interim rate in effect.

5 But on the other hand it would certainly not be
6 harmful to do so.

7 CHAIRMAN JOHNSON: Yeah. Well, and I'm just
8 asking the question. You tell me legally it's not
9 necessary, then I don't have any reason to disagree with
10 you.

11 MR. SMITH: Well, it would be unnecessary to me
12 if in lieu of an alternative interim rate the Commission
13 were to just vote and decide what you're going to do,
14 you know, what the rate -- what your decision is in the
15 case.

16 CHAIRMAN JOHNSON: Well, then I guess that's my
17 next question then. Do the parties anticipate asking for
18 an opportunity to brief after this?

19 I mean, if the answer is no, frankly, it may get
20 a lot easier for the Commission to make a decision in a
21 timely fashion. But if they want three weeks to write a
22 brief, that changes things.

23 MR. SMITH: Mr. Magnuson.

24 MR. MAGNUSON: Thank you. That's an excellent
25 comment, Chairman Johnson.

1 From our perspective, there have been no
2 significant legal issues that have arisen that have not
3 been addressed prior to this time. Therefore, we are not
4 going to request that we file a written brief with regard
5 to this hearing.

6 MR. SMITH: Mr. Khorroosi.

7 MR. KHOROOSI: At this point I'd agree. I think
8 this matter came up at the prehearing conference as well,
9 and I had stated at that time that we were willing to
10 accommodate whatever the Commission felt was appropriate
11 as far as closing arguments or closing briefs. And
12 that's still our position.

13 MR. SMITH: Staff.

14 MS. CREMER: And Staff would agree that at this
15 point I don't believe there's anything to brief and it is
16 ripe for Commission decision.

17 CHAIRMAN JOHNSON: In some ways I think that is
18 good news for the rate payer. I mean, regardless of what
19 the Commission decides, I think it would be easier --
20 rather than have a new interim rate and then have to wait
21 a few weeks, to ultimately decide what we feel on the
22 settlement. It could be a lot more convenient to just
23 have a decision and move forward with whatever that's
24 going to be.

25 Would the parties want closing argument, and, if

1 so, would that be appropriate then next Wednesday?

2 MR. SMITH: In my view, it would be appropriate
3 at the conclusion of the hearing on Wednesday. Again, we
4 only have -- barring something -- obviously anything can
5 always happen, but barring something very unexpected, I
6 can't imagine there would be anything so surprising that
7 the parties would be unable to present closing argument
8 next week.

9 Is that fair?

10 MR. MAGNUSON: It appears to me that we should
11 have sufficient time for the witnesses, for our rebuttal,
12 and to present closing arguments next witness. And we
13 would certainly be willing to provide a closing
14 argument.

15 MR. SMITH: Mr. Khorroosi.

16 MR. KHOROOSI: I agree with Mr. Magnuson.

17 MR. SMITH: Staff, are you okay with that?

18 MS. CREMER: Yes. Staff is fine with that.

19 Thank you.

20 CHAIRMAN JOHNSON: Thanks for letting me budge
21 in, Mr. Smith. That's all I had.

22 MR. SMITH: Okay. Well, I think with that, is
23 there any other business to come before the Commission at
24 the hearing today from anyone?

25 Hearing and seeing no indication that there is,

1 we will be in recess until 9 o'clock on Wednesday
2 morning, July 7. Thanks, everyone.

3 (The hearing is in recess at 1:50 p.m.)
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3 COUNTY OF SULLY)

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

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 29th day of
11 June, 2010, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 21st day of
14 July, 2010.

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

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