

1 THE PUBLIC UTILITIES COMMISSION

2 OF THE STATE OF SOUTH DAKOTA

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

7 = = = = =

8 Transcript of Proceedings
9 July 7, 2010
10 Volume III, pages 370-562

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12 COMMISSION STAFF

13 John Smith
14 Karen Cremer
15 Greg Rislov
16 Bob Knadle
17 Dave Jacobson
18 Jon Thurber
19 Tim Binder
20 Terri Labrie Baker

21 APPEARANCES

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

ALSO PRESENT

Nicole Shalla

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1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State Capitol
3 Building, 500 East Capitol Avenue, Pierre, South Dakota,
4 on the 7th day of July, 2010, commencing at
5 9 o'clock a.m.

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(Exhibit Nos. RCC 19-21 are marked for identification)

1 MR. SMITH: Good morning, everyone. My name is
2 John Smith. I am Commission counsel acting as Hearing
3 Examiner in Docket EL09-018, which is the application of
4 Black Hills Power for authority to increase its electric
5 rates in its service territory in South Dakota.

6 For those of you who may have been in attendance
7 last week, we took testimony on Monday and Tuesday, and
8 at that time we went into recess to accommodate a
9 scheduling conflict that Mr. Christopher James, a witness
10 for Residential Consumers Coalition, had that he could
11 not find a way around.

12 And at this point we have had a slight jumbling
13 of the order of testimony due to that, and we're going to
14 make accommodation for that as we go along here as all
15 parties had agreed last week.

16 So with that, are there any preliminary matters
17 anyone needs to address before we proceed to
18 Mr. Khorroosi's resumption of his direct case?

19 MR. BRINK: None from Black Hills Power,
20 Mr. Smith.

21 MR. SMITH: Staff.

22 MS. CREMER: Staff has nothing, thank you.

23 MR. SMITH: Mr. Khorroosi.

24 MR. KHOROOSI: We don't have any preliminary
25 issues.

1 MR. SMITH: Mr. Khorroosi, please proceed to call
2 your next witness.

3 MR. KHOROOSI: Thank you, Mr. Smith. We'd call
4 Chris James.

5 (The witness is sworn by the court reporter)

6 MR. SMITH: Mic on, please. And if you would,
7 please, Mr. James, and I hate to interrupt, but keep the
8 mic close to your mouth. These have a little trouble
9 picking up if it's at a distance.

10 THE WITNESS: Right. I did notice that in
11 reading some of the testimony, the audio. I'll do my
12 best.

13 MR. SMITH: Frequent reminder that occurs.

14 THE WITNESS: And please remind me if I'm not
15 speaking clearly.

16 MR. SMITH: Will do.

17 Go ahead, Mr. Khorroosi. Thank you.

18 MR. KHOROOSI: Thank you, Mr. Smith.

19 DIRECT EXAMINATION

20 BY MR. KHOROOSI:

21 Q. Good morning, Mr. James. Could you introduce
22 yourself to the Commission, please.

23 A. Yes. Good morning. My name is Christopher James.
24 I'm employed by Synapse Energy Economics, 22 Pearl
25 Street, Cambridge, Massachusetts.

1 I want to thank the Commission for accommodating my
2 scheduling conflict. I appreciate that very much. It
3 was something that, unfortunately, had been scheduled
4 many months in advance, and I was not able to make any
5 changes.

6 My educational background, I have a Bachelors of
7 Science in mechanical engineering from Worcester
8 Polytechnic Institute and a Master's in environmental
9 studies from Brown University.

10 Professional background, prior to joining Synapse I
11 was employed for 24 years as a government air quality
12 regulator at both the state and federal level, the last
13 12 years serving as director of air planning for the
14 Connecticut Department of Environmental Protection.

15 It was in that capacity that I also managed their
16 energy and climate change programs, and I sat on the
17 board of our State Energy Efficiency Program for eight of
18 those years.

19 I've been retained by Plains Justice on behalf of
20 the Residential Consumers Coalition.

21 I have four key points that I would like to
22 summarize. First --

23 Q. Mr. James, if I could ask, as a preliminary matter,
24 first, did you submit prefiled written testimony and
25 exhibits in this case?

1 A. Yes, I did.

2 Q. And have those -- have those exhibits been received
3 as RCC 1 through 8I, inclusive?

4 A. Yes, they have.

5 Q. Okay. Thank you. And could you summarize your
6 direct testimony for the Commission?

7 A. Sorry. Be happy to.

8 I had four key points in my direct testimony. The
9 first is that Black Hills Power can provide reliable
10 and affordable electricity to its customers without
11 Wygen III.

12 Two, Wygen III exposes Black Hills Power's customers
13 to unnecessary risk.

14 Three, energy efficiency, demand side management,
15 and demand response reduce risk and volatility, improve
16 reliability, and reduce customer bills.

17 And, four, Black Hills Power can satisfy current and
18 future demand more cost-effectively through energy
19 efficiency, demand side management, and demand response.

20 My conclusions are the same today and are not
21 changed by the framework of the Black Hills/Power Public
22 Utilities Commission Settlement.

23 I would suggest that in the context of this
24 discussion that the Commission consider the following
25 questions:

1 First, what is the cost of the next resource added
2 to serve Black Hills Power's customers?

3 Two, what is the cost of avoided energy in
4 South Dakota?

5 Three, how much energy efficiency, demand side
6 management, and demand response could be provided for the
7 same or lower cost compared to those for new supply side
8 resources? How much demand side management exists in
9 South Dakota from a technical, economic, and achievable
10 perspective?

11 Four, what entity is best capable to deliver and
12 sustain demand side management services?

13 Five, how can the Public Utilities Commission verify
14 the performance and persistence of the demand side
15 management portfolio?

16 Six, how does Black Hills Power's South Dakota
17 operations compare to that of their peers and Black Hills
18 Power's other companies located in other states?

19 And, seven, what does diversity mean for Black Hills
20 Power?

21 I'd like to provide some evidence for the basis of
22 my conclusions. Nationally, regional technician
23 organizations in New England, Mid-Atlantic, and on the
24 West Coast have integrated demand side management into
25 their long-term plans.

1 Demand side management is competing with supply side
2 resources and reducing capacity costs in each of those
3 regional transmission areas that I mentioned. About 20
4 states have some flavor of an energy efficiency resource
5 standard, and states are implementing plans that are
6 reducing energy consumption in real terms.

7 There are, of course, concerns in these states about
8 utility revenue requirements. And in each of these
9 states performance-based incentives have been developed
10 that are linked to specific state circumstances so the
11 utility is able to retain revenue and keep up with its
12 fixed costs that exist regardless of the number of
13 customers.

14 Those performance-based incentives are linked to
15 the goals which are overseen by public utilities
16 commissions.

17 Nationally, FERC Order 719, which was issued in
18 October 2008, requires regional transmission
19 organizations to treat all resources comparably. And I
20 know that that Order does not apply to South Dakota since
21 it's not an organized market. But it is evidence of the
22 trend that we see nationally and, in fact, Order coming
23 out of FERC.

24 Specifically, I want to provide five case examples
25 just to highlight my points. First in Vermont. Vermont

1 in 2008 saved 53 megawatt hours for each \$10,000 invested
2 in energy efficiency, saving a total of 144,000 megawatt
3 hours for that year, which is a 2.5 percent reduction of
4 the consumption in that state at a cost of 3.1 cents per
5 kilowatt hour.

6 I would note that Vermont is a very mature
7 program -- it's been operating for many years -- and that
8 this is a significant increase in their savings from
9 previous years. Just to show how much energy efficiency
10 is out there, even in states that have been involved in
11 these programs for many, many years.

12 In my former state of Connecticut where I sat on the
13 Board that state has saved energy equivalent to a
14 500-megawatt power plant since that program was initiated
15 in 1999.

16 More locally, in Dakota County, Minnesota their
17 county administration building saved \$1.3 million in 2009
18 based on the energy efficiency measures that were
19 implemented in that county admin building.

20 And then Eastern Illinois University in Charleston,
21 Illinois, which has a student body of about 12,000, has
22 reduced its consumption 33 percent since 2000, saving
23 over \$15 million in the last decade.

24 So I want to talk about energy efficiency and how it
25 works because based on my review of both the testimony

1 last week and the Docket submitted to the hearing, there
2 appeared to be some confusion among the parties about
3 what efficiency is and how it works.

4 Q. Mr. James, in addressing those issues, did you
5 prepare a series of three demonstrative exhibits?

6 A. Yes, I did.

7 Q. Okay. I'd like to show you what have been marked
8 Exhibits 19 -- I'm sorry. Exhibits RCC 19 through 21.
9 Take a moment to familiarize yourself with them.

10 A. Thank you.

11 Q. Could you briefly describe these charts to the
12 Commission?

13 A. Yes. But if I may, Counsel, I had like 60 seconds
14 of preliminary --

15 Q. Sure.

16 A. -- before that, if that's okay.

17 Q. Sure.

18 A. All right. Thank you.

19 Before I get into the exhibits, I just want to take
20 a brief moment to distinguish energy efficiency from
21 conservation and demand response.

22 Very simply, energy efficiency means an appliance, a
23 process, piece of equipment that is performing the same
24 or better level of service but at lower energy
25 consumption.

1 I distinguish that from conservation. Conservation
2 are those extra steps that are taken on peak days, either
3 during the winter or summer, when we see electricity
4 prices going up or when we have the potential for
5 reliability problems.

6 There are things like increasing the temperature of
7 air conditioning up several degrees, turning parts of
8 lighting off, or in some cases some industrial facilities
9 will actually send workers home to reduce the demands on
10 the system.

11 And then, finally, demand response is those measures
12 that are taken in response to signals from a utility or
13 from a regional transmission organization when the
14 electricity peak is believed to or is about to
15 contribute to reliability issues and some quick steps
16 need to be taken in the next 10 to 30 minutes to relieve
17 that peak.

18 So they include not only those steps that I
19 mentioned about conservation but they can also include
20 measures such as actually shifting over to backup
21 generation and actually shutting down entire operations.

22 So I just want to then use that to talk about energy
23 efficiency and how it works. So energy efficiency is
24 cumulative in that performance persists for the life of
25 the project measure or program. So actually how do we

1 work this thing?

2 Q. First we need to have the exhibits admitted.

3 A. Okay.

4 Q. Did you personally prepare those charts?

5 A. I did.

6 Q. And what do those three charts represent in general
7 terms?

8 A. Okay. The Exhibit 19 and 20 are examples of energy
9 efficiency savings of 1 percent per year and 1.5 percent
10 per year.

11 And then Exhibit 21 is a combined example that shows
12 the impact of energy efficiency and demand response at a
13 commercial application.

14 MR. KHOROOSI: Okay. Mr. Smith, I would move
15 the admission of RCC Exhibits 19 through 21.

16 MR. BRINK: Mr. Smith, I would object, just for
17 the record, on the basis that these exhibits were just
18 provided to us this morning. I don't know that there's
19 any reason why they could not have been provided earlier.

20 We did ask for Mr. James' deposition which would
21 have given us an opportunity to discuss these exhibits
22 with Mr. James, and Mr. Khoroosi objected to that. So,
23 for the record, I would enter an objection to the
24 admission of these exhibits.

25 MR. SMITH: Staff.

1 MS. CREMER: Staff does not have any objection.

2 MR. SMITH: I guess you've put me in kind of a
3 tough spot, Mr. Khoroosi, but I'm going to admit the
4 exhibits so that he can discuss them.

5 And my apologies, Mr. Brink. We'll do the best
6 we can with cross-examination on that, with that
7 understanding.

8 Please proceed.

9 MR. KHOROOSI: Thank you.

10 Q. You can proceed, Mr. James.

11 A. Okay. Thank you. So this is the Elmo that I put it
12 on?

13 So these are hypothetical -- I want to just say that
14 at the outset. Hypothetical examples that I prepared
15 just to illustrate some very simple invasive points about
16 efficiency.

17 This first graph here in Exhibit 19 assumes that
18 Black Hills Power would have started an energy efficiency
19 program in 2006 that would have resulted in savings of
20 1 percent per year. And what it shows is based on a peak
21 load of 600 megawatts, that you would save approximately
22 6 megawatts each year and that each succeeding year those
23 savings accumulate.

24 The basis for that is when you install an efficient
25 light bulb, efficient motor, that performance persists

1 for the life of that measure. So the savings that occur
2 in year one will last for as long as that measure. So if
3 the light bulb lasts 7, 8, 9, 10 years, those savings
4 persist.

5 The same with the motors that are installed in a
6 factory. Those will typically last for decades. And at
7 the end of that life the assumption is that the person,
8 the commercial application, the factory's not going to go
9 back and install an inefficient device after it's been
10 operating all of these years in saving not only energy
11 but also money.

12 So that's the basis for saying that first the
13 savings accumulate and they persist.

14 Now at the end of the tenth year we would have about
15 54 megawatts of capacity that have been created by this
16 energy efficiency program. And this is about the point
17 when some of the measures will begin to need to be
18 replaced. For example, lighting and those kinds of
19 things typically last eight to 10 years.

20 So if the efficiency program remained at that same
21 level of 1 percent, then based on this hypothetical
22 example, the 54 megawatts is probably about the amount of
23 capacity that would be saved. You would actually have to
24 increase your program in order to receive additional
25 benefits above that 54 megawatts just because of the way

1 these measures perform.

2 My next example, though, is probably closer to how a
3 lot of the efficiency programs perform in this country.
4 And that is after an initial period of, you know, one,
5 two, three years programs get a sense of, you know, the
6 customers, their loads, what measures are cost-effective.

7 They perform energy efficiency potential studies to
8 determine, you know, how much energy efficiency is there,
9 what's available economically. And based on that, what
10 we see is a trend that actually increases the amount of
11 savings that have occurred.

12 I note my Vermont example as one. That has
13 basically tripled the amount of savings in the last four
14 years.

15 So here in this example on Exhibit 20 what we have
16 is a program that saves 1 percent per year for the first
17 three years and then increases that savings rate to
18 1.5 percent per year for the next several years so at the
19 end of the 10th year we have 66 megawatts of capacity
20 created.

21 Now it shows that 1.5 percent number based on a
22 couple of local points. First, that is the number that,
23 in fact, the Iowa Utilities Board has used in their cases
24 in that state where they've required their utilities to
25 achieve that level by 2011. And it's also consistent

1 with the commitment that Governor Rounds has made, as
2 well as states next to Iowa. For example, Illinois has a
3 commitment to go to 2 percent.

4 So these are not only recent numbers, they're also
5 regional numbers. I wanted to use something that was
6 based on, you know, facts local to South Dakota.

7 Okay. And then finally because I'm sure that there
8 will be questions about, well, this is -- you know,
9 54 megawatts is very nice but what if the capacity needs
10 are actually higher than that or we need to create
11 savings more quickly than the rate that I've shown in my
12 previous exhibits.

13 So Exhibit 21 is a actual exhibit from a commercial
14 building in Albany, New York. This building had its
15 electricity performance measured prior to the completion
16 of efficiency measures so they were able to measure
17 before and after performance.

18 So the top of this graph here, this is the load
19 shape from the existing building before efficiency
20 measures were implemented.

21 The green line under that shows the performance
22 after the measures were adopted. What you see is about
23 roughly a 20 percent reduction of energy demand during
24 the day.

25 Then on top of that they looked at what would be the

1 benefits of applying demand response or additional
2 conservation measures during the peak period, which in
3 this area of the country tends to be in the afternoon on
4 hot days like we're seeing today.

5 So they applied additional conservation measures,
6 load management measures during those peak periods of the
7 day and got an additional reduction of 10 or so percent.
8 So the entire difference where their performance was
9 before to where they would be after the application of
10 conservation plus the additional demand response
11 conservation measures is about a 30 to 35 percent
12 reduction.

13 I'd next like to move to concerns that I had in my
14 direct testimony and which remain to be not addressed
15 relating to the Integrated Resource Plan or the IRP. And
16 I just want to briefly summarize the concerns.

17 There are a number of variables that influence the
18 results of an IRP. Those are the rate of electricity
19 growth, the assumptions regarding fuel costs and their
20 escalation, the assumptions regarding cost of
21 construction for both the resource of choice as well as
22 the resources that it's being compared to, and then the
23 cost of operation.

24 Each of those variables requires some sort of human
25 interaction and review. There was testimony regarding

1 how the Ventyx model provides the least cost resource
2 based on how the model works. And that is true. It is a
3 computer model.

4 But the computer requires human input. And humans
5 have a very high degree of -- of ability to review those
6 assumptions and to question whether those assumptions are
7 accurate and precise.

8 And my conclusions regarding the IRP are that,
9 first, efficiency and demand response have not
10 appropriately been accounted for. Despite questions that
11 the Residential Consumers Coalition asked both in its
12 data request and then follow up, we were unable to obtain
13 a copy of the Black Hills Power Demand Side Management
14 Study and any assumptions that they used regarding how
15 those resources were accounted for in the IRP.

16 And I reviewed the testimony from last week and
17 was -- and learned that this study has been delayed yet
18 again. So I do have a number of concerns about why it
19 has taken so long to complete the study and why it's not
20 yet been released so we can have a look at it.

21 But I wanted to emphasize that these IRP processes
22 do benefit from questions that are asked by the public
23 and especially questions that are asked by Public Service
24 Commissions. I think it's very important that you all
25 understand that you have a very critical role in these

1 processes and that the results should be transparent to
2 everyone.

3 My final topic gets into risk. And I want to talk
4 about the risk from costs of additional environmental
5 programs that are expected. And if I could quote former
6 Secretary Rumsfeld, these are "known knowns."

7 There are several new environmental requirements
8 that are expected in 2010 and 2011. One of these
9 actually was released yesterday, and this is the
10 Environmental Protection Agency's replacement for what
11 was known as the Clean Air Interstate Rule.

12 While this is still a proposed rule and expects to
13 be finalized over the next several months, the rule is
14 expected to impose additional requirements on criteria
15 air pollutants to the utility industry in the
16 United States.

17 Additionally, the EPA is working on a new rule for
18 mercury emissions from the utility industry. That rule
19 is expected to come out in early 2011.

20 The EPA is also promulgating new ozone and fine
21 particulate standards during 2010 and 2011 that will
22 require states to develop plans for how to obtain and
23 maintain compliance with those standards.

24 One of the key provisions in these rules is that
25 states must demonstrate that they are not causing or

1 contributing to a significant impact to another state
2 from these standards, even if they themselves are not in
3 attainment or are in violation of the standard.

4 We also have new standards coming out from the EPA
5 on cooling water and for ash landfills.

6 So there are a number of issues coming out. The
7 utility industry estimates that these will impose
8 billions -- multiple billions of dollars of costs upon
9 them, and this is something that utilities across the
10 country are looking at now in terms of how does this
11 affect their current business and what steps they need to
12 be taking to meet these new standards that are coming
13 out.

14 Finally, I want to address comments that were made
15 in a related docket in Wyoming related to Wyoming Public
16 Service Commission Docket 20002-69-EA-07. And I want to
17 refer to the direct testimony by Denise Parrish of the
18 Wyoming Office of Consumer Advocate that was filed on
19 March 10, 2008.

20 Ms. Parrish noted that Black Hills Power has not
21 complied with the 1993 Wyoming Public Service Commission
22 Order issued pursuant to the Neil Simpson Unit II to
23 treat demand side resources equally in their plans. The
24 company was also ordered to include resource diversity
25 and the ability to verify energy savings.

1 So we've had 17 years where we still do not have
2 comparable treatment of demand side management or
3 evidence of fuel diversity.

4 Also in this same testimony Black Hills Power told
5 Wyoming that a 10 percent reduction in consumption is
6 feasible. That was also referenced in Ms. Parrish's
7 testimony.

8 That concludes my formal remarks at this time.

9 Q. Thank you, Mr. James. And did you have a chance to
10 review the rebuttal testimony and the rough transcript of
11 the proceedings last week?

12 A. I did.

13 Q. Okay. And do you have any particular comments in
14 response to particular issues that were raised,
15 particularly by Ms. Tietjen and Mr. Evans?

16 A. Yes, I do.

17 Q. Okay. Could you explain those to the Commission?

18 A. Sure. I'd be happy to.

19 Regarding the testimony of Ms. Tietjen, there were
20 four points that I wanted to respond to. First was her
21 statement that demand side management is an attempt to
22 influence peak demand and is focused on measures.

23 I think that really narrows the scope of how demand
24 side management is treated and viewed throughout the
25 United States. First is that DSM actually focuses not

1 only on peak but on base so that you get benefits during
2 all hours of the day and all days of the year.

3 Second is that a demand side management program
4 includes measures such as installing a new light bulb,
5 programs like a low income program, a residential
6 program, a commercial program.

7 Projects. For example, looking at this entire
8 capital building as a project and doing things
9 wholistically that would reduce the consumption as well
10 as the energy bills from this building as a whole. So
11 many, many measures at one time but in one defined
12 location.

13 And then finally the portfolio of resources, which
14 means all measures and all projects and programs
15 together. That is how we look at demand side management
16 appropriately.

17 My second point in response to her, the model just
18 picks the least cost resources, referring to the Ventyx
19 model. And while it is true that that's indeed how the
20 model operates, I think that oversimplifies how this
21 model is used.

22 Utilities, stakeholders, everyone involved in this
23 process have an opportunity to determine and decide what
24 assumptions should be used for the different variables
25 that the model will assess. And I referred to a few of

1 those that have particular influence earlier in my
2 testimony.

3 So I think I just wanted to point that this is not
4 some black box type of thing that just goes off on its
5 own and spits out, you know, the least cost number. It's
6 actually a model that first requires human input and then
7 based on input provides the least cost resources.

8 Her third point is that DSM will not reduce the need
9 for capacity in the next 20 years. And that remark just
10 really is counter to what we see as the facts on the
11 ground.

12 We see states across the country not only on the two
13 coasts but here in the Plains and Midwest as well that
14 have very aggressively pursued efficiency, recognized the
15 economic energy and environmental benefits, and
16 particularly as we see now in the leading Northeast and
17 Mid-Atlantic, PJM markets -- what we see is efficiency is
18 actually not only reducing the need for capacity but it's
19 lowering the cost of capacity so it's providing direct
20 economic benefits to consumers in those states.

21 Her fourth point related to some demand side
22 programs are cost-effective, others are not, I note that
23 she did not provide any evidence of what programs are
24 cost-effective, just referred back to programs that were
25 started 30 years ago. I don't think that's really

1 relevant.

2 There are discrete measures that may not be
3 cost-effective. You know, some programs that target
4 renters and low income where you have the landlord
5 responsible for the appliance but the tenant paying the
6 bill, those may not be cost-effective. But there are
7 ways of first making those cost-effective, and then when
8 you look at the entire portfolio of measures, projects,
9 and programs, what we see in general is that these
10 programs are providing benefits that are saving 3 to \$4
11 of energy for each dollar of invested. And that is in
12 addition to the other benefits.

13 I also had three points on I believe it was Staff
14 Witness Evans, if I'm accurate on that, if I may.

15 The first regarding a statement that 4 percent is a
16 U.S. national average for demand side management. I
17 think it's inappropriate to use national numbers to
18 characterize programs because when you do that you're
19 including, for example, the entire southeastern
20 United States, which effectively does not have a demand
21 side management program.

22 I think it's more appropriate to look at what's
23 happening regionally as well as what we see happening in
24 many of the leading states that I've identified where
25 we're seeing savings of 2 percent a year.

1 In Massachusetts they actually have a commitment of
2 3 percent per year. And these are not considered at all
3 out of the main stream. Utilities are invested in these
4 and also recognizing the benefits.

5 My second point was that 17 percent reduction by
6 2020 is not realistic. Again, I think it looks at, you
7 know, from what perspective are you starting? If you're
8 not making a commitment to demand side management, then
9 17 percent could seem like a very high bar.

10 But what we see is that when utilities undertake
11 very systematic, comprehensive, and thorough assessment
12 of what resources are available in their territory, what
13 resources are available economically, how do they
14 prioritize them, what goals can be set, then actually
15 that number is not only, I think, reasonable but is very
16 attainable.

17 And the third point was one that solar energy only
18 works on the hottest days of the summer. I don't
19 understand that remark when we see programs not only in
20 the United States but in Europe that are being adopted in
21 very cloudy climates, and they're achieving a number of
22 benefits.

23 And so I just wanted to point out that the way that
24 solar energy and photovoltaics perform has nothing to do
25 with the temperature. It has to do with the amount of

1 insulation or the amount of sunlight that's coming in on
2 a particular day and is unaffected by temperature.

3 So, in conclusion, I would just again go back to my
4 opening remarks that while I've reviewed the testimony
5 that was presented last week and also the Settlement
6 Agreement, there is nothing in that Settlement Agreement
7 that would change my conclusion.

8 And, in fact, I would suggest to the Commission that
9 it consider improving the Settlement so that the next
10 time that Black Hills Power comes in to request a rate
11 increase that they have some specific metrics by which
12 can be judged.

13 And I would suggest specifics in terms of when the
14 IRP is to be due, like what date, as well as specific
15 requirements to include demand side management and
16 renewable resources.

17 The way the Settlement Agreement reads now I don't
18 believe there is adequate protection or clarity for the
19 Commission, and I think it would be prudent to improve
20 that agreement by inclusion of a few clarifying remarks
21 to help your decision making in the future.

22 That concludes my remarks at this point.

23 MR. KHOROOSI: Thank you, Mr. James. I have
24 nothing further.

25 MR. SMITH: Mr. Brink, are you handling the

1 cross-examination?

2 MR. BRINK: Yes, I am, Mr. Smith.

3 MR. SMITH: Please proceed.

4 CROSS-EXAMINATION

5 BY MR. BRINK:

6 Q. Good morning, Mr. James.

7 A. Good morning.

8 Q. My name is Todd Brink, and I'm an attorney for
9 Black Hills Power. How are you today?

10 A. Good.

11 Q. I noticed in your testimony that you said today was
12 a hot day; is that right?

13 A. I was referring to what I'm sure many of you saw in
14 the news in the eastern United States. It was all over
15 the weather channel this morning.

16 Q. Much of your testimony was focused on the eastern
17 portion of the United States; is that correct?

18 A. It references cases in the eastern United States as
19 well as those more locally where I could find examples.

20 Q. For example, you referred to the "facts on the
21 ground" I believe was a phrase that you used, and then
22 you went on to discuss the facts on the ground in the
23 northeastern portion of the United States; is that
24 correct?

25 A. Right. Northeastern United States as well as PJM,

1 which covers markets from New Jersey over to the Chicago
2 metropolitan area.

3 Q. And looking at your prefiled testimony in this case,
4 I noted on page 6 that you indicate that prior to filing
5 your testimony you reviewed Black Hills Power's
6 Application including its testimony and exhibits; is that
7 correct?

8 A. Yes. That's correct.

9 Q. And you also reviewed data responses and other
10 publicly available information; is that correct?

11 A. Yes.

12 Q. Would you say that you conducted a thorough review
13 of these items prior to filing testimony in this case?

14 A. I reviewed the data requests that were responsive to
15 the areas that the Residential Consumers Coalition was
16 interested in.

17 Q. Okay. How about the Application itself, the
18 testimony that was filed with the initial Application?
19 Did you thoroughly review those items?

20 A. Yes. At the time they were filed I have, yes.

21 Q. Okay. And prior to filing your testimony, you
22 thoroughly reviewed those items?

23 A. Yes, I did.

24 Q. Thank you.

25 A. But I would point out that, for example, I did not

1 get into any of the economics or rate issues, those
2 issues.

3 Q. As relevant to your testimony, you thoroughly
4 reviewed the Application?

5 A. Right.

6 Q. And Black Hills Power's testimony and exhibits?

7 A. Right.

8 Q. Thank you. Also looking at your prefiled testimony
9 you state that customer and stakeholder input are
10 important to the design of energy efficiency programs; is
11 that correct?

12 A. Yes.

13 Q. And you also suggest that Black Hills Power discuss
14 or talk with other South Dakota utilities regarding the
15 energy efficiency programs that are being implemented in
16 the state by other utilities; is that correct?

17 A. I did. As well as their own -- other companies that
18 they operate in other states.

19 Q. Yeah. Certainly. And you also suggested that
20 perhaps the PUC or Black Hills Power could convene a
21 stakeholder process for gathering input regarding energy
22 efficiency programs; is that correct?

23 A. Sure. That's absolutely one option that could be
24 considered.

25 Q. If that process were to take place, would you be

1 interested in participating?

2 A. I'd have to talk with my clients, but on a personal
3 level, yes.

4 Q. Would you expect that Synapse Energy, the company
5 that you work for, would be interested in participating?

6 A. I would think so. We have done it in other states.

7 Q. And would you expect that Plains Justice, the entity
8 that hired you in this case, would be interested in
9 participating in that stakeholder process?

10 A. I don't know the answer --

11 MR. KHOROOSI: Objection. Calls for
12 speculation.

13 Q. Would you expect that any of the three residential
14 consumers in this case, Liliias Jarding, Bobbie Handley,
15 or Karla Kock, would be interested in participating in
16 that stakeholder process?

17 MR. KHOROOSI: Objection. Calls for
18 speculation.

19 MR. SMITH: Sustained.

20 Q. Well, it's something that you suggested that
21 stakeholders would be interested in participating in this
22 process.

23 Have you ever discussed that issue with Ms. Jarding,
24 Ms. Handley, or Ms. Clock? Kock. Excuse me.

25 A. I have not directly.

1 Q. Okay. Have you had any discussions with them at all
2 about any matter?

3 A. No.

4 Q. Okay. Now two weeks ago on June 30, 2010 the
5 South Dakota PUC did host an Energy Efficiency Workshop.
6 Excuse me. June 23, 2010 the South Dakota PUC did, in
7 fact, host a Energy Efficiency Workshop to seek
8 stakeholder input.

9 More than 40 industry experts were here to discuss
10 energy efficiency and demand side management programs.
11 Did you participate in that workshop?

12 MR. KHOROOSI: Objection. That's irrelevant.

13 MR. SMITH: Overruled.

14 A. No.

15 Q. To your knowledge, did anyone from Plains Justice
16 participate in that process?

17 MR. KHOROOSI: Objection. Irrelevant.

18 MR. SMITH: Overruled.

19 A. I don't know.

20 Q. To your knowledge, did anyone from Synapse Energy
21 participate in the Energy Efficiency Workshop hosted by
22 the South Dakota PUC on June 23, 2010?

23 MR. KHOROOSI: Same objection.

24 MR. SMITH: Overruled.

25 A. No.

1 Q. To your knowledge, did any of the three Residential
2 Intervenors in this case, Liliias Jarding, Bobbie Handley,
3 or Karla Kock, participate in the Energy Efficiency
4 Workshop hosted by the South Dakota PUC on June 23, 2010?

5 MR. KHOROOSI: Objection. Irrelevant.

6 MR. SMITH: Overruled. Only if you know.
7 Answer only if you know.

8 A. I don't know.

9 Q. On page 13 of your prefiled testimony you conclude
10 that Black Hills Power is not going to initiate
11 development of renewable energy resources unless a
12 state enacts a renewable portfolio standard; is that
13 correct?

14 A. I don't think that's my exact conclusion.

15 MR. SMITH: What page are you on, Mr. Brink?

16 MR. BRINK: Give me a moment here. I've got
17 page 13. The pages are a little off. I think from what
18 Mr. Khoroosi sent around yesterday, it might be page 14.

19 The first words on the top of my page are
20 "Recycled energy."

21 Q. And what I'm looking at is the testimony just
22 above -- the question that says, "Please discuss issue
23 number 3." I'm looking at the last sentence of the
24 answer before that.

25 A. Okay.

1 MR. KHOROOSI: I'm sorry. If I could interrupt,
2 Mr. Smith, if I could have permission to bring my laptop
3 up so that the witness can read the testimony off of it.

4 MR. MAGNUSON: He can just look at the exhibits.
5 The exhibits are right here.

6 MR. SMITH: Okay. There you go. Has the --
7 have the numbered pages been provided to the reporter for
8 inclusion in the final -- in the official exhibits?

9 MR. KHOROOSI: They have not. It's -- I can
10 have it provided later today.

11 MR. SMITH: Okay. Thank you.

12 MR. BRINK: Mr. Smith, if I could approach the
13 witness --

14 THE WITNESS: I found it.

15 Q. Okay. Thank you. So it's basically the middle of
16 the page?

17 A. Yeah.

18 Q. BHP is essentially admitting that it's not going to
19 initiate development of renewable energy resources unless
20 the state enacts an RPS?

21 That was your testimony that you prefiled; is that
22 correct?

23 A. Yes. I see those words.

24 Q. Thank you. So in your review of the 2007 IRP which
25 was included with Black Hills Power's Application, did

1 you note that the base plan called for the addition of
2 renewable resources, including 25 megawatts of wind
3 resources in 2012?

4 A. I did note the addition of a wind resource, small
5 wind resource, yes.

6 Q. Okay. And did you note the addition of 25 megawatts
7 of wind resources in 2013?

8 A. Yes. Well, because I referenced that above.

9 Q. Yeah. I'm asking if you recognize that -- I'm not
10 asking you to read your prefiled testimony. I'm asking
11 if you recognized that when you reviewed the 2007 IRP.

12 A. I recognized that that was a -- one of the elements
13 being considered, yes.

14 Q. And the addition of 25 megawatts of wind in 2022?

15 A. Well, I think you're just referring to the figure
16 from above; right?

17 Q. So yes, you did notice that then?

18 A. Yes. Yes.

19 Q. Okay. Thank you. And additional renewable
20 resources were called for in the base plan throughout the
21 planning period; is that correct?

22 A. There was also resources in 2027.

23 Q. Okay. Thank you. And also 2026, I guess if you
24 wanted to be complete, and 2023; correct?

25 A. I don't recall the 2023.

1 Q. Okay. Thanks. Also in your prefiled testimony you
2 make note of two utilities with operations in
3 South Dakota that "lead the nation in total wind
4 capacity"; is that correct?

5 A. I believe that -- yes. I recall making that
6 statement.

7 Q. Correct. One of them was MidAmerican with wind
8 capacity equal to 4.7 percent of its retail sales; is
9 that right?

10 A. Yes.

11 Q. And the other was Xcel Energy with wind capacity
12 totalling 9.3 percent of its retail sales; is that
13 correct?

14 A. Right. Right.

15 Q. As part of your review, your thorough review in this
16 case, did you ever bother to calculate Black Hills
17 Power's wind capacity in relation to its total retail
18 sales?

19 A. I haven't made that exact calculation, no. And,
20 again, you're asking me to compare what is developed
21 versus what is planned.

22 Q. Are you aware that Black Hills Power receives
23 35 megawatts of wind capacity currently?

24 A. Yes.

25 Q. Okay. So that would be something current that you

1 can consider and not something that you would speculate
2 into the future; is that correct?

3 A. Right.

4 Q. And I guess more to the point, are you aware that
5 Black Hills Power's wind capacity totals 6.3 percent of
6 its retail sales?

7 A. I didn't know that exact number.

8 Q. If 6.3 is the correct number, you'd have to also say
9 that Black Hills Power leads the nation in wind
10 development, wouldn't you?

11 A. If that's the correct number, yes.

12 Q. Thank you. Also in your prefiled testimony you
13 state that the owner of the mine that provides fuel for
14 Wygen III could deplete its reserves by accessing
15 domestic and international markets; is that right?

16 A. Yes.

17 Q. Do you know who owns the mine that supplies the fuel
18 for Wygen III?

19 A. I believe it's the Wyodak Resources.

20 Q. Okay. And do you know anything about that company?

21 A. Not in detail. I know that there's a relationship
22 with Black Hills Power, but I don't know the details of
23 any financial relationship.

24 Q. So you are aware that it's an affiliate of
25 Black Hills Power, Wyodak Resources, the supplier of fuel

1 for Wygen III, is an affiliate of Black Hills Power?

2 A. Yes.

3 Q. And are you aware where the mine is located?

4 A. I'm aware the mine is located close to the plant.

5 Q. Okay. You mentioned some discussion of a Black
6 Hills Power DSM study in your testimony here today.

7 Do you recall that?

8 A. Yes.

9 Q. And I think that you said that you had not seen a
10 DSM study from Black Hills Power; is that right?

11 A. That's correct.

12 Q. Is it possible that Mr. Khorroosi has been provided a
13 draft of a DSM potential study and has not shared that
14 with you?

15 A. I'm not aware of any such.

16 Q. But it's possible that he's been provided it and you
17 have not been provided the study; is that correct?

18 A. I have not seen any study.

19 Q. Okay. And I think you also said that you didn't
20 understand why a DSM study had not been made final or
21 had not been completed by Black Hills Power; is that
22 correct?

23 A. Yes. As referenced in the testimony last week, it
24 was indicated there was an additional delay to the
25 release of that study.

1 Q. And that you didn't have any explanation for that;
2 is that correct?

3 A. That's correct.

4 Q. Is it possible that Mr. Khorroosi has received an
5 explanation for that and has not shared that explanation
6 with you?

7 A. I suppose. I have not been provided an explanation.

8 Q. Certainly. You mentioned the facts on the ground in
9 your testimony. I just want to ask a few questions about
10 the facts on the ground here in South Dakota.

11 Have you ever been to Black Hills Power's service
12 territory?

13 A. Yes.

14 Q. Okay. A vacation?

15 A. Yes.

16 Q. When were you last in Black Hills Power's service
17 territory?

18 A. Would have been the early 1990s.

19 Q. Okay. It was not a work-related trip; it was just
20 enjoying the Black Hills?

21 A. Correct.

22 Q. Okay. Do you know whether Black Hills Power's
23 service territory is in the eastern or western
24 transmission grid?

25 A. Well, it actually is physically located more in the

1 east, but there are bridges to the west.

2 Q. Okay. There are bridges to the west?

3 A. Well, there's interconnection to the access WECC
4 from that area of the Dakotas.

5 Q. Do you know the size and capacity of that?

6 A. I don't know the exact -- I'd have to look at a
7 transmission map but --

8 Q. Do you know the current growth rate for Black Hills
9 Power's service territory, just in population growth what
10 the current growth rate is?

11 A. I only know what the assumption on electricity
12 growth rate was from the IRP, which was, you know,
13 nominally something around 1.6 percent or so.

14 Q. And have you done anything to study that growth
15 rate, to verify or come to your own conclusions regarding
16 what the growth rate is in Black Hills Power's service
17 territory?

18 A. No, I have not.

19 Q. Do you have any knowledge of any current economic
20 development activities in the Black Hills in the Black
21 Hills Power service territory?

22 A. Not directly.

23 Q. Have you ever prepared an electric resource plan for
24 a utility -- or an Integrated Resource Plan. Excuse me.

25 A. It depends on what you mean by "prepare." Have I

1 personally conducted the entire thing, done it by myself?

2 No. Of course not. Nobody --

3 Q. Have you been the person responsible for seeing to
4 it that an Integrated Resource Plan is prepared and
5 completed for an electric utility?

6 A. No. I've never worked directly for a utility.

7 Q. So have you ever been or has it ever been your
8 responsibility to make the ultimate planning decision to
9 ensure the electric customers have safe, reliable
10 electric service?

11 A. I would say as part of my duties on the Connecticut
12 Energy Efficiency Board that was one of our key operating
13 principles.

14 Q. But you've never worked for a utility and had to
15 make those decisions on behalf of the utility, have you?

16 A. No. But Our board was comprised of the main
17 utilities in the state. I mean, we worked very closely
18 with them.

19 Q. Certainly.

20 A. Not only on efficiency but also when IRPs were
21 developed we worked very closely on the assumptions,
22 modeling. It was a very collaborative process. I mean,
23 I would suggest that the IRP is the responsibility of the
24 utility and not of the state regulator.

25 Q. Thank you. And that was my question, if you had

1 ever prepared that as your responsibility on behalf of a
2 utility.

3 And I think your answer was no; is that correct?

4 A. No. Because I have not worked directly for a
5 utility.

6 Q. Thank you.

7 MR. BRINK: That's all I have at this time,
8 Mr. Smith. Thank you.

9 MR. SMITH: Thank you.

10 Commission Staff, cross-examination?

11 THE WITNESS: If I may, could I just take a
12 break to get a little water?

13 MR. SMITH: Sure.

14 MR. MAGNUSON: Can I turn off the projector
15 system too? Because I think it's broadcasting his
16 testimony.

17 MR. SMITH: Please do.

18 Are you ready to go, Mr. James?

19 THE WITNESS: I am.

20 MR. SMITH: Commission Staff, cross-examination
21 of Mr. James.

22 MS. CREMER: Thank you. Staff has no questions.

23 MR. SMITH: Then we'll turn to Commissioner and
24 advisor questions of Mr. James.

25 Are the Commissioners ready to proceed, or do

1 you want a break?

2 CHAIRMAN JOHNSON: I am. I may ask a few
3 questions and take a little break while others pop up, if
4 that's acceptable to you, Mr. Smith.

5 MR. SMITH: Fire away, Chairman Johnson.

6 CHAIRMAN JOHNSON: Good morning.

7 THE WITNESS: Morning.

8 CHAIRMAN JOHNSON: Could differences in
9 regulatory treatments or environments affect how many DSM
10 demand response or energy efficiency programs a company
11 offers?

12 THE WITNESS: Potentially, yes. Depending on
13 what cost-effectiveness tests are in the state statute.
14 Whether the utility has conducted any kind of examination
15 of the resources available. The degree to which those
16 are cost-effective.

17 Those can all influence what programs are
18 implemented and how deep penetration occurs.

19 CHAIRMAN JOHNSON: How important is regulatory
20 treatment?

21 THE WITNESS: Well, I guess I would -- I always
22 like to suggest that you stay within the law. But it
23 can -- I mean, there's --

24 For example, I'm aware in the state of Florida,
25 for example, it's the remaining state in the U.S. that

1 continues to use the rate impact measure. And as a
2 result, they are missing an incredible amount of
3 efficiency measures because of the restrictions that are
4 placed on what measures actually pass cost-effectiveness.

5 Contrast that with states that have statutes
6 that require all cost-effective efficiency measures to be
7 adopted or look at measures that are treated comparably
8 or using efficiency first as a loading resource. Those
9 are a much more -- I think give the Commission much more
10 flexibility in terms of what measures are accounted for
11 as well as the degree of penetration and success that can
12 occur.

13 CHAIRMAN JOHNSON: It seems as though a number
14 of those things you mentioned were functionally mandates
15 at the state level.

16 In your experience have those generally been
17 passed by the state legislature?

18 THE WITNESS: Either at the legislature or there
19 are sometimes general authorizing statutes, you know,
20 provide fair, affordable, reliable electric service. You
21 know, some commissions are -- I guess operate from a ask
22 for forgiveness rather than permission. And others look
23 at, you know, wanting specific words they can reference
24 first. And it really is very state specific.

25 CHAIRMAN JOHNSON: To your knowledge, is there

1 any statutory energy efficiency measure or objective in
2 South Dakota?

3 THE WITNESS: There are no specific goals that
4 I'm aware of in South Dakota.

5 CHAIRMAN JOHNSON: You noted the Iowa Utilities
6 Board and their goal to have 1.5 percent energy
7 efficiency attainment by 2011.

8 Do you know when that goal was set?

9 THE WITNESS: It was set in 2008.

10 CHAIRMAN JOHNSON: So that wouldn't be a
11 one-year attainment? That would be a three-year
12 attainment? Is that right?

13 THE WITNESS: No. What the Iowa Utilities Board
14 said was that each of the utilities in that state had to
15 ramp up the rate of their savings from where they were
16 currently, which was nominally around 1 percent or
17 slightly less, to achieve 1.5 percent per year and
18 sustain that starting from 2011 and then continuing that
19 beyond.

20 CHAIRMAN JOHNSON: So the 1.5 percent would
21 begin in 2011?

22 THE WITNESS: Correct.

23 CHAIRMAN JOHNSON: Okay. There was some
24 testimony, if I'm recalling correctly, maybe Ms. Tietjen,
25 that the low load growth assumptions used by Black Hills

1 Power in its IRP could have accounted for increased
2 energy efficiency efforts.

3 Do you think that's right?

4 THE WITNESS: I think that she believes that it
5 was. And this is why, you know, we asked those questions
6 and multiple times. Because we wanted to get at, well,
7 what was being assumed.

8 Because currently there were not only no
9 efficiency programs occurring in Black Hills Power's
10 service territory but there were statements made that
11 they were included in the model. So we wanted to see,
12 you know, what those were.

13 And we were not able to obtain what those --
14 what those data were or, in fact, that there actually
15 were assumptions used. That was the first point.

16 And the second is I would suggest that you look
17 at, you know, in these planning processes many different
18 scenarios and that one assumption should be to compare,
19 you know, what would it look like if South Dakota had a
20 similar standard to Iowa? What would the effect be? And
21 what resources would be chosen or needed based on that
22 kind of assumption?

23 And it gives much more range and kind of
24 establishes boundaries of, you know, what might exist and
25 what kinds of resources do we need to provide service in

1 the future.

2 CHAIRMAN JOHNSON: I will apologize at the
3 outset of this question because I don't think I have the
4 new paginated copy of your testimony. So what I'm going
5 to hope is page 12 but at the very least begins at the
6 top "Uncertain if" -- and it looks like I am right.

7 So on page 12 of your prefiled testimony.

8 THE WITNESS: I'm sorry. These are not
9 paginated so --

10 CHAIRMAN JOHNSON: Okay. It begins "Uncertain
11 if."

12 Commissioner Hanson let's me know that some
13 people have that as 11.

14 THE WITNESS: Is it a page that has -- it's just
15 all white? There's no bolded?

16 CHAIRMAN JOHNSON: It is all words. No bold.

17 THE WITNESS: Okay.

18 CHAIRMAN JOHNSON: No particular special format.

19 THE WITNESS: Okay. Maybe following the
20 question "Please explain" that begins "an IRP should
21 evaluate all resources"?

22 Does that land us in the right spot?

23 CHAIRMAN JOHNSON: It does not.

24 THE WITNESS: Okay.

25 MR. KHOROOSI: Commissioner Johnson, if I could

1 approach and assist Mr. James.

2 CHAIRMAN JOHNSON: Yeah. I don't have a problem
3 with that.

4 THE WITNESS: None of these are paginated.
5 Okay. I think we found that.

6 CHAIRMAN JOHNSON: Halfway down that page, in
7 fact, the last sentence of the paragraph that begins that
8 page, I believe your testimony reads "Based on Black
9 Hills Power sales from the period of December '08 through
10 November '09 the energy saved by Black Hills Power energy
11 efficiency measures is less than" it looks like
12 1 one-hundredth of 1 percent; is that right?

13 THE WITNESS: Yes. I see that. That's correct.

14 CHAIRMAN JOHNSON: Did you do any analysis as
15 to whether or not there was load growth that may have
16 masked the effectiveness of energy efficiency measures
17 in place?

18 THE WITNESS: I guess I want to separate that.
19 Because when you look at the quantity of energy savings
20 through energy efficiency, you compare that to their
21 annual sales for that particular year. That's how these
22 savings are calculated.

23 So the load growth variable comes into mind in
24 terms of looking at the future benefits of efficiency and
25 how much of that load growth might be offset by

1 efficiency.

2 So if the load growth is 1.7 percent per year
3 and efficiency remains at .01 percent, you're not going
4 to have much of an effect. It's going to continue at
5 that rate.

6 CHAIRMAN JOHNSON: I guess I'm curious more
7 about the calculation of this number. And perhaps I'll
8 ask it hypothetical. I'm just trying to aid to my
9 understanding of what this number means.

10 I mean, is it possible that there was some
11 amount of new load growth that showed up in Black Hills
12 Power's service territory for whatever reason and that
13 the effectiveness of energy efficiency measures was
14 masked by that, it was difficult to tell exactly what the
15 effectiveness of the energy efficiency measures would
16 have been?

17 THE WITNESS: I don't think -- I think that
18 might be possible, but I don't think that's the case.

19 And the reason I say that is we looked at what
20 were Black Hill (sic) Power sales, you know, during that
21 12-month period. And then based on the data that was
22 provided to us, these different measures, measure water
23 heating, measure et cetera, what were the total savings
24 compared to that. So --

25 CHAIRMAN JOHNSON: Okay. Now I got you. I

1 wanted to find out where these numbers came from. And
2 now I get that. Thanks.

3 THE WITNESS: Right.

4 CHAIRMAN JOHNSON: That's all I've got right
5 now, Mr. Smith.

6 Thanks, Mr. James.

7 THE WITNESS: Thank you.

8 MR. SMITH: Other Commissioner questions?

9 COMMISSIONER KOLBECK: Sure. Hi. I'm
10 Commissioner Kolbeck.

11 On your Exhibits RCC 19 and 20 I'll just focus
12 on 19. When you say energy efficiency increase of
13 1 percent a year --

14 THE WITNESS: Uh-huh.

15 COMMISSIONER KOLBECK: -- and then you've got
16 the 6-12-18, are you adding that like -- like you can
17 save money? Because we can't store megawatts. But are
18 you adding 1 percent a year so if you go for 16 years,
19 now you're at 16 percent energy efficiency?

20 Is that how you're figuring that?

21 THE WITNESS: Right. If you maintain that same
22 level of savings in each of those years and continue
23 that, that would be your cumulative savings over that
24 period of time.

25 COMMISSIONER KOLBECK: But if we're -- if we're

1 still only doing 1 percent -- well, are you assuming that
2 there's no growth then in your RCC 19 exhibit?

3 THE WITNESS: Well, it's a very -- it's a
4 hypothetical exhibit, and it just -- it actually is --
5 well, I guess it's irrelevant, I guess, depending on
6 the -- it assumes that your energy efficiency programs
7 are saving 1 percent per year of the total energy and
8 that nominally, you know, your peak demand is about
9 600 megawatts. Those are the core assumptions there.

10 COMMISSIONER KOLBECK: So, in other words, at
11 the end of -- well, you've got a 10-year span here. At
12 the end -- hypothetically you're assuming that in 2016 --
13 or 2015 you're assuming that you're at 15 percent energy
14 efficiency of your total growth? Or is it still the
15 1 percent?

16 THE WITNESS: That would -- you could say at the
17 end of that period compared to where you would have been
18 that you have reduced, you know, the total consumption by
19 15 percent. Right.

20 COMMISSIONER KOLBECK: And then my other
21 question goes to the EPA. You spoke of EPA standards and
22 such.

23 Do you feel that that's going to have what type
24 of an economic impact in the future? Is that what you
25 were driving at?

1 THE WITNESS: Yes.

2 COMMISSIONER KOLBECK: Or were you driving at
3 that Black Hills Power's IRPs and such will be trumped by
4 the EPA anyway?

5 THE WITNESS: No. It wasn't so much trumping
6 the IRP as these are programs that are coming out as we
7 speak. And, I mean, what I read from, you know, not only
8 utilities but also, you know, trade journals and things
9 like that is this is going to require the most
10 significant investment for utilities that it's ever
11 experienced in the United States.

12 And a number of utilities are looking, you know,
13 at what to do with their existing assets and how to
14 operate them based upon what they see.

15 So these are economic questions that are
16 being asked about current and future environmental
17 standards.

18 COMMISSIONER KOLBECK: In your opinion, would
19 that make it more difficult for a company to make a
20 decision in these times because the EPA standards are
21 changing? Or do you think that there's a clear view of
22 where we're headed?

23 THE WITNESS: I think on the programs that I've
24 mentioned, it's very clear that the EPA first intends to
25 impose more stringent requirements and that they intend

1 to be more comprehensive.

2 You'll note that I did not refer to carbon or
3 greenhouse gas regulations because I don't believe that
4 there's the same certainty.

5 With respect to those, I've been explicitly
6 avoiding including that because, A, it's not relevant to
7 this process here and, B, we have these known regulations
8 that are out there that we more or less know what the
9 requirements are going to be and if utilities are going
10 to have to put controls on what those costs are, at least
11 an estimate of what those costs are.

12 COMMISSIONER KOLBECK: And my last question
13 would be the cost of energy.

14 In your exhibit and your rationale I know that
15 on the East Coast the cost of electricity is considerably
16 more than it is here in South Dakota. Does that have an
17 influence on the impact of energy efficiency or your
18 conservation programs?

19 In other words, is it -- do you find it more
20 difficult to convince people who have lower rates to
21 conserve and use energy efficiency than on the East Coast
22 where costs could be double or even triple?

23 THE WITNESS: That's a very good question. And
24 let me try to unpack that a little bit.

25 First is that the high rates actually do allow,

1 you know, more energy efficiency to be cost-effective in
2 those states so the -- whoever is operating that program
3 has the ability to go, you know, much deeper and perhaps
4 look at, you know, measures and projects that in other
5 states may not be as cost-effective and may be, you know,
6 testing, you know, new technologies, for example, that
7 they would not otherwise be able to do because either
8 they have the latitude to do so through their program
9 administrators and their commissions or they have
10 statutes that say all cost-effective efficiency.

11 But I would note in the current state I live
12 in -- I now live in the state of Washington, and my
13 utility is the Tacoma City & Light. And we have pretty
14 cheap rates. They have a very aggressive efficiency
15 program there and, you know, have solar energy programs
16 and things like that. And this is a municipal utility
17 with about a city of 200,000 people.

18 So rates do matter in terms of maybe how deep
19 you're able to go initially and, you know, how high you
20 set the bar. But in terms of what's cost-effective, you
21 know, there are many, many measures that are achievable
22 for, you know, less than 3 cents per kilowatt hour. And
23 I'm not aware of any state that has rates that are that
24 low.

25 I think, you know, even the least cost state is

1 6 or 7 cents now. So there's a wide degree of measures
2 and programs that can be adopted, regardless of the rates
3 it can save customers.

4 I guess the last point I would make in terms of
5 South Dakota, while your rates are indeed lower than
6 those in other parts of the country, your customer bills
7 are the same as those in Vermont or California because of
8 the quantity of electricity that's used.

9 The average bill paid by customers in
10 South Dakota is very similar to that paid in Vermont,
11 Washington, you know, in states that have high rates.

12 So I think there's a number of opportunities
13 here to help consumers reduce their bills and, you know,
14 look at some very aggressive and cost-effective measures.

15 COMMISSIONER KOLBECK: I said it was the last
16 one. One more.

17 Do you think that that has any bearing on the
18 climate that we live in? In other words, California,
19 San Francisco is normally around 70 degrees whereas in
20 South Dakota we could be negative 30 to 110.

21 Is any of that taken into consideration with
22 energy efficiency programs?

23 THE WITNESS: It does in terms of what measures
24 you would want to look at. You might find that like
25 heating types of measures might be something more of

1 focus here because of the winter temperatures as well as,
2 you know, air conditioning in the summer.

3 Agriculture, you know, could be one because of
4 the, you know, degree of agriculture in this state.
5 Colorado has -- you know, operates a number of good ag
6 programs, for example, because of the influence in the
7 industry there.

8 So the climate has an effect only to the degree
9 of what measures you end up looking at first and how
10 those are prioritized. There's no difference in terms of
11 how those measures perform.

12 You know, some of the states I mentioned, you
13 know, Minnesota, Iowa have fairly cold winters and hot
14 summers as well.

15 COMMISSIONER KOLBECK: So you'd agree with me
16 that it's pretty difficult to compare apples to apples
17 from state to state?

18 THE WITNESS: Well, you have to look at -- I
19 mean, I never make broad sweeping statements that you
20 should do whatever, several Xs, because there are
21 different statutes, you know, rates, climate, et cetera.

22 But what is true across the country is that
23 efficiency measures perform exactly the same whether
24 they're installed in South Dakota or California. You
25 know, your light bulb is going to reduce consumption by

1 70 percent regardless of where it's installed. That
2 motor installed in the factory is going to work just as
3 well here.

4 But the difference that I think we've been
5 discussing here is just in terms of what areas you might
6 want to focus on first and the degree to which climate
7 may influence that.

8 COMMISSIONER KOLBECK: Thank you. Thank you
9 very much.

10 THE WITNESS: You're welcome.

11 MR. SMITH: Commissioner Hanson, questions?

12 COMMISSIONER HANSON: Thank you, Mr. Smith.

13 Mr. James, good morning.

14 THE WITNESS: Good morning.

15 COMMISSIONER HANSON: I will confess that I have
16 a -- that I'm not excited about coal generation, and much
17 to the chagrin of the Black Hills Power folks, I'll say
18 that on record. I do prefer nuclear, and that does not
19 appear to be an option for us at this juncture.

20 I thought it would be quite interesting to hear
21 your testimony, and it was. And I thought we would
22 have -- I would have a stronger relationship in support
23 of it than I do.

24 I'm curious about portions of it still. I
25 appreciate the fact that you presented the new Exhibit 19

1 and 20 to help a little bit. I suspect that you listened
2 to the testimony that was given and the questions that we
3 asked pertaining to those exhibits and those issues and
4 that's why you presented the exhibits.

5 Could you help me a little bit? I'm going to
6 piggyback a little bit, excuse me, on Commissioner
7 Kolbeck's questions on Exhibit 19. I'm still struggling
8 with understanding that. And perhaps I could use an
9 analogy and you can help me out with it from that
10 perspective.

11 THE WITNESS: Uh-huh.

12 COMMISSIONER HANSON: Assuming -- not
13 withstanding ENE and demand side management, et cetera,
14 assuming that 120 megawatts were necessary, an analogy of
15 my expenses are going up \$128. I need \$128.

16 Perhaps I can save 1 percent by cutting back in
17 some areas so I'm going to save \$6. You said the
18 funds -- the megawatts are cumulative. Now help me here.
19 If I need \$128 and I can save 6 and over a period of
20 10 years I save \$60, that's not going to make it for me.
21 I still need to have 128 every single year. The saving
22 \$60 over a period of 10 years doesn't help.

23 So are we -- is that cumulative, or is it a
24 point after 10 years that it has reached a savings of
25 60 megawatts or \$60?

1 THE WITNESS: Okay. No. That's good. Let me
2 illustrate this with a prop. Okay?

3 This is the room key to my hotel.

4 COMMISSIONER HANSON: We may end up with too
5 many analogies here, but go ahead.

6 THE WITNESS: Well, we'll see where this goes.
7 When I checked into my hotel last night the air
8 conditioner was running full blast. It was freezing.
9 And I think we all agree that this is abnormally cool
10 weather for South Dakota. I actually opened my window
11 because, you know, I didn't need the air conditioner.

12 So my point here is a very simple measure that
13 could be done is when you check in with your room key you
14 put your room key into a slot that controls your lights
15 and your HVAC, and whatever temperature you want you can
16 go over there and set it.

17 But when you leave the hotel you don't have to
18 worry about turning the lights off or running the AC when
19 nobody is there. It all goes off. The savings from just
20 that alone are significant. And that goes to the hotel's
21 bottom line. The customer doesn't even notice it.

22 This is, in fact, standard practice in many
23 countries globally now. And I've gotten used to it. In
24 fact, I had to remember to turn my lights off. So my
25 point is, first of all, there's a very significant

1 quantity of resources available in South Dakota and all
2 states. Even those really good states are finding
3 incredible cost-effective measures.

4 So getting to your question, Commissioner, when
5 it's -- let's go back to my example. The hotel decides,
6 okay, we're going to go to this new room key idea. Those
7 savings that occur when that switch is made continue as
8 long as those measures perform.

9 So if the consumption is reduced 30 percent,
10 that continues for years and years. So then you go to
11 another hotel and say, okay, this worked. What is this?
12 The Comfort Inn. We're going to try the Super 8 or
13 whatever. And you start to see, okay, where you have one
14 hotel, 10, 100, et cetera. I don't know how many hotels
15 there are in this territory. I would expect in Black
16 Hills' there are quite a few because of the tourist
17 industry. You could start to build up quite a bit of
18 savings, and those savings persist.

19 So your question about the 6 versus 60, in the
20 first year you indeed, you know, using the same example
21 so we're keeping apples and apples, are at \$6. But then
22 that \$6 continues. You know, in year two you have
23 another \$6, and the \$6 from the first year continues.

24 So the point is by the end of the tenth year
25 you're at \$60 a piece. So I think that part of your

1 understanding is accurate.

2 So then your question is, well, I need 128. How
3 do I get there?

4 Well, first it may be that you could actually do
5 much better than 1 percent per year. If a company does a
6 good efficiency study and looks at what the potential is,
7 they will likely find there is much more significant and
8 cost-effective measures than just 1 percent a year. That
9 will be the first step.

10 But then it gets into what other opportunities
11 are there to deal with this peak that I'm worried about
12 10 years out. And that gets into, you know, other load
13 management techniques that I might be able to apply
14 during peak hours. Are there demand response programs
15 available?

16 And we haven't talked at all about opportunities
17 on the supply side, other opportunities for combined heat
18 and power to the extent that I have, you know, large
19 commercial and industrial operations that might be able
20 to advantage themselves by having on-site power
21 generation and then using the waste heat in other
22 processes.

23 We're seeing a lot of very cost-effective
24 combined heat and power. And there is actually a company
25 in Chicago called Recycled Energy Development that's one

1 of the leaders nationally in that industry.

2 So it's not so much a question of silver bullets
3 as silver buckshot. You know, there are a lot of
4 policies that together can add up to, you know, whatever
5 the goal you're trying to reach.

6 But the most important thing, though, first is
7 to determine what is my goal and what measures can I
8 consider and adopt to achieve that goal and sustain that
9 over the long-term?

10 I'm hoping that I at least answered part of your
11 question, and if I didn't, let me fill in the gaps.

12 COMMISSIONER HANSON: Well, the answer that I
13 understand that you gave is that after 10 years you
14 believe that there is a possibility of saving those \$60
15 or those 60 megawatts every year so that when you reach
16 the tenth year you're saving 60 megawatts.

17 THE WITNESS: That's correct.

18 COMMISSIONER HANSON: For the entire year.

19 THE WITNESS: Right.

20 COMMISSIONER HANSON: It's not cumulative from
21 the standpoint of accumulating those megawatts and
22 hoarding them until you get to one particular year.

23 THE WITNESS: Right.

24 COMMISSIONER HANSON: Okay. Are you familiar
25 with maximum generation warnings from MISO and other

1 RTOs?

2 THE WITNESS: I'm not familiar with that exact
3 term, no.

4 COMMISSIONER HANSON: Well, are you familiar
5 with peak demands from the standpoint that they used to
6 be just in one season and now they're in winter and
7 summer both?

8 THE WITNESS: Yes. Sure.

9 COMMISSIONER HANSON: And as a result, peak
10 usage has increased to a point where the RTOs have to
11 issue warnings for generators to make certain that they
12 don't have any of their generation off-line?

13 THE WITNESS: Yes. Yeah. That we see really
14 nationally. The peak is growing, generally speaking,
15 much faster than the base.

16 COMMISSIONER HANSON: And presently out in the
17 Massachusetts area they are suffering through an
18 extremely hot period of time, and maximum generation
19 warnings would be issued, I assume, from PJM and other
20 areas?

21 THE WITNESS: Right. They're calling -- in
22 these extreme conditions they've asked for all generators
23 to be online, right.

24 COMMISSIONER HANSON: Do you think behavioral
25 attitudes change when the temperatures at 105 don't --

1 would not energy efficiency measures, other than CFLs,
2 things of that nature, sort of go out the window under a
3 peak demand?

4 THE WITNESS: No. Because I guess this gets
5 into obviously if you have an air conditioner, you're
6 going to be running it. But the question is what kind of
7 air conditioner do you have? You know, is it that the
8 base -- is it a CR-14 that's the most efficient?

9 So it really gets into my remarks in my
10 testimony that providing the same or better level of
11 service for lower consumption.

12 So, yes, all those homes and businesses are
13 running their air conditioners, but those homes that have
14 the more efficient air conditioners are staying cool and
15 actually using lower -- less kilowatts.

16 I think if we didn't have -- if we had not had
17 these very strong programs for the last decade, that
18 there would be some serious issues. And I know the ISO
19 has very much accounted for that in their planning the
20 degree to which efficiency has helped New England as well
21 as the Mid-Atlantic maintain their reliability without
22 bringing on a lot of, you know, diesel generators, things
23 like that.

24 COMMISSIONER HANSON: So in a perfect world then
25 we would be able to meet those reliability needs.

1 THE WITNESS: Right. I mean, it's -- you know,
2 it gets into these are hopefully extreme conditions that
3 they're seeing. I think this is the hottest it's been
4 in, you know, many, many years there.

5 COMMISSIONER HANSON: However, you talk about
6 the highest of energy efficient equipment being used by
7 the population. Don't we still see -- well, are not --
8 excuse me. Strike that.

9 Don't companies still sell less than efficient
10 equipment to the consumers?

11 THE WITNESS: I mean, yeah. Sure. You can
12 still buy incandescent light bulbs. Sure.

13 COMMISSIONER HANSON: So in order to achieve
14 what you're saying is achievable, wouldn't it be
15 necessary for everyone to have the best equipment, the
16 most efficient equipment?

17 THE WITNESS: Well, that would certainly help to
18 a big degree. But getting back to, you know, the fact
19 there's a lot of different policies, you don't have to
20 reduce consumption, you know, 50 or 75 percent across the
21 board.

22 There are -- and it doesn't have to be through
23 just putting in more efficient light bulbs. You know,
24 building codes and standards are very good.

25 COMMISSIONER HANSON: Okay. We won't need to

1 rewalk that path.

2 THE WITNESS: Right. Right.

3 COMMISSIONER HANSON: How long do you think it
4 would take for population to get to -- say in Black Hills
5 Power's area to achieve a 20, 21 percent reduction in
6 electricity?

7 THE WITNESS: Okay. Well, I'm going to answer
8 that based on an assumption that the company has
9 conducted an analysis of, you know, what the resource
10 potential is and they start, you know, ramping up and
11 pursuing efficiency on a scale similar to that we see in
12 other parts of the country.

13 So starting from zero, what the story has been
14 elsewhere is it takes three to five years to get to about
15 a 1 percent savings rate. And then you can continue to
16 increase beyond that. It may take another, say, two
17 years to get to 1.5 percent. And then, you know, you can
18 increase -- you know, once you have that kind of maturity
19 you can get to 2 or 2 and a half percent.

20 So let me do the math then. We take -- let's
21 say it assumes you take three years to get to 1 percent.
22 So call the first two years zero. And the third year is
23 1 percent. And then by year five you're at 1.5 percent.
24 So that's now a total of about 4 percent after five
25 years.

1 And then you start to increase. Even if it just
2 stays at 1.5 percent, you would get another 7 and a half
3 percent in the next five years, which gets us to 11 and a
4 half.

5 COMMISSIONER HANSON: How do you get 1 and a
6 half percent per year? Just because? Just because?

7 THE WITNESS: Well, again, I'm predicating that
8 on this company's done a thorough and comprehensive
9 study.

10 COMMISSIONER HANSON: And so people just
11 continue to do better things and accomplish --

12 THE WITNESS: Right. You know, people sometimes
13 criticize me for using Vermont because, you know, what is
14 Vermont? It's a small state, and the biggest city is
15 40,000 people.

16 But the Vermont example is actually a really
17 good one. The entire population of the state is 600,000
18 people. And they -- you know, now they've got 10 years
19 of experience. They're achieving, you know, 2 and a half
20 to 3 percent per year by knowing their customer, knowing
21 where the loads are, doing what they call geotargeting to
22 see, you know, where is peaks and --

23 COMMISSIONER HANSON: Okay. As long as you're
24 using that as an example, after 10 years what have they
25 achieved? What percentage?

1 THE WITNESS: I'd have to look at the discrete
2 numbers so --

3 COMMISSIONER HANSON: Okay. Using your
4 hypothetical numbers that you were giving earlier, it
5 would take somewhere in the neighborhood of five to seven
6 years to achieve 2 percent, 2 and a half percent?

7 THE WITNESS: Per year.

8 COMMISSIONER HANSON: But you are at 2 percent
9 after seven years. Five to seven years you are at
10 2 percent.

11 THE WITNESS: Right.

12 COMMISSIONER HANSON: So how does Black Hills
13 Power achieve a 21 percent in two years or in three years
14 if they need the power now? Even if they started two
15 years ago, you're saying that the best they could achieve
16 on average would be 2 percent at this juncture. And yet
17 they need 21 -- they're shy by 19 percent. They're shy
18 by 120 some megawatts.

19 What about the reliability to their customer.

20 THE WITNESS: Right.

21 COMMISSIONER HANSON: What about the hot and
22 cold days of the year? What do they do under that
23 scenario?

24 THE WITNESS: No. That's -- that's -- you've
25 constructed the math appropriately.

1 COMMISSIONER HANSON: So --

2 THE WITNESS: So there are other things, though,
3 that they -- and I won't repeat my testimony.

4 COMMISSIONER HANSON: But all of those things
5 you're saying take a certain period of time.

6 THE WITNESS: Right.

7 COMMISSIONER HANSON: And even if they had
8 started years ago, which I believe that they have done --
9 certainly done some from other information they've
10 provided.

11 But the question then is their customers are
12 looking at blackouts or brownouts during the coldest days
13 of the year or during the hottest days of the year. If
14 we say, no, you cannot use -- or if they had decided not
15 to build Wygen III, then their customers don't have
16 electricity.

17 Even if they could go back in time 10 years,
18 they still would not have accumulated enough savings of
19 E&E under the best scenario that you provided in order to
20 meet that demand. Isn't that true?

21 I mean, haven't you stated that here today?

22 THE WITNESS: That's correct. If they had only
23 focused on efficiency.

24 COMMISSIONER HANSON: Well, demand side
25 management --

1 THE WITNESS: I mentioned other resources. And,
2 again, we have not talked about other supply side
3 resources.

4 COMMISSIONER HANSON: But they have to reach
5 21 percent in order to reach that 128 megawatt.

6 THE WITNESS: Right. No. I understand the
7 numbers.

8 COMMISSIONER HANSON: And under your
9 presentation here, that would take decades for them.

10 THE WITNESS: Well, I don't know about decades.
11 But starting from zero it would take a number of years if
12 they only focused on efficiency.

13 COMMISSIONER HANSON: Well, under your scenario
14 you show 10 years, which is a decade, shows 54 megawatts.

15 THE WITNESS: Right. That's at 1 percent per
16 year.

17 COMMISSIONER HANSON: So it's over a third of
18 what they need, but it's still shy for all of those folks
19 that need electricity.

20 Are you familiar with Evans -- I assume you're
21 familiar with Evans' testimony in which -- in which he
22 states that -- on page 5 of his testimony the question to
23 him is, "Is it reasonable to assume that new DSM programs
24 could provide 77 megawatts of capacity savings?"

25 And he points out that Otter Tail Power was able

1 to achieve .4 megawatts, MidAmerican .6 megawatts, and
2 Xcel Energy 2.9 megawatts.

3 Are you familiar with that?

4 THE WITNESS: Yes. I'm familiar with his
5 testimony.

6 COMMISSIONER HANSON: How do you square the
7 reality of the experience with the hypothetical of your
8 exhibits?

9 THE WITNESS: Each of those three programs he
10 mentioned has also just started I believe in the last 12
11 to 18 months. And one of them I believe is a pilot type
12 of program.

13 So these are utilities that are perhaps ahead of
14 Black Hills Power in terms of experience but, you know,
15 not significantly so. None of those three has been
16 operating, you know, efficiency programs long-term and
17 achieving, you know, savings.

18 COMMISSIONER HANSON: Would you be surprised to
19 know that Xcel Energy has been longer than 12 months?
20 Its duration has been closer to two years, I believe.

21 THE WITNESS: Okay. But still it's -- you -- I
22 mean, I'm not -- I don't want to misrepresent my remarks.
23 These -- you don't just turn a switch on and achieve --
24 it's not the same as a generator. The performance is not
25 the same.

1 But the fact of -- that you can start -- and I
2 would suggest starting now. Those savings accumulate.
3 And I think we want to look ahead to how these resources
4 can help the state in the future so we're not back three
5 or four years from now having this same conversation.

6 We ought to be looking at the resources that can
7 help not only with current growth and consumption but
8 also future.

9 COMMISSIONER HANSON: Mr. James, you talk about
10 risk. And just about all of the risk that you talk about
11 regards cost, the fact that Wygen III provides a risk
12 from the standpoint of potential increased costs. Of
13 course, you have a background in environment as well.

14 THE WITNESS: Uh-huh.

15 COMMISSIONER HANSON: And you do some
16 discussions of that.

17 THE WITNESS: Uh-huh.

18 COMMISSIONER HANSON: But primarily you discuss
19 the challenge of risk, and you associate that with
20 potential legislation on a federal level or not likely on
21 a state level from South Dakota but potentially from
22 federal legislation.

23 I assume you're talking about cap and trade and
24 things of this nature. Do I assume correctly?

25 THE WITNESS: I did not mention cap and trade.

1 COMMISSIONER HANSON: Okay. But you -- what
2 then? Renewable portfolio standards?

3 THE WITNESS: No. These were more types of
4 regulations that I was discussing with Commissioner
5 Kolbeck and in my testimony about the EPA requirements
6 that are coming out and what the effect of those is going
7 to be on the utility industry and the degree to which
8 utilities in South Dakota are impacted by them and how
9 that affects their business plan.

10 COMMISSIONER HANSON: In your written testimony
11 you speak of the impacts of federal and/or regional
12 greenhouse gas reduction plans.

13 What would those plans include?

14 THE WITNESS: I was talking about the regional
15 greenhouse gas initiative. For example, it's operating
16 now in 10 states in the east, as well as efforts in the
17 west and now starting in the Midwest, to look at first
18 capping carbon dioxide emissions and reducing those over
19 time and what sectors would be included in those regional
20 programs.

21 COMMISSIONER HANSON: You also state "a
22 reasonable range of prices for air emissions, including
23 carbon dioxide, NOx, SOx, mercury."

24 Who would be charging those expenses?

25 THE WITNESS: Well, typically in states like

1 South Dakota the cost of meeting environmental
2 requirements is passed along or attempted to be passed
3 along to consumers.

4 So to the extent that Black Hills Power has to
5 install control equipment or purchase allowances or
6 anything like that, I would expect that they would want
7 to recover those costs through a formal proceeding.

8 COMMISSIONER HANSON: So under mandates from --
9 through government mandates Black Hills Power's increased
10 costs would be passed on to the consumer.

11 THE WITNESS: Right.

12 COMMISSIONER HANSON: In regards to emissions.

13 THE WITNESS: Right. That's correct.

14 COMMISSIONER HANSON: What about the risk for
15 increased load from anything from the new high definition
16 television sets to plug in hybrid electric vehicles?

17 Isn't it likely that load is going to
18 significantly increase?

19 THE WITNESS: Those are the types of factors
20 that the company should look at when they're completing
21 their IRP. We see plug in hybrids now being considered
22 by Pacific Core, for instance, in their IRPs. They're
23 looking at it as a national issue.

24 And it's like -- I mean, it's too early to tell,
25 but it certainly is, I would suggest, prudent to look at

1 over a 10-year period what assumptions to make regarding,
2 you know, whether there's going to be any penetration of
3 all of these vehicles and, you know, how much and, you
4 know, whether additional generation is needed and, if so,
5 what type.

6 COMMISSIONER HANSON: You're aware, I'm
7 assuming, that the Federal Government has included
8 significant funds for the promotion as well as for
9 charging stations for plug in hybrid electric vehicles?

10 THE WITNESS: Yes.

11 COMMISSIONER HANSON: So it is likely that we
12 will see a surge of plug in hybrid electric vehicles over
13 the next 10 years? Certainly over the -- well, certainly
14 over the next 10 years.

15 THE WITNESS: Yes.

16 COMMISSIONER HANSON: Would that not
17 significantly increase the load, the electric load in
18 this country?

19 THE WITNESS: Well, that's -- I don't want to
20 answer your question indirectly, but it's not -- it's not
21 an easy question to address. Because in many areas of
22 the country the capacity factors are not very high.

23 So some of these utilities are looking at, you
24 know, is there an opportunity to valley fill using
25 existing resources to boost the capacity of the resource

1 that they already have during off-peak periods and what
2 would that look like.

3 They're also looking at does it have to be
4 fossil generation. Are there opportunities for
5 renewables? And if so, you know, when?

6 So, you know, the favor of that question is
7 being sorted out many different ways.

8 But, absolutely, I mean, you're correct in terms
9 of from a broad perspective penetration of plug in hybrid
10 vehicles would increase the load.

11 COMMISSIONER HANSON: Did you take into
12 consideration any reduction in energy in Black Hills
13 Power's footprint that has already taken place, such as
14 that would result from increased costs of electricity,
15 for instance, or because of the challenged economic
16 conditions?

17 THE WITNESS: No. I have not taken that in --

18 COMMISSIONER HANSON: You spoke about
19 Massachusetts having a commitment of 3 percent per year
20 reduction in energy usage.

21 Do you know if they've achieved that?

22 THE WITNESS: The legislation was just passed in
23 2009. So they've committed something north of
24 \$1.8 billion over the next three years, two measures in
25 that state.

1 COMMISSIONER HANSON: Excuse me. 1.8 what?

2 THE WITNESS: \$1.8 billion. The three main
3 utilities over the next three years by the end of --
4 well, including 2009 through 2011.

5 COMMISSIONER HANSON: Do you know what the
6 average cost of a kilowatt hour in Massachusetts is?

7 THE WITNESS: In terms of retail rates?

8 COMMISSIONER HANSON: Any --

9 THE WITNESS: Or like the cost of new generation
10 there?

11 COMMISSIONER HANSON: The average in a state,
12 the average residential, the average industrial? Do you
13 have any idea?

14 THE WITNESS: It's nominally 12 or 13 cents.
15 Probably slightly lower for industrial.

16 COMMISSIONER HANSON: You spoke of -- when you
17 were discussing photovoltaics and Europe you were
18 discussing why we could do things similar to Europe.

19 Do you know what the average cost of electricity
20 in any of the European countries is?

21 THE WITNESS: Well, it's much higher than it is
22 here. The point that I was making was not so much that
23 South Dakota has to only pursue photovoltaics because of,
24 you know, Europe but that the resource performs not based
25 on the temperature but on the amount of sunlight. That

1 was the only point I was making.

2 COMMISSIONER HANSON: Do you know what the
3 average cost of -- kilowatt hour is for photovoltaics?

4 THE WITNESS: It depends on the system, whether
5 you're talking about residential or large scale. But
6 typically it's more than 20 cents a kilowatt hour if not
7 30 or 40 cents.

8 COMMISSIONER HANSON: Thank you, Mr. Smith.
9 Thank you, Mr. James.

10 MR. SMITH: Additional Commissioner questions?

11 Mr. Rislov, did you have a question?

12 MR. RISLOV: Yeah. I might have a couple here.

13 Mr. James, you talked in general about DSM
14 energy efficiency and conservation. Truthfully, I agree
15 with many of your generalities because I think probably
16 most analysts across the United States agree. But the --
17 it seems the disagreements come in with the linear growth
18 rate you projected on your Exhibits 19 and 20.

19 And do you find those to represent the real
20 world?

21 THE WITNESS: The 1 percent is a number that is
22 considered to be a good number these days in the
23 United States.

24 MR. RISLOV: Good by whom?

25 THE WITNESS: By utilities that are operating

1 these programs across the country.

2 MR. RISLOV: Utilities think those are good
3 numbers?

4 THE WITNESS: And many of them are achieving,
5 you know, higher rates than that.

6 MR. RISLOV: Do you consider Minnesota to be a
7 state that's fairly aggressive with those types of
8 programs?

9 THE WITNESS: I would say Minnesota is, you
10 know, not a top 10 state, but it's, you know, the second
11 10 performer.

12 MR. RISLOV: I'm going to have to tell my
13 friends in Minnesota what you just said.

14 THE WITNESS: Well, some of them may agree with
15 me. Some may not.

16 MR. RISLOV: Do you know they have an economic
17 get out clause on their goals for demand side management,
18 energy efficiency, and conservation savings?

19 THE WITNESS: Is this for industrial customers?

20 MR. RISLOV: No. This is mandated to meet their
21 30 by '25 for Xcel Energy. Did you know there's an
22 economic get out --

23 THE WITNESS: I was not aware.

24 MR. RISLOV: -- to achieve that?

25 THE WITNESS: Yeah. I wasn't aware of that

1 specific clause.

2 MR. RISLOV: Why do you suppose they put that
3 economic get out in the law, if we assume it's there?

4 THE WITNESS: I have no idea.

5 MR. RISLOV: Don't you believe the first few
6 percent of energy efficiency is much easier to achieve
7 and that as you go down the line five, six, seven years
8 getting those same incremental annual savings gets to be
9 very, very difficult?

10 THE WITNESS: No.

11 MR. RISLOV: You haven't found that?

12 THE WITNESS: I don't agree with it.

13 MR. RISLOV: Okay. Your whole career has
14 basically been in energy efficiency and what I would call
15 conservation management views of utilities; is that
16 correct?

17 THE WITNESS: Well, I would say most of my
18 career was an air regulator. In the last 12 years
19 focused on energy issues. And I worked very closely with
20 my -- what we called, and your Commission may enjoy this,
21 public utility control. They didn't use the word
22 "Commission."

23 MR. RISLOV: Yeah.

24 THE WITNESS: Yeah. So a different flavor. But
25 we worked very closely on planning, regulatory issues,

1 legislative issues.

2 MR. RISLOV: Regulatory. I've been here for it
3 will be -- it was 34 years two days ago. 34 years. And
4 I've been working on cost of service issues for the most
5 part, although I have worked on energy efficiency issues
6 and IRP issues.

7 But I found it interesting in your testimony you
8 were willing to kick out the whole rate increase over one
9 niche of a rate case, and that's an IRP analysis. I
10 believe that's what your testimony stated.

11 And I'm just asking how can that be?

12 THE WITNESS: Well, I think if we had the
13 opportunity in 2007 to look at this IRP in the ways that
14 I suggested in my testimony, it's likely that there would
15 be a different outcome. That's basically the summary of
16 the testimony I was making.

17 MR. RISLOV: A different outcome? Different
18 enough to negate the entirety of the cost of service
19 requirements?

20 THE WITNESS: I just -- I'm not going to
21 speculate on what that outcome would have been, other
22 than to say that I suspect it could have been different.

23 MR. RISLOV: I have Staff's case in front of me,
24 and just take it subject to check. They offered
25 62 adjustments in rate base and cost of service. 62. I

1 believe they had eight witnesses other than their energy
2 efficiency witness.

3 Did you look at any of those adjustments?

4 THE WITNESS: I did not focus on any of the rate
5 issues.

6 MR. RISLOV: And, again, going back to my
7 experience, this is near and dear to me. And you'll have
8 to forgive me. And I have a cold so I'm not really angry
9 at you. I just have a cold.

10 THE WITNESS: That's fine. No offense taken.

11 MR. RISLOV: But, you know, most IRP analyses
12 I've seen have been done outside a rate case. You know,
13 we get together and maybe we'll want to draft rules for
14 IRPs or we draft rules for financing or we draft rules
15 for rate design or we draft rules for customer relations.
16 You know, we can look at rules for depreciation. They
17 all represent different interests in utility operations.

18 But I've never seen a witness come in and
19 declare an entire rate case invalid because of one niche
20 that normally doesn't even occur within a rate case, at
21 least that I'm aware of.

22 And I guess you'd have to explain to me --
23 again, maybe I've already asked this question. But, you
24 know, when Staff's looking at depreciation and they're
25 looking at labor and they're looking at other elements of

1 the cost of service thinking that that's a legitimate
2 thing to do, we're talking about utility revenue
3 requirements, actually it's required by the law, it just
4 seemed to me as I was reading through your testimony
5 it's like saying I have a flat tire so let's go crush the
6 car.

7 Could you explain to me why that isn't true?

8 THE WITNESS: Well, I think I'll try to answer
9 this, you know, simply. The question was, you know, had
10 the IRP been done, you know, as -- I won't repeat my
11 testimony, but using those factors, what resources would
12 have come out? You know, how much -- how much energy
13 efficiency and demand side management would have been
14 included? You know, is that rate of electricity growth
15 the right one to use?

16 And these are all questions. I'm not saying
17 they're -- I'm not saying they're wrong about their
18 assumptions, but I'm saying that we should ask questions
19 about them.

20 What about demand response? You know, is that
21 something that is even a resource here? If so, how much
22 can it provide? If not, fine. But at least be
23 transparent, and if you're going to dismiss something,
24 you know, do so in ways that are, you know, seeable by
25 all of us.

1 And it may have been that at the conclusion of
2 the 2007 IRP they said, well, okay, we don't really have
3 energy efficiency. We can't get all of it to efficiency.
4 Going back to the discussion I had with Commissioner
5 Hanson. But we can provide some, and we have these other
6 pieces. We still need -- our resource is not as large as
7 the one we're proposing.

8 That's a totally different question to be
9 addressing than the one that's before us.

10 MR. RISLOV: And I stated -- I believe -- I
11 agree with you in general about these programs and what
12 you just said. I don't disagree, except I find it
13 unrealistic to believe that a program undertaken in
14 2007's going to offset the 52-megawatt base load need in
15 2010.

16 That just seems preposterous, I'll be honest
17 with you, to me that I'm going to kick out this plant and
18 I'm going to kick out the entirety of this rate case
19 because the company didn't undertake an IRP analysis
20 quickly enough and then I'm going to do a linear
21 projection of energy savings.

22 And, again, I agree with a lot of your points.
23 I agree with where you end up. But I just find it
24 amazing that you think that could hold up through court
25 on that one issue, considering all the statutes that the

1 Commission has to comply with.

2 THE WITNESS: Uh-huh. Well, again, I hope that
3 I've been clear that the discussion has not been only
4 about DSM. Obviously, we focused on it, but it's also
5 what other resources are available, would be available,
6 and the degree to which those could also provide reliable
7 service in the future.

8 That's really the sum of all of those things,
9 not just focusing on DSM so much. But, you know, the
10 diverse portfolio of resources and what would that have
11 achieved.

12 I guess I would also point out just on going
13 back to the supply side, what we see now in natural gas.
14 We're seeing prices at 4 bucks, you know. What does that
15 mean in the future?

16 I'm hearing utilities in California that are
17 signing 20-year contracts now at 4 bucks.

18 So the things -- I think it's important to be
19 nimble I guess is, you know, one of the things I would
20 want to make -- and not just, you know, say this is the
21 way things are going to be in the next 10 years because
22 that's not the way we seem to be operating these years.
23 Things change very quickly.

24 MR. RISLOV: I agree. I spent a considerable
25 amount of time the last two years working with a group

1 from MISO in the various states all the way from western
2 Pennsylvania to eastern Montana going through the IRP
3 analysis.

4 Is it true that most IRPs give a range of net
5 load growth and that's considering even aggressive energy
6 efficiency programs?

7 THE WITNESS: Yes. You typically see, you know,
8 low, medium, and high and what would a flat load growth
9 look like.

10 MR. RISLOV: Would it surprise you that these
11 this diverse group of states and working with Midwest ISO
12 staff and some people very -- who are representing states
13 with very aggressive energy efficiency didn't develop a
14 negative load growth estimate on the low end, that all
15 the load growth estimates were positive at the high,
16 medium, and low range?

17 Would that surprise you?

18 THE WITNESS: Well, I guess I would want to, you
19 know, talk more about what was included. But if
20 they're -- you know, if they have plug in hybrid vehicles
21 in there, you know, there's -- I think, I mean -- I guess
22 basically no, it doesn't surprise me so.

23 MR. RISLOV: Within your IRP analysis you were
24 looking at base load and coal which are least cost
25 resource. Would you personally recommend building that

1 coal plant?

2 THE WITNESS: I guess I'd be surprised to know
3 that that was the least cost resource these days.

4 MR. RISLOV: Would you believe for base load in
5 our Midwest ISO analysis coal was least cost base load
6 resource, even projecting coal tax into the future for
7 15, 20 years?

8 THE WITNESS: Again, it's hard for me to answer
9 that question. I mean, I believe you that it exists, but
10 without knowing how you reached those -- how they reached
11 it, it's hard for me to answer that question.

12 MR. RISLOV: It was a bevy of very intelligent
13 people from the Midwest ISO, very highly paid and very
14 many of them.

15 But be that as it may, have you ever recommended
16 a coal plant as a resource for supply side?

17 THE WITNESS: Well, as I pointed out earlier, I
18 have not worked directly for a utility.

19 MR. RISLOV: Have you ever in examining an IRP
20 suggested that a coal plant would be the least cost
21 resource? If it were -- have you ever recommended a coal
22 plant be included in an IRP as one of the supply side
23 options that should be picked?

24 THE WITNESS: No.

25 MR. RISLOV: Okay. There's one thing I run into

1 occasionally, and I do have a bone to pick with you on
2 this. I'll probably sound very angry. I'm just kidding.

3 You were comparing California consumption with
4 South Dakota consumption. And I understand programs can
5 work in any state. That's -- you explained that.
6 That's, to me, obvious. That's correct.

7 But my son lives in San Jose, does not have an
8 air conditioner, does not have a furnace. Now can you
9 really compare California consumption to Pierre where it
10 was 100 degrees what, three days last week, and I'll
11 guarantee it's going to get awfully cold this winter.
12 And we have to have an air conditioner. We have to have
13 a furnace.

14 Are you going to compare what my son uses in
15 San Jose and say they're more energy efficient because he
16 uses fewer kilowatt hours?

17 THE WITNESS: That's not -- I think you're
18 oversimplifying my -- I understand your point.

19 MR. RISLOV: You made that statement. You said
20 in California they consume, you know, less energy than
21 they do in South Dakota, and you were leaving the
22 implications because of their programs.

23 That's not correct, is it?

24 THE WITNESS: Well, I think you've seen the
25 graphs that California Energy Commission has published

1 about the success they've had over the last 30 years.

2 MR. RISLOV: Does that have something to do with
3 demand destruction because of the prices that have been
4 placed upon the California rate payers?

5 THE WITNESS: I think they have a number of
6 issues and, you know, as we talked about differences
7 among states, price is only one factor.

8 MR. RISLOV: But price is an important factor
9 when it's twice or three times more, isn't it?

10 THE WITNESS: Price is a factor. And California
11 has a statute that requires them to procure all
12 cost-effective efficiency. That's also a good factor.

13 MR. RISLOV: And no coal; correct?

14 THE WITNESS: California imports quite a bit of
15 coal.

16 MR. RISLOV: But no new coal.

17 THE WITNESS: Well, those contracts go to 2020.
18 They're not building any in state.

19 MR. RISLOV: We run into some problems in this
20 part of the country because of the utilities we regulate.
21 And Black Hills is one example.

22 We regulate MidAmerican Energy. I think they
23 have 3,000 customers in the state. And we also regulate
24 Xcel. We're a very small part of their total business,
25 but they're the largest utility. But their peak load is

1 bordering on 9,000 megawatts.

2 THE WITNESS: Uh-huh.

3 MR. RISLOV: When we start talking about
4 utilities that are in the 400-megawatt range and we talk
5 about building base load versus intermediate versus
6 peaking versus adding wind, and we're talking about 40-
7 or 50-megawatt hours, you really limit the choices when
8 you shrink the size of a utility, don't you?

9 THE WITNESS: That was one of the points I make
10 in my testimony is that Black Hills Power doesn't have to
11 go at this alone. Why not collaborate with their peers
12 in this state and look at, you know, what economies of
13 scale could be achieved by working with, you know, MidAm
14 and Xcel and et cetera.

15 A lot of these service territories I would
16 assume have some overlaps, or at least in terms of media
17 coverage they almost certainly do. And you can reduce
18 your administrative costs, the advertising costs, program
19 administration, et cetera, by looking at programs that
20 are consistent throughout the entire state.

21 MR. RISLOV: Okay. I'll follow that up just a
22 bit, and then I'm about done.

23 From your earlier testimony I believe you failed
24 to realize that Black Hills is in the western grid.
25 They're in the western interconnection.

1 THE WITNESS: No. I think I answered that
2 question.

3 MR. RISLOV: Okay. Yeah. I think you said they
4 had ties to the west but they were in the east. They're
5 actually in the west. They don't interconnect
6 necessarily to any of the utilities you just mentioned,
7 who are all in the eastern interconnection.

8 That and the fact that there's almost no load
9 between, let's say, mideast South Dakota until we get to
10 the Black Hills.

11 I guess we see a lot of cooperation with
12 utilities on the east side of the state with MDU,
13 Otter Tail, Northwestern. They all co-own plants, and
14 they do some various things together. But Black Hills
15 kind of sits on an island.

16 I'm just curious as to how you would have the
17 Commission affect that in a cost-effective manner. Not
18 just do it because it's a good thing but do it so the
19 rate payers can afford to pay for it.

20 How would we do that?

21 THE WITNESS: Well, I mean, it needs to be both
22 systematic and comprehensive. And I think we're all
23 talking from a lack of knowledge about what exists in the
24 service territory.

25 We don't have a DSM study from them. We don't

1 know if it's even a good DSM study. That is a typical
2 first step that's applied in these issues. Before you
3 even look at how to adopt and implement such a program,
4 you have to know what your customers are and where the
5 opportunities are.

6 But I would still suggest that from your
7 perspective from that of the Commission in looking at not
8 only consistency throughout the state but also cost that
9 there are opportunities to share resources and that those
10 should be explored to see how effective they would be.

11 MR. RISLOV: And I have one last question and it
12 probably goes back to what I said before but considering
13 all the cost of service standards, reliability standards,
14 all the testimony that eight Staff witnesses gave, I
15 won't even mention the company witnesses and the
16 settlement, do you really believe that your
17 recommendation of no rate increase accomplishes anything
18 fruitful for the purposes of the Commission making the
19 decision?

20 THE WITNESS: I think that's a speculative
21 question.

22 MR. RISLOV: But you made that recommendation.
23 And it's been publicized. I mean, people really believe
24 no rate increase is necessary because of your testimony.
25 And I think you -- you have to be responsible for that

1 recommendation.

2 I think you have to sit here and tell us why
3 that would pass muster through all the cost of service
4 requirements and all the reliability requirements, even
5 though you failed to consider at least 62 adjustments. I
6 think you have that responsibility.

7 CHAIRMAN JOHNSON: Mr. Rislov, I think
8 Mr. Khorroosi's showing a lot of restraint in providing
9 some deference to the Commission, but I wonder if the
10 phrasing of that question is a little argumentative.

11 MR. RISLOV: I'm done.

12 MR. SMITH: Do Commissioners have additional
13 questions? If we're going to be going on for a while, I
14 might --

15 COMMISSIONER HANSON: I have one.

16 MR. SMITH: Okay. One question.

17 COMMISSIONER HANSON: You looked at me and you
18 said "a while."

19 MR. SMITH: Well, I'm assuming some of the
20 others might have additional questions. But if not,
21 fairly soon we're going to have to take a break. Both
22 the witness and the reporter and me a break.

23 Anyway, Commissioner Hanson, proceed.

24 COMMISSIONER HANSON: In deference to Cheri, I
25 will make this brief.

1 As Mr. Rislov was asking questions, Mr. James,
2 it occurred to me there was one that I had not asked.
3 And in your testimony I have labeled it on page 23 -- I
4 don't know that you need to turn to it -- you refer to
5 the hydroelectric resource can be run more as a peaking
6 or cycling resource and take advantage of the typically
7 higher electricity prices that occurred during these peak
8 hours. And you refer to energy efficiency that,
9 therefore, enhanced the value of South Dakota's Oahe,
10 Big Bend, and Fort Randall hydroelectric plants.

11 Are you aware of any connection,
12 interconnection, between the WAPA, the Western Area Power
13 Administration, facilities that you referred to here and
14 Black Hills Power?

15 THE WITNESS: I'm not aware directly. Again,
16 this gets to suggestions in how to look at the resources
17 that are available in this state.

18 COMMISSIONER HANSON: Are you referring more to
19 what the State of South Dakota can do as opposed to what
20 Black Hills Power can do?

21 THE WITNESS: Yes.

22 COMMISSIONER HANSON: So we should not interpret
23 that there are opportunities through the hydroelectric
24 power to assist the folks in Black Hills Power?

25 THE WITNESS: No. It was a suggestion that I

1 made in terms of how you might look at some of your
2 existing resources and how those could be better
3 advantaged.

4 COMMISSIONER HANSON: Thank you. Thank you,
5 Mr. Smith.

6 MR. SMITH: Any other Commissioner questions?

7 I might have to ask you at least one. And on
8 the hydroelectric facilities I'm not sure how it works
9 everywhere in the country, but here are you familiar with
10 the term "preference customer"?

11 THE WITNESS: Not -- not exactly, no.

12 MR. SMITH: Okay.

13 THE WITNESS: Maybe you could explain it to me,
14 how it's interpreted here.

15 MR. SMITH: The hydroelectric power, at least
16 all of that that's calculated to be deliverable on a
17 reliable bases, other than spot market sales, are all
18 subject to a regime called the preference power regime
19 under Pick-Sloan. And that requires that all of that
20 power, every bit of it, be allocated only to co-ops,
21 municipalities, governmental units, and other what are
22 called preferenced entities. That does not include any
23 industrial-owned utilities.

24 So, I mean, my bottom line is just to clarify, I
25 guess, for that -- power off the dams except on a very

1 spot basis is simply not available for ordinary regulated
2 utilities. So just to let you know that.

3 THE WITNESS: Sure. Thank you for the
4 clarifier.

5 MR. SMITH: I've just got one other question
6 too. And this is very general. There is a relationship,
7 and to some extent, although we're talking physical
8 energy savings, there's definitely -- and I think you
9 stated this -- a clear relationship between economics and
10 energy efficiency success, is there not?

11 THE WITNESS: Yes. In general terms, sure.

12 MR. SMITH: At some point, I mean, you reach the
13 point theoretically, right, where you actually sort of --
14 you price yourself out of the market with certain types
15 of things that are not on an economic basis worth doing?

16 THE WITNESS: Right. That's exactly --

17 MR. SMITH: On the cost benefit basis.

18 THE WITNESS: Right. That's one of the outcomes
19 from these studies: What's economic, what's technical,
20 what's achievable.

21 MR. SMITH: And so because there is an economic
22 element and it -- part of this is an economic
23 decision-making process. Does what I've always
24 understood to be a universal law of economic behavior,
25 and that is the law of diminishing returns, apply to the

1 performance of attempts to cut either energy use or
2 demand through energy efficiency programs?

3 THE WITNESS: That actually has not been the
4 case. I would point to just my personal experience
5 sitting on the board in Connecticut.

6 We required the utilities to conduct a study in
7 2004 of what the potential is for the next 10 years. And
8 they came back with, you know, the typical technical,
9 achievable, economic. And we had them focus on economic.

10 They were required to update that study in 2008.
11 They found again another tranche of savings that was
12 actually greater than what they had found in 2004. Part
13 of that is how you approach the customer.

14 If you're only looking at replacing light bulbs,
15 you might be missing the fact that they have a 1942
16 boiler in their basement that is burning oil or gas very
17 inefficiently.

18 So part of it is looking at the entire building
19 envelope, for example. And that is accommodated by
20 looking at electric, gas, and oil at the same time so you
21 don't have this competition for resources.

22 So I want to be as brief as I can but just say
23 just from personal experience we have found that actually
24 not to be the case, and I suspect that there's quite a
25 bit of efficiency that is out there that is not tapped.

1 MR. SMITH: Okay. And might that not be just
2 because we're still at the -- what you'd call the
3 pre-hockey stick portion of a diminishing returns graphic
4 depiction?

5 THE WITNESS: I don't know.

6 MR. SMITH: Okay. Thank you.

7 Any other questions at this point? Then we'll
8 break, and then we'll go to redirect, Mr. Khoroosi.

9 Why don't we take -- what do you think?
10 15 minutes? We've been at it for a long time.
11 15 minutes. 25 after. Thank you.

12 (A short recess is taken)

13 MR. SMITH: Our recess time -- we've hit the end
14 of our 15-minute recess time here, maybe a minute or so
15 extra. So we'll reconvene the hearing.

16 And a slight anomaly we usually practice here
17 because of the oddity of the Commission questions is
18 usually we allow the opportunity for some recross before
19 we give you then the last bite of the apple,
20 Mr. Khoroosi.

21 Is there any additional cross-examination from
22 Black Hills in view of Commissioner questions?

23 MR. BRINK: No. Thank you, Mr. Smith.

24 MR. SMITH: Staff?

25 MS. CREMER: Staff would have no questions.

1 Thank you.

2 MR. SMITH: Okay. Thank you.

3 Mr. Khoroosi, please proceed.

4 MR. KHOROOSI: Thank you, Mr. Smith.

5 REDIRECT EXAMINATION

6 BY MR. KHOROOSI:

7 Q. Mr. James, you were asked a number of questions
8 about Black Hills Power's wind energy portfolio or its
9 projected wind energy portfolio.

10 Was it your testimony that the utility could
11 eliminate the need for Wygen III solely by incorporating
12 wind power?

13 A. No.

14 Q. Does wind have anything to do with demand side
15 management?

16 A. No.

17 Q. Exhibits 19 and 20 drew a lot of questions about the
18 effectiveness of implementing the hypothetical 6-megawatt
19 savings.

20 Is energy efficiency the only form of demand side
21 management?

22 A. No. As I explained in both my opening statement and
23 then in questions that we had, energy efficiency is one
24 of many such demand side measures that can be considered
25 in a portfolio. That also includes conservation and load

1 management as well as demand response techniques.

2 Q. Had the utility -- had the utility done a more
3 thorough analysis of demand side management in its IRP,
4 would there be more certainty as to whether Wygen III
5 were necessary?

6 MR. BRINK: Excuse me. I'm going to object.
7 That calls for speculation.

8 MR. SMITH: I'm going to overrule the objection.

9 A. There would have been more certainty about what
10 resources were needed in Black Hill Power's territory to
11 provide future services, yes.

12 MR. KHOROOSI: Okay. Thank you. I have nothing
13 further.

14 THE WITNESS: Okay. Thank you.

15 MR. SMITH: With that then, I think you're
16 excused and may step down.

17 THE WITNESS: Okay. Great. Thank you very
18 much.

19 MR. SMITH: Mr. Khoroosi, does that conclude
20 your case in chief?

21 MR. KHOROOSI: It does, Mr. Smith.

22 MR. SMITH: Mr. Magnuson, are you set to go on
23 rebuttal?

24 MR. MAGNUSON: We are, Mr. Smith. We would call
25 Kyle White to the stand for the purposes of rebuttal.

1 MR. SMITH: You've already been sworn,
2 Mr. White. You're still under oath.

3 THE WITNESS: Yes, I am.

4 DIRECT EXAMINATION

5 BY MR. MAGNUSON:

6 Q. Mr. White, could you -- the implication by certain
7 witnesses has been that Black Hills Power does not have
8 any energy efficiency or ESM, never has and doesn't at
9 the present time.

10 Would you please respond to that implication.

11 A. Black Hills Power over the last 16 or 17 years has
12 actively worked with its customers to look for
13 opportunities to encourage the wise use of energy in the
14 Black Hills. We have at various times had rebates for
15 energy efficient appliances, for commercial lighting
16 applications, for commercial motor applications.

17 We conduct annual meetings with our largest
18 customers to talk to them about their energy use. We
19 provide them graphical representations that compare
20 year-to-year energy consumption. We talk to them about
21 how they are using the electricity and what changes
22 they've been contemplating.

23 We have looked at our rate designs and have filed
24 with this Commission even during periods of rate freezes
25 new tariffs that would allow for customers to implement

1 applications. A good example is our energy storage rate.

2 We implemented a combined account general service
3 large rate, which allowed then commercial customers to
4 integrate and save demand between their various
5 applications within their business. Many of our
6 businesses, because of the nature of how they've
7 constructed their facilities, have had different electric
8 meters. We allowed them to combine them so they could
9 lower their demand and manage their operations totally
10 together.

11 We have continued to encourage off-peak use. We
12 have a residential demand rate with over 4,000 customers
13 on it. We continue to encourage total electric. As a
14 result of those efforts, we have a relatively balanced
15 peak between our summer and winter loads. Our summer
16 load was set in 2007 at 430 megawatts. In 2008 we hit a
17 winter peak load of 407 megawatts.

18 When we look at the opportunities for us to control
19 our loads through energy efficiency or demand side
20 management -- just for a point of reference, about
21 80 megawatts of that load was associated with wholesale
22 power contracts. So we're talking basically about
23 350 megawatts of retail load that we're working with.

24 We have done many things during that period of time.
25 The one thing we have not done is document the results of

1 our savings. For 12 of the last 15 years our customers
2 have seen no change in the price of their electricity.
3 Well, one way that you do that in a small utility is you
4 limit your administrative costs with these programs.

5 And so we've focused on customer results and not on
6 administrative costs of documenting the results from
7 these programs in a very substantial way.

8 Ultimately, it's the economics of the consumer that
9 drive the decision to implement energy efficiency
10 measures or demand side management measures. And we've
11 had a lot of experience in talking to our customers on an
12 annual or even more frequent basis about ways they can
13 change their use of our electricity.

14 Q. In your opinion, would DSM and energy efficiency
15 significantly reduce the load at Black Hills Power?

16 MR. KHOROOSI: Objection. The witness is not
17 competent to answer the question.

18 MR. SMITH: Do you have a response,
19 Mr. Magnuson?

20 MR. MAGNUSON: Yeah. Absolutely. A witness
21 that is an employee of an organization has the right to
22 make statements. That's within their purview regarding
23 that corporation.

24 I think from his previous testimony Mr. White is
25 more than qualified to address this topic.

1 MR. SMITH: I'm going to overrule the objection.

2 A. Thank you. I actually was responsible for the
3 development of all our demand side management programs
4 when we began them in 1993 and oversaw their actual
5 implementation for about eight years.

6 So we've had that opportunity. It's been really a
7 pretty good situation because I've also been responsible
8 for the company's regulatory activities for the last
9 28 years. And a lot of what consumers need to make
10 decisions about the economics of making investments in
11 energy efficiency require them to have an opportunity to
12 save, to create a reasonable payback period of time on
13 these energy efficiency measures.

14 And that's one of the things that hasn't been talked
15 about much in the testimony in this hearing is that
16 energy efficiency comes at both a cost to the utility but
17 also at a cost to the customer. Because they have to
18 replace their air conditioner. They have to replace
19 their refrigerator. They have to replace their
20 television in order to get a more energy efficient unit.

21 And so it's different than conservation, which are
22 basically behavioral changes that allow me to live a
23 comfortable lifestyle or our customers to live a
24 comfortable lifestyle by working with our thermostat, by
25 turning off lights, by turning off televisions when

1 you're not in the room, and those types of things.

2 Q. Tell us about the work that you've done with regard
3 to DSM energy efficiency with some of the industries in
4 Rapid City and the Black Hills Power service territory
5 including the cement plant.

6 A. We have worked through the years with many of our
7 customers. Some of them continue to be customers. Some
8 of them are no longer customers.

9 In fact, when you look at the historical data that
10 we use to forecast future demand for electricity, in the
11 last 15 years Black Hills Power has lost 40 to 50
12 megawatts of large, high load customer loads. And yet
13 we're still growing at 1 to 2 percent a year. And so
14 that's been an important part of it.

15 We have worked in partnership with our large
16 customers. In particular, we've worked with our second
17 largest customer at the time, the South Dakota Cement
18 Plant, in encouraging off-peak use. Our rates are
19 designed to do that. The large customer rate that they
20 have allows them to take 150 percent of on-peak demand
21 off peak with no additional charge.

22 They liked that application. It worked within their
23 operations. But over time when the economy was much
24 stronger and cement sales were much higher, the six-month
25 period of time where our on-peak period was 10 a.m. to

1 10 p.m. daily became an inhibitor in their ability to
2 produce profit. And so we worked with them to reduce
3 that period of time.

4 And through a period of time we actually had notice
5 to them where we would call them on 24 hours notice, and
6 they would curtail a load. And that was for about 5 or
7 6 megawatts of load.

8 Ultimately what happened was the demand for product
9 was so high and the price of electricity was low enough
10 that they chose to run flat out. And instead of having a
11 load of 17 or 18 megawatts, they then became a load of 22
12 or 23 megawatts. They've since scaled back some.

13 But consumer behavior changes based upon the
14 economics of their household or the comfort level or the
15 alternative opportunities. And so conservation can be
16 fickle at times.

17 Q. Have you worked with any customers regarding the use
18 or consideration of combined heat and power?

19 A. We haven't worked with customers when we talk
20 specifically about combined heat and power. Generally
21 what they were referring to with us is cogeneration.

22 They're looking for an opportunity to generate
23 power, utilize some processed steam within their
24 operations, and sell any excess energy back to the
25 utility.

1 We have looked at several of those applications
2 through the years. What we typically have found was that
3 the price of electricity is low enough from Black Hills
4 Power that it doesn't justify the investment and the
5 hassles of operating their own generation because the
6 avoided cost of energy just doesn't support the
7 economics.

8 We have recently looked at an opportunity that a
9 customer brought us, and it actually would produce
10 electricity for our customers at about 50 percent higher
11 than the costs from Wygen III. So the economics just
12 have not been there within our service territory in the
13 last 15 years or so as I've had the opportunity to visit
14 with customers about these types of situations for
15 cogeneration.

16 Q. Mr. White, in your opinion would the use of DSM and
17 energy efficiency have prevented the requirement of
18 building Wygen III?

19 A. No. When you consider the loss of load that we've
20 experienced in our load forecast, when you consider that
21 the Integrated Resource Plan looked at low load
22 scenarios, we see that Wygen III was the right choice for
23 our customers in 70 percent of the scenarios.

24 And as Chairman Johnson pointed out, because of the
25 lack of a fat tail on the graph that we were looking at

1 last week, about 90 percent of the scenarios were either
2 favorable to building Wygen III for our customers or
3 pretty much a push.

4 So no. Demand side management and energy efficiency
5 have been, in fact, applied by Black Hills Power,
6 essentially, as Mr. James said, on a silver shotgun
7 approach. And we have done that for a number of years.

8 Wygen III is needed. We live in a very attractive
9 part of the country. We have an obligation to provide
10 safe and reliable service. We have worked very
11 diligently with Staff to come up with a settlement that
12 will allow us to provide safe and reliable service in the
13 next 20 years to 50 years.

14 MR. MAGNUSON: That's all the questions I have.
15 Thank you, Mr. Smith.

16 MR. SMITH: Thank you.

17 Mr. Khorroosi.

18 MR. KHOROOSI: Thank you, Mr. Smith.

19 CROSS-EXAMINATION

20 BY MR. KHOROOSI:

21 Q. Good morning, Mr. White.

22 A. Good morning.

23 Q. Pardon me. You were talking earlier about how
24 consumer needs can be fickle and sometimes unpredictable.

25 A. Yes.

1 Q. Is that any -- strike that.

2 That's also true in every other energy market you're
3 aware of in the country; is that correct?

4 A. Certainly.

5 Q. And, indeed, the world.

6 A. Yes.

7 Q. Black Hills Power has not yet completed its energy
8 efficiency potential study, has it?

9 A. No. I testified to that last week.

10 Q. All right. And at the time it filed the Application
11 that study had not been completed; correct?

12 MR. MAGNUSON: Mr. Smith, I'll object. It's
13 beyond the scope of the rebuttal testimony of this
14 witness.

15 MR. SMITH: Do you have a response,
16 Mr. Khoroosi?

17 MR. KHOROOSI: Well, I think it goes to his
18 testimony that they're adequately addressing energy
19 efficiency. I could rephrase it or lead up to it in
20 perhaps a more relevant way if, that would assist the
21 Commission.

22 MR. SMITH: Maybe try that.

23 MR. KHOROOSI: Okay.

24 Q. You stated that you -- that you engage in a variety
25 of energy efficiency programs already or that you have in

1 the past.

2 A. Specifically, demand side management, yes.

3 Q. Okay. Including rebates for energy efficiency
4 appliances?

5 A. Yes.

6 Q. How many rebates are you currently offering for
7 energy efficient appliances?

8 A. It's a limited program at this point. And we have
9 been in the process of developing the demand side -- or
10 the energy efficiency study. And so we've trended down.

11 Q. Would it be accurate to say that you're only
12 offering one rebate at the current time?

13 A. Could be.

14 Q. Okay. Do you know?

15 A. No.

16 Q. Okay. Black Hills Power believes it would be
17 helpful to have a complete energy efficiency potential
18 study, doesn't it?

19 A. Black Hills Power has always worked in partnership
20 with the communities and the customers that we serve, and
21 helping customers make wise decisions about the use of
22 our product is important to us.

23 Q. Okay.

24 A. And an energy efficiency study is an important
25 component of that going forward.

1 Q. So the answer to my question is yes?

2 A. Yes.

3 Q. That study is not complete yet, is it?

4 A. As I testified to last week, it is not complete. It
5 is pending the Commission's consideration of energy
6 efficiency, which started with the workshop on June 23.

7 We had discussed that study with you. It's been
8 prepared by AEG, which is the consultant we use in
9 Colorado for our energy efficiency studies that Mr. James
10 referred to.

11 Because of --

12 Q. Okay. You've answered my question. Thank you.

13 MR. KHOROOSI: Okay. Thank you, Mr. White. I
14 have nothing further.

15 MR. SMITH: Ms. Cremer, questions of Mr. White?

16 MS. CREMER: Staff would have no questions.
17 Thank you.

18 MR. SMITH: Commissioners? Advisors?

19 Mr. Rislov.

20 MR. RISLOV: Mr. White, if we could go to -- I
21 have it as page 14 of the Staff memo.

22 THE WITNESS: I have it now. What page,
23 Mr. Rislov?

24 MR. RISLOV: I have page 14, and it's headed up
25 Balancing of Rate Payer and Utility Interests.

1 THE WITNESS: Yes.

2 MR. RISLOV: And on the last paragraph of that
3 page, that first sentence, maybe I should have you read
4 that first sentence in that last paragraph starting with
5 "It is."

6 THE WITNESS: "It is Staff's position that the
7 issues raised by its IRP consultant should be addressed
8 directly and fully in future IRPs undertaken by
9 Black Hills Power but that criticisms of the company's
10 2007 IRP should not be used alone to treat Wygen III as
11 if it does not exist or, equally important, to withhold
12 from rate payers the benefits that it is expected to
13 produce."

14 MR. RISLOV: Do you understand what Staff is
15 getting at in that sentence, what criticism they may have
16 had?

17 THE WITNESS: Yes.

18 MR. RISLOV: And what would those be?

19 THE WITNESS: They also were concerned about the
20 timing of Wygen III, the consideration of alternatives,
21 and some of the forecasting. Ultimately decisions to
22 build resources are not just based upon Integrated
23 Resource Plans. They're based upon the realities of the
24 utility system and what resource changes may be happening
25 in the future.

1 And I believe that Staff correctly has
2 recognized that Wygen III is going to be a very important
3 asset benefiting consumers over the next 50 years.

4 MR. RISLOV: You used the word "also." Would
5 that include Mr. James' recommendations?

6 THE WITNESS: The recommendations to address
7 demand side management in a more specific way I think was
8 a concern of Staff, yes.

9 MR. RISLOV: And Mr. James as well?

10 THE WITNESS: And Mr. James as well.

11 MR. RISLOV: So to that extent, Staff is making
12 some type of recommendation for the future with regard to
13 IRPs and, you know, perhaps energy efficiency planning;
14 is that correct?

15 THE WITNESS: Yes, they are.

16 MR. RISLOV: Where do you think Black Hills is
17 in the scope of energy efficiency planning compared to
18 the area utilities? Where would you place Black Hills?

19 THE WITNESS: We would be lagging in the
20 formality of energy efficiency planning. We are more
21 successful, I believe, in the demand side management
22 area. We will be catching up as the Commission addresses
23 this issue over the next several months and do intend to
24 file an energy efficiency plan.

25 But based upon the testimony that we heard

1 earlier today, you know, we're only a year or two behind
2 the other utilities in their implementation in the State
3 of South Dakota.

4 MR. RISLOV: I guess what I want to address is
5 my concern that with regard to whatever's being
6 recommended here -- I wasn't privy to the conversations
7 among the parties, but this is going to be addressed.

8 THE WITNESS: Yes.

9 MR. RISLOV: And to some extent at least this
10 would include both Mr. James' as well as Mr. Evans' --

11 THE WITNESS: Yes.

12 MR. RISLOV: -- recommendations. Thank you.

13 MR. SMITH: Other questions of Mr. White?

14 CHAIRMAN JOHNSON: Mr. White, is Black Hills
15 Power undertaking all cost-effective energy efficiency
16 and DSM measures?

17 THE WITNESS: I would say that at this point the
18 answer would be no but we intend to.

19 CHAIRMAN JOHNSON: Thank you.

20 I'm sorry, Mr. Smith. And it's difficult --
21 would you agree that it is difficult for the Commission
22 to ascertain what you "intend to" means in the absence of
23 an energy efficiency study? Is that right?

24 THE WITNESS: Yes. And, in fact, it is our
25 intent to file an application with the Commission for

1 your consideration to get approval of programs and the
2 recovery of the costs associated with those programs.

3 CHAIRMAN JOHNSON: Do you know when that filing
4 is intended to be made?

5 THE WITNESS: We had planned to do it earlier
6 this year, but given the Commission's recent interest in
7 energy efficiency, we thought it prudent to wait and see
8 what the conclusions of your activity may result in.

9 CHAIRMAN JOHNSON: Thank you.

10 MR. SMITH: Additional Commissioner questions of
11 Mr. White?

12 Seeing no nodding of the heads, did you have,
13 Mr. Khoroosi, follow on to Commissioner/advisor
14 questions? Any additional questions?

15 MR. KHOROOSI: Nothing further. Thank you.

16 MR. SMITH: Staff?

17 MS. CREMER: Staff would have nothing. Thank
18 you.

19 MR. SMITH: Mr. Magnuson, redirect?

20 MR. MAGNUSON: I have no further questions for
21 this witness. Thank you.

22 MR. SMITH: Okay. Mr. White, you may step down
23 and be excused.

24 So where are we at, Mr. Magnuson?

25 MR. MAGNUSON: Mr. Smith, we have concluded our

1 case and our rebuttal. And so we're at the point where
2 we would rest.

3 MR. SMITH: Okay. Mr. Khorroosi, I think we're
4 at an end then; is that correct?

5 MR. KHOROOSI: Yes. Mr. Smith, we have no
6 surrebuttal, and we would rest as well.

7 MR. SMITH: Okay. Ms. Cremer.

8 MS. CREMER: Staff has nothing further.

9 MR. SMITH: Okay. Well, with that, it's
10 5 minutes to noon. My assumption, based on our
11 discussion prior to the recess on Tuesday, was that the
12 parties would prefer to proceed with oral argument
13 today. And am I correct in that and that we not go down
14 the route of briefs?

15 Is that correct, Mr. Magnuson?

16 MR. MAGNUSON: That is correct. We'd prefer
17 closing arguments and not briefs.

18 MR. SMITH: Thank you. Mr. Khorroosi?

19 MR. KHOROOSI: Yes. That's correct for us as
20 well. Thank you.

21 MS. CREMER: Yes. That's true.

22 MR. SMITH: So why don't we take a recess and so
23 folks can get organized and whatever. And maybe what do
24 you think for recess time, everyone, to -- what do you
25 need in terms of -- is that okay, or do you want to do

1 that or forge ahead or what?

2 CHAIRMAN JOHNSON: 1:15?

3 MR. MAGNUSON: Certainly 1:15 would be
4 acceptable.

5 MR. KHOROOSI: Absolutely. Thank you.

6 MR. SMITH: Okay. We're in recess until 1:15.
7 See you then. Thank you.

8 (A lunch recess is taken)

9 MR. SMITH: Thank you. We'll reconvene the
10 hearing in Docket EL09-018, application of Black Hills
11 Power for authority to increase rates.

12 First we'll check the phone line. Is
13 Mr. Evans -- are you still on the phone?

14 MR. EVANS: Yes, I am.

15 MR. SMITH: Okay. Anyone else on the phone?

16 Okay. With that, all parties have concluded the
17 evidentiary portion of this hearing. And the parties
18 have agreed that the preferred course of action they
19 would like in this case is to present oral argument.
20 Something's happening here in my mic.

21 So we'll turn it over first to the Applicant,
22 Black Hills Power.

23 Mr. Magnuson.

24 I'm not going to set an arbitrary time limit.
25 Now if, Commissioners, you want to overrule me on that,

1 please feel free to do so. But, you know, what I'd ask
2 is let's say within reason, but I'm not going to sit here
3 and time you guys with a clock. Okay?

4 MR. MAGNUSON: Thank you, Mr. Smith. And I also
5 would like to confirm that I'm going to preserve a
6 portion of my time for closing until after the closing
7 argument of the Intervener.

8 MR. SMITH: Okay. Well, that's customary here
9 is that the Applicant in any case we have has the last
10 say. So okay.

11 MR. MAGNUSON: Thank you.

12 Thank you, Commissioners, for your attention and
13 your questions during this hearing as you consider
14 whether or not to approve the rates in the Settlement
15 Stipulation as entered into by Black Hills Power and the
16 Commission Staff.

17 It's clear that the issue before you -- before
18 this Commission is whether there is substantial evidence
19 on the record as a whole that the Settlement Stipulation
20 establishes just and reasonable rates, giving due
21 consideration to the criteria that is set forth in
22 SDCL 49-34-8A for a determination of rates. Although I'm
23 sure you're familiar with that statute, I'm going to
24 briefly review it.

25 Statute SDCL 49-34A-8 sets forth as follows:

1 "The Commission in the exercise of its power under this
2 chapter to determine just and reasonable rates for public
3 utilities shall give due consideration to the public need
4 for adequate, efficient, economical, and reasonable
5 service and to the need of the public utility for
6 revenues sufficient to enable it to meet its total
7 current cost of furnishing such service, including taxes
8 and interest and including adequate provision for
9 depreciation of its utility property, used and necessary,
10 in rendering service to the public, and to earn a fair
11 and reasonable return upon the value of its property."

12 We believe that the Settlement Stipulation that
13 has been entered into between Black Hills Power and the
14 Staff meets the criteria of SDCL 49-34A-8. The burden of
15 proof is on Black Hills Power, and we would submit that
16 the rates set forth in the Stipulation are just and
17 reasonable and that the evidence that has been submitted
18 clearly meets that burden of proof. The evidence is all
19 in the record.

20 I'm going to briefly outline the testimony that
21 has taken place here, realizing that the testimony
22 basically was less than three days. It should be fresh
23 in everybody's minds so I am just going to hit the high
24 points of that testimony.

25 First I'm going to review the testimony of

1 Black Hills Power. The first witness we had was
2 Bill Avera. He's an ROE expert. He's testified in over
3 200 -- I believe it was over 300 rate cases on ROE. He's
4 supported the ROE number in the Settlement, testifying
5 that it was in the low range but within an acceptable
6 range of ROE, particularly given the context of the
7 Settlement.

8 Mr. Kyle White testified on behalf of
9 Black Hills Power. And he testified that the rates set
10 forth in the Stipulation are just and reasonable, and he
11 provided this Commission with his reasons supporting that
12 opinion.

13 Our next witness was Chris Kilpatrick. He's the
14 numbers guy. He sets forth that the savings to the rate
15 base was \$26 million, due to being under budget, the
16 bonus depreciation, and related matters. That
17 corresponds to a reduction in the requested revenue
18 requirement. And I might note that there were no
19 questions by the Interveners of Mr. Kilpatrick.

20 The numbers in the Settlement and the
21 Application are supported by the evidence before this
22 Commission: The prefiled testimony, the Application
23 itself, the Staff memorandum, and related matters. And,
24 as I mentioned, the numbers aren't in question. There
25 weren't any questions by South Dakota Peace & Justice

1 regarding what I will refer to as the numbers.

2 Our next witness was Jill Tietjen. Jill Tietjen
3 has prepared somewhere in the neighborhood of 20
4 Integrated Resource Plans. She's experienced. She's
5 qualified. She described the process in detail. She set
6 forth that utilities conduct their planning all the time,
7 not just when they do an IRP. They conduct it as a
8 regular basis in support of their operations.

9 The Integrated Resource Plan that was completed
10 in 2007 is in evidence. And that document demonstrates a
11 thorough review and consideration of what was going to be
12 the correct resource for Black Hills Power to construct.

13 Our next witness was Doug Buresh. He was the
14 person from Ventyx. Ventyx was noted to be a
15 top-of-the-line modeling entity. And certainly
16 Mr. Buresh demonstrated that to this Commission. He
17 demonstrated a knowledge of modeling and a background in
18 this type of work.

19 He also noted that high carbon taxes were
20 modeled, that they were fully considered, and that the
21 least cost resource was determined to be Wygen III.

22 Our final witness was Tom Ohlmacher. And
23 Tom Ohlmacher testified that planning takes place all of
24 the time on behalf of a utility, not just when the
25 company does an IRP.

1 These witnesses were available, and they
2 answered questions of the Commission and the very limited
3 questions of South Dakota Peace and Justice.

4 On the record before you there is also the
5 testimony of the Staff witnesses. Now Black Hills Power
6 certainly believes that it has presented substantial
7 evidence in support of the Stipulation. But there is
8 also significant testimony from Staff witnesses that
9 support that burden of proof.

10 Now, as you know, the Commission Staff is
11 charged with representing the public interest. And the
12 Commission Staff here supports the Settlement and has
13 asserted that the Settlement results in just and
14 reasonable rates.

15 First I would turn to the Joint Motion for
16 Approval of the Settlement Stipulation that is in
17 evidence in this matter. I would quote from the second
18 paragraph of that Settlement -- Joint Motion for
19 Settlement Stipulation. It says, "The terms of the
20 Settlement Stipulation agreed upon are just, fair, and
21 reasonable, and consistent with South Dakota Law."

22 We've heard a lot of evidence indicating that
23 Staff did a comprehensive review of this Application.
24 The Staff memorandum on file and part of the evidence
25 here is extensive. It's about 17 pages long. It

1 documents that Staff did a thorough and rigorous review
2 of this entire matter.

3 There were, I believe, 62 adjustments that were
4 made by Staff. There were negotiations. There's been a
5 demonstration that there has been a rigorous review of
6 this Application.

7 The Staff memo indicates that there's
8 approximately \$17 million less than the requested amount
9 in the Application. The numbers have been adjusted to
10 actual.

11 I would also call the Commission's attention to
12 page 3 of the Staff memorandum, which reads as follows:
13 "Staff believes this Settlement provides Black Hills
14 Power with an annual level of revenues relative to its
15 current service costs that is fair, just, and reasonable.
16 Their Settlement rates allow its current service
17 costs" -- excuse me. "Allow Black Hills Power a
18 reasonable opportunity to earn a return that is adequate
19 to enable it to continue providing safe, adequate, and
20 reliable service to its South Dakota retail customers."

21 As I mentioned before, the Staff memorandum
22 addresses the significant issues. The numbers are not
23 contested. The testimony shows that there were over
24 500 data requests that were submitted to Black Hills
25 Power and that were responded to by Black Hills Power.

1 There were over 15,000 pages of documents that
2 were provided not only to Staff but that were provided to
3 Staff and to all of the Interveners. In fact, in the
4 testimony of Chris Kilpatrick from Black Hills Power his
5 comment was "It was the most thorough exam that I have
6 been a part of."

7 In addition, I would like to call your attention
8 to some of the testimony that was presented by Staff
9 witnesses. I'm referring now to the rough draft of the
10 transcript of the hearing that took place last week and
11 realizing that that's a rough draft I imagine it could
12 change somewhat but I'm going to read what's in that
13 rough draft.

14 Mr. Robert Towers testified on page 10 of
15 Volume II as follows: "Staff submits that the rates that
16 would be established on the basis of the Settlement
17 Stipulation would be just and reasonable, balancing
18 fairly the interests of Black Hills Power and its
19 customers. The rates were established to recover no more
20 than Black Hills' current revenue requirements, including
21 a reasonable return to its stockholders commensurate with
22 its cost of equity capital."

23 Mr. Towers has done regulatory work for over
24 50 years. He's testified in more than 200 rate
25 proceedings. I'd like to cite this transcript on

1 questioning by Chairman Johnson. Chairman Johnson said,
2 "I mean, the Commissioners have asked a lot of detailed
3 questions on individual components but the big question
4 that I want to ask you is given your experience, does
5 this Settlement Stipulation -- would it result in fair
6 and reasonable rates to consumers?" Witness Robert
7 Towers' answer: "Yes."

8 The additional testimony of Robert Towers sets
9 forth that Black Hills Power mitigated the impact of
10 Wygen III to the benefit of its rate payers. As you'll
11 recall, there was bonus depreciation in a very, very
12 significant amount. The depreciation was set at
13 2.35 percent per year, which basically sets forth then
14 that it would be depreciated over a 50-year life.

15 That asset is going to benefit the rate payers
16 of Black Hills Power for 50 years and beyond. In
17 addition, as you noted, Commissioners, there was the ECA
18 and the surplus credit, all of which will mitigate the
19 impact of Wygen III on rate payers. There was rate
20 design as well as a three-year rate moratorium, all of
21 which will mitigate the impact of Wygen III to the
22 benefit of rate payers.

23 I would also like to call to your attention the
24 testimony of Robert Evans. His testimony was that
25 Wygen III, even under high carbon tax, is still the right

1 choice. And, second, that energy efficiency programs
2 can't replace the need for Wygen III under any
3 circumstances.

4 I would like to briefly address one topic that
5 obviously was covered during the hearing, and that is the
6 topic of power marketing. I believe that it's a fair
7 characterization that the power marketing provisions in
8 this Settlement are very general to rate payers.

9 I would call your attention first to the
10 questioning that was approached by Commissioner Johnson.
11 And as he reviewed within the fuel and purchase power
12 adjustment to rate payers there is at least a
13 13.75 million dollar benefit to rate payers over the next
14 three years. That is compared to today's rates. There
15 could be more.

16 I would also like to call your attention to some
17 of the testimony that came in with regard to the power
18 marketing.

19 On page 61 of Volume II Chairman Johnson
20 indicated "And we talked with Mr. White yesterday a
21 little bit about two components. First off, the split of
22 the power marketing income with almost two-thirds of the
23 benefits accruing to rate payers or flowing to rate
24 payers, and then the surplus energy credit. Taken
25 together, I mean, I view these as strong components of

1 the Settlement that really provide a substantial and
2 robust benefit to rate payers. But you've got a lot more
3 experience with rate cases across the country than I do,
4 Mr. Towers. I mean, how do you view these components?"
5 Answer by Witness Towers: "Well, I view them as a very
6 significant benefit to rate payers."

7 The power marketing components of this
8 Settlement Stipulation benefit rate payers.

9 I would also like to talk briefly about the
10 Integrated Resource Plan that was prepared in 2007 for
11 Black Hills Power by Jill Tietjen and Ventyx. First we
12 used a nationally known firm in doing the modeling.

13 The modeling of Ventyx addressed the high carbon
14 tax scenario that apparently South Dakota Peace & Justice
15 was arguing was not addressed. Clearly it was in the
16 50 scenarios that you saw, and as you'll recall, he had
17 the figures showing that the mean case that was set forth
18 by Mr. Schlissel and Synapse was in the middle of the
19 graph showing the high carbon tax that was modeled by
20 Ventyx.

21 The stochastic analysis showed that in
22 70 percent of the scenarios that Wygen III was going to
23 be the least cost resource. And as you'll recall under
24 questioning, I think it's fair to say that approximately
25 90 percent of the scenarios would show that Wygen III was

1 the least cost resource if you take all of the scenarios,
2 including those that are close to the point where it
3 crosses over.

4 As you'll recall, Doug Buresh talked about fat
5 tails. And basically, as I understand what he's saying,
6 that even if you went with Wygen III, there was no
7 significant downside with the choice of Wygen III, even
8 in those very few scenarios that would have chosen a
9 different resource.

10 I would also like to point out to this
11 Commission that Black Hills Power did undertake and went
12 through an entire hearing in Wyoming requesting a
13 certificate of public necessity and need -- excuse me.
14 Certificate of Public Convenience and Necessity and
15 presented that to the Wyoming Commission and they
16 approved that certificate.

17 Briefly on ROE, it's not going to take long.
18 Bill Avera, well respected in the field, expert in the
19 field, testified in over 300 rate cases on ROE. It's the
20 lower end of his range. The Staff memorandum sets forth
21 that the Settlement is -- for ROE is within the range of
22 that of its Staff expert.

23 Bottom line, the rates in the Settlement
24 Stipulation are just and reasonable and are fully
25 supported by the evidence that's been presented to this

1 Commission. I'll reserve the remainder of my closing
2 until after the Intervener's closing.

3 Thank you.

4 MR. SMITH: Thank you, Mr. Magnuson.

5 The Order of evidence presentation was then
6 Staff as on the side of -- in support of the Stipulation.

7 Ms. Cremer, did you want to do oral argument
8 next?

9 MS. CREMER: Yes. That would be fine. I think
10 I'll just go from up there. It would be easier than
11 trying to talk from here.

12 MR. SMITH: Okay. Please.

13 MS. CREMER: Thank you. This is Karen Cremer of
14 Staff. And this is unusual. I don't think I've ever
15 actually looked at you guys, other than from a side view.

16 I'm going to try not to repeat much of what
17 you've just heard here.

18 Staff and Black Hills Power filed a Joint Motion
19 for Approval of the Settlement Stipulation in this
20 matter.

21 The Settlement Stipulation reflects the efforts
22 of many individuals. Staff and Black Hills Power were
23 able to work through the issues that we encountered, and
24 ultimately we reached a resolution that was mutually
25 acceptable to both parties.

1 Black Hills Power worked diligently with Staff
2 to address our concerns, and we appreciate their
3 flexibility and compromise on those issues.

4 Staff believes we have reached an appropriate
5 balance of the parties' interests. We believe the
6 Settlement Stipulation resolves all of the issues in this
7 proceeding based on sound regulatory principles and that
8 the terms of the Settlement Stipulation result in rates
9 that are just, fair, and reasonable and consistent with
10 South Dakota Law and, in particular, 49-34A-6, 49-34A-8,
11 and 49-34A-11.

12 As shown by the evidence, the Settlement
13 Stipulation is in the public interest, and the approval
14 of the Settlement Stipulation will permit Black Hills
15 Power's customers to continue to receive safe, adequate,
16 and reliable service at just and reasonable rates.

17 As testified to by the various witnesses, the
18 Settlement Stipulation has many elements that benefit the
19 rate payers. And a couple of these were mentioned by
20 Mr. Magnuson.

21 The first obvious ones that come to mind are the
22 65 percent of the pretax power marketing income that will
23 be credited to retail rate payers. A minimum power
24 marketing income credit of \$2 million. A 2.35 percent
25 depreciation rate for Wygen III reflecting a 50-year

1 lifespan. And a South Dakota surplus energy credit for
2 three years totalling \$6.75 million. And then also the
3 three-year moratorium.

4 The Interveners have argued that Black Hills
5 Power did not conduct an adequate planning process and
6 that the ROE agreed to in the Settlement Stipulation is
7 not just and reasonable. However, I would submit that
8 the evidence in this docket show that that is not the
9 case.

10 As pointed out earlier by Mr. Magnuson, the
11 company did conduct an adequate planning process.
12 Further, any issues that Staff did have with the planning
13 process have been addressed in the Settlement Stipulation
14 by the various commitments agreed to by Black Hills
15 Power.

16 As for the return on equity, the rate agreed to
17 in the Settlement Stipulation is well within the range
18 established by the various witnesses' testimony.

19 I'm just going to address the interest at this
20 point, the interest rate. I don't know if you want to
21 take that up now or later. But at this time Staff is
22 recommending that the refund of the interim rates for
23 service -- no?

24 MR. SMITH: Why don't we wait on that until we
25 know if and when -- we don't even know yet whether the

1 Commission's going to render a decision.

2 MS. CREMER: Okay. Then I'll wait on that.

3 Staff believes this Settlement provides
4 Black Hills Power with an annual level of revenues
5 relative to its current service costs that is fair, just,
6 and reasonable.

7 The Settlement rates allow Black Hills Power a
8 reasonable opportunity to earn a return that is adequate
9 to enable it to continue providing safe, adequate, and
10 reliable service to its South Dakota retail customers.

11 Staff would recommend the Commission grant the
12 Joint Motion for Approval of the Settlement Stipulation
13 and adopt the attached Settlement Stipulation without
14 modification for Docket EL09-018.

15 Thank you.

16 MR. SMITH: Thank you, Ms. Cremer. Give her a
17 minute to get out of the way, Mr. Khoroosi, and then --

18 MR. KHOROOSI: If I could ask the Commission's
19 forgiveness while I set up here.

20 MR. SMITH: Sure.

21 MR. KHOROOSI: Thank you, Mr. Smith.

22 Chairman Johnson, members of the Commission,
23 Counsel, I'd like to start out today by reminding the
24 Commission of the standard of proof in this case.

25 As you'll see in SDCL 49-34A-6, every rate made,

1 demanded, or received by any public utility shall be just
2 and reasonable. Moreover, the goal of this rate making
3 process is ultimately so that the public shall pay only
4 just and reasonable rates for services rendered.

5 These statutes are written to protect the
6 public, and that's precisely what we're asking the
7 Commission to continue to do.

8 There's been no doubt through these proceedings
9 that the burden of proof lies on the utility. It's the
10 contention of the Residential Consumers Coalition that
11 Black Hills Power simply has failed to meet this burden.
12 They've done so in two major respects.

13 First, they have not met their burden of showing
14 that the inclusion of Wygen III in rate base is a just
15 and reasonable outcome, even under the Settlement
16 Agreement.

17 Second, the proposed return on equity is far too
18 high as to render it just and reasonable. And the
19 utility certainly hasn't offered sufficient evidence to
20 meet its burden in that respect.

21 I'd like to begin by addressing the inclusion of
22 Wygen III and rate base. The primary reason that the
23 utility has failed to meet its burden in this respect is
24 that its 2007 IRP which determined the necessity to build
25 the plant is deficient.

1 It fails to adequately consider demand side
2 management. It also fails to consider renewable energy
3 resources in a -- in a sufficient way. Indeed, this is
4 certainly true with the Settlement proposal that is at
5 issue today.

6 Although the Settlement addresses these issues,
7 there are no concrete commitments. There are no
8 identifiable goals. There is simply a promise that the
9 utility will address these matters.

10 Nothing is said about meeting -- about meeting
11 Governor Rounds' stated goals or about meeting any other
12 hard and fast even objectives or goals. The utility has
13 not agreed to even establish these goals, let alone meet
14 them.

15 Further, as you've heard, the utility has failed
16 to adequately consider environmental costs. And that
17 doesn't just include CO2 emissions. It's certainly a
18 part of it. But we're talking -- we're talking O_x, we're
19 talking particulate matter, and a whole host of other
20 sorts of environmental costs that the utility will face.

21 Though they have been technically addressed,
22 they are inadequately addressed in the IRP.

23 Further, there are a host of unknown model
24 inputs. The utility was heavily reliant on the fact that
25 these models are sound. The models themselves are sound.

1 The firms that invented these models are the best in the
2 country.

3 Maybe. But the utility has refused to
4 acknowledge and the witnesses for the Residential
5 Consumers Coalition have shown that in every respect of
6 this case it's absolutely essential that the data put
7 into this model be adequate and be accurate. Otherwise,
8 the best model in the world is completely manipulable.
9 Toward any end. And, indeed, that level of subjectivity
10 has been ignored by the utility.

11 We also -- we also addressed in our testimony an
12 adequate return on equity. Again, here we see a lack of
13 reliable input data.

14 As Mr. Frankenfeld testified -- and I have to
15 say Dr. Avera was quite adamant about, you know, his
16 allegations that Mr. Frankenfeld did not correctly
17 establish what he thought was a fair return on equity.

18 Mr. Frankenfeld does not have a burden of
19 showing what a fair return on equity does. What
20 Mr. Frankenfeld established is that the models used by
21 Dr. Avera, in spite of all of his years of experience,
22 relied on subjective input data. Furthermore, they were
23 also based on inaccurate proxy groups. Those were also
24 highly subjective. Dr. Avera chose those input data.
25 Those weren't chosen by the model.

1 There is also a great deal made of the low
2 credit rating for Black Hills Power. That naturally
3 increases the risk and ordinarily determines that
4 investors are going to need a higher return on equity in
5 order to invest an appropriate amount.

6 But it's important here to consider the burden
7 of proof and the standard of proof. The standard of
8 proof does not require this Commission to say what would
9 be ideal for the utility, what would be preferable for
10 the utility, or even what does the utility need for
11 itself.

12 The task of this Commission is to look at what
13 the utility has requested and to determine whether this
14 is just and reasonable. Dr. Avera himself testified that
15 market forces that are beyond the control of the utility
16 account for only 50 percent of a utility's credit rating.
17 So what's the other 50 percent?

18 These are -- these are items -- we would submit
19 these are forces that the utility itself can control.
20 When this privately owned utility takes risks, which it's
21 certainly entitled to do, and when this privately owned
22 utility makes mistakes, which it's certainly entitled to
23 do, who should pay for it? The investors who voluntarily
24 assume the risk or the consumers who more often than not
25 do not have a choice as to who provides this essential

1 service?

2 But when all is said and done, the Settlement
3 Stipulation is unjust and unreasonable. Is it preferable
4 to the original requested rate? Absolutely. Is it just
5 and reasonable? Hardly.

6 The reason it's not just and reasonable is that
7 it's based on the same assumption that the -- that the
8 original Application was based on. Namely, that
9 Wygen III should be included in the rate base.

10 When you base the Settlement Agreement on those
11 faulty assumptions, this Commission cannot approve a just
12 and reasonable rate based on those assumptions. The
13 utility -- the utility hasn't shown that it has
14 adequately determined its need for Wygen III. They've
15 certainly said they need one.

16 When Mr. White was testifying earlier in his
17 rebuttal the scope of his rebuttal was essentially, well,
18 we did -- we did this stuff. We just didn't write it
19 down. I mean, that hardly seems like responsible
20 planning with the interests of the consumer in mind. Or,
21 frankly, even the shareholders.

22 But in the end the utility and Staff have
23 submitted a woefully inadequate Settlement Stipulation to
24 address these concerns that the Residential Consumers
25 Coalition have had.

1 There are ways in which we believe that the
2 Settlement Stipulation could and should have been
3 improved.

4 Number one, it could and should require Black
5 Hills Power to attempt to obtain a more diverse energy
6 portfolio.

7 Second, it should implement a firm IRP due date.
8 This requirement --

9 MR. MAGNUSON: Mr. Smith, at this point I'm
10 going to object to this. There's no evidence of any of
11 these items that have been presented to this Commission
12 so it's inappropriate to bring them up at the present
13 time.

14 MR. SMITH: I think that a little too narrowly
15 maybe states Mr. James' prefiled testimony. I think it's
16 broad enough to encompass those two bullets there. I'm
17 going to let you proceed.

18 MR. KHOROOSI: Thank you.

19 Third, and this was in Mr. James' testimony,
20 that it should establish concrete goals for DSM,
21 including robust energy efficiency goals and programs.

22 Again, this is not a -- this is not a we have
23 issued rebates in the past and we've done other things,
24 we just didn't write them down.

25 Furthermore, we need a meaningful moratorium on

1 rate hikes. This three-year moratorium on an increase in
2 rates is simply not sufficient. The IRP itself states
3 that they are contemplating --

4 MR. MAGNUSON: Mr. Smith, at this point I'm
5 going to set forth my same objection. There has been no
6 discussion about going beyond the three-year moratorium
7 by any of the witnesses, including the South Dakota Peace
8 & Justice witnesses.

9 MR. SMITH: Well, my problem is an exhibit on
10 the record is the Settlement Stipulation to which if no
11 one else, at least several people here have commented on
12 the existence of that three-year moratorium as a positive
13 benefit in the Settlement Stipulation for rate payers.

14 And to me this is argument. He's just making
15 comment. He's not presenting evidence or whatever. And
16 to me this is just the realm of argument, as far as I'm
17 concerned, as to does it or does it not constitute what
18 other arguers here have argued it does.

19 MR. KHOROOSI: Thank you, Mr. Smith.
20 Furthermore, in support of that notion, I would point to
21 I believe it was Mr. White's cross-examination in which
22 he admitted that it took about that long to design,
23 build, and get all necessary approval, assuming that this
24 rate increase is approved.

25 It took about that long to do Wygen III. The

1 IRP states that they're already contemplating Wygen IV.
2 If there is not a more meaningful moratorium, more
3 meaningful limits, more meaningful DSM goals -- and we're
4 talking goals, not absolute requirements. Just any sort
5 of meaningful goal -- then we're bound to repeat the same
6 mistakes that were made with Wygen III.

7 Finally, the IRP addresses the possibility but
8 the Settlement does not of retiring outdated generation
9 facilities. These are -- especially when you're talking
10 about building a brand new -- building brand new
11 generation. Some of these concerns could be mitigated by
12 a genuine commitment to retire these older facilities
13 that are no longer necessary.

14 In conclusion, our case has been very simple.
15 Black Hills Power has not met the burden of showing that
16 the inclusion of Wygen III in rate base or its return on
17 equity have been either just or reasonable and, quite
18 simply, consumers should not be forced to bail out an
19 irresponsible utility.

20 Thank you.

21 MR. SMITH: Thank you, Mr. Khoroosi.

22 Mr. Magnuson, it looks like it's going to take
23 just a -- there you go. Okay.

24 MR. MAGNUSON: I will try and keep this brief.
25 Excuse me if I get a little worked up.

1 First, it's greatly offensive -- greatly
2 offensive and not supported by the record when
3 Mr. Khoroosi refers to Black Hills Power as an
4 irresponsible utility. That is just not the case, and
5 it's inappropriate for him to make that comment in a
6 public forum.

7 I understand that he's -- can make whatever
8 comments he wants. It is not supported by the record,
9 and it's entirely inaccurate.

10 You know, when somebody looks at something 20/20
11 hindsight it's much easier to try and pick holes at
12 things. Now we're presented with what I will call the
13 South Dakota Peace & Justice Christmas list. That's what
14 they want, all of those things. But what I'm going to
15 say is where was the evidence? There's no evidence to
16 support their Christmas list, their wish list.

17 Mr. Khoroosi said that we haven't met our burden
18 of proof and that it is woefully inadequate. Well, I'm
19 going to turn the tables on that. I realize we have the
20 burden of proof. We've met our burden of proof.

21 Where is the evidence to support all of these
22 allegations of South Dakota Peace & Justice?

23 Let me give you an example. Mr. Schlissel's
24 testimony was entered into the record. It's been
25 admitted. If you review Mr. Schlissel's testimony,

1 you'll see that there is not one place in his testimony
2 where he references the modeling of the 50 scenarios that
3 was done by Ventyx. Not in there.

4 He presented his testimony, and there's not a
5 thing in there about the modeling that was done by
6 Ventyx. And that's probably one of the most important
7 parts of this case. Not even mentioned in his testimony.

8 Let's talk about the IRP. The IRP and the
9 modeling determined that in 70 percent of the scenarios
10 that it confirmed the choice of Wygen III as a coal fired
11 generation as the least cost resource. Mr. Khorroosi
12 didn't even ask Doug Buresh a question. Did not ask him
13 a question. Where is the evidence? Where is the
14 evidence to support what they're requesting?

15 One of the things they put up on the screen was
16 that it didn't adequately consider renewable resources.
17 Well, I think the testimony today was clear that
18 Black Hills Power has significant renewable resources in
19 the form of wind. And I think all of you will remember
20 Jill Tietjen's testimony where she went through in the
21 IRP where it was planned to have renewable resources.

22 So for South Dakota Peace & Justice to just
23 say -- easy to say. Hard to prove. Where is -- they're
24 saying where is the evidence that we're going to use
25 renewable resources? We've presented it.

1 The comment that was made that to characterize
2 Kyle White's testimony as we did it but we didn't write
3 it down is an unfair characterization. I think what
4 you'll find is that Mr. White testified that they did not
5 spend the money to determine what the impact and results
6 of the demand side management and energy efficiency was.
7 Who benefits from that? The rate payers benefit from
8 that by not spending money.

9 As Mr. White testified, there's a reason why
10 rates remained so constant since the 1995 time frame for
11 Black Hills Power customers. That's because they weren't
12 spending money foolishly.

13 Let's talk a little bit about ROE. Bill Avera,
14 as we've noted, has testified in over 300 cases. He's an
15 expert in the subject. He supported the ROE that's set
16 forth in the Settlement Stipulation, as did the expert
17 from Staff.

18 On the other hand, we have Mr. Frankenfeld. Now
19 there may be certain types of cases, perhaps economic
20 damage cases, where Mr. Frankenfeld is going to qualify
21 as an expert. But he's not qualified in utility rate
22 cases. That's the bottom line. Give his testimony the
23 weight it deserves, which is little or no weight. And
24 here's why:

25 Number one, Mr. Frankenfeld was not able to

1 point us to any awards by any regulatory commissions at
2 the low level of his offered -- of the testimony that he
3 supported an ROE. Couldn't point to any other regulatory
4 Commission that approved an award that was that low.

5 Number two, he has never testified before any
6 regulatory commission regarding ROE. He was not able to
7 direct us to any regulatory commission that has accepted
8 his methodology. He hasn't --

9 Three, he has not read the Bluefield and Hope
10 cases. Those are the cases that set forth the
11 requirement of the standards for determining what an
12 appropriate ROE should be.

13 And, in addition -- and I hesitate to mention
14 this, but I will. The ROE number that's in the
15 Settlement Stipulation is within the range of
16 Mr. Frankenfeld's testimony.

17 Now a couple of other things. And I know I'm
18 jumping around. I'm trying to address all the points
19 that were brought up by Mr. Khorroosi. He said we don't
20 even know -- according to the 2007 IRP, Wygen IV is going
21 to be constructed.

22 Well, he never asked them a question about
23 whether or not they were contemplating building Wygen IV.
24 They're not. But he never asked them that question. So
25 why would we bring it up now and say we don't even know

1 where they stand on Wygen IV.

2 I would also note that the items that he put up
3 there I think he referred to as goals, not requirements.
4 Well, let's keep them as goals because they're
5 inappropriate for this rate case. A Settlement
6 Stipulation has been entered into by Staff and Black
7 Hills Power, and it's an appropriate, just, and
8 reasonable rate.

9 I would like to note that there were several
10 pieces of evidence that came in that were not rebutted in
11 any way by South Dakota Peace & Justice. One of those,
12 for example, would be the allegation that DSM and energy
13 efficiency could have been alleviated -- could have
14 alleviated the need for Wygen III.

15 Okay. In our rebuttal testimony together with
16 the rebuttal testimony of Staff clearly demonstrated that
17 to be inaccurate. In fact, I think if you'll take a look
18 at the testimony of Mr. Evans on page 68 of Volume II his
19 testimony when he's talking about some of Mr. James'
20 testimony, It is simply unrealistic to assume that such a
21 thing could occur.

22 Mr. Evans later testified and said, Well, I
23 can't see that energy efficiency programs could replace
24 the need for Wygen III under any circumstance. That's on
25 page 80 of Volume II.

1 So, once again, what it comes down to is it's
2 easy to say that Black Hills Power hasn't met its burden
3 of proof in certain things, but showing the evidence is a
4 different matter. And the evidence clearly is before you
5 that the rates are just and reasonable.

6 We haven't attempted to shift the burden of
7 proof. We have met the burden of proof head on, and the
8 record clearly demonstrates that the rates are just and
9 reasonable.

10 If I could, I'm going to borrow the language
11 from Commissioner Hanson's question, and I'm going to
12 turn the tables on the question. But basically he said
13 at some point you have to -- and this was when Mr. James
14 was on the stand. At one point he said you have to
15 square the reality with the hypotheticals of his
16 examples.

17 And the question is did Mr. James and
18 South Dakota Peace & Justice ever square the reality with
19 the hypotheticals and examples that they presented, and
20 the answer is no.

21 I would also like you to look back to the
22 evidence and basically here's the point: There was not
23 one witness that testified that the rates set forth in
24 the Settlement Stipulation are not just and reasonable.
25 All of Staff witnesses, all of Black Hills Power's

1 witnesses testified that they were just and reasonable.
2 But there's no testimony -- they never connected the
3 dots. They never said, well, because of this the rates
4 are not just and reasonable.

5 What they've done is they've tried to poke holes
6 at the IRP that was completed in 2007. And from the
7 testimony of Black Hills Power witnesses, as well as
8 Staff witnesses, we have demonstrated that that was a
9 thorough and review IRP that considered all of the
10 circumstances and Wygen III was the resource of choice.

11 There's been no demonstration that Wygen was not
12 needed.

13 As Mr. Evans testified, he said, in other words,
14 he's claiming that Wygen III would not have been needed
15 had Black Hills Power implemented additional demand side
16 measures instead of building Wygen III. This claim is
17 both unrealistic and -- I believe there's a typo in here.
18 I think it says, according to my notes, this claim is
19 both unrealistic and unsupported.

20 In conclusion, Black Hills Power did an IRP.
21 The IRP was approved by way of a CPCN hearing in Wyoming.
22 Wygen III was constructed under budget and ahead of
23 schedule. Black Hills Power made an application for a
24 rate case. It went through a rigorous review of Staff.
25 There were negotiations. There were adjustments. And

1 ultimately there was a result as set forth in the
2 Settlement Stipulation.

3 The 2007 IRP was not prepared with 20/20
4 hindsight. It was prepared at the time, and it showed
5 that Wygen III was the resource of choice. The benefits
6 of Wygen III are going to accrue to rate payers for
7 50 years and beyond. There's a substantial record that
8 the rates in the Settlement Stipulation are just and
9 reasonable.

10 Thank you for your consideration.

11 MR. SMITH: Thank you, Mr. Magnuson. That
12 concludes oral argument. Are there any last procedural
13 matters or anything that any of the parties wish to bring
14 before the Commission before the Commission decides then
15 what, if any, action to take today?

16 MR. MAGNUSON: Mr. Smith, I'm not aware of
17 anything. Thank you.

18 MR. SMITH: Mr. Khorroosi.

19 MR. KHOROOSI: We have nothing. Thank you.

20 MR. SMITH: Staff.

21 MS. CREMER: Staff has nothing.

22 MR. SMITH: Okay. Then I'm going to turn it
23 over, I guess, to the Commission. And step one, one
24 thing I wanted to ask is whether the Commission wanted to
25 take any kind of a break following argument to do some

1 personal pondering, or are you prepared to do something?

2 CHAIRMAN JOHNSON: I don't need a break,
3 Mr. Smith. Certainly if Commissioners Hanson or Kolbeck
4 do, we can take one.

5 Okay. It looks as if no break is necessary.

6 MR. SMITH: Okay. With that, I'm going to
7 conclude my Hearing Examiner portion of this, and I'm
8 going to turn the gavel back over to Commissioner
9 Chairman -- or Chairman Johnson.

10 CHAIRMAN JOHNSON: Thanks, Mr. Smith. And
11 thanks for your service here during this hearing as
12 Hearing Examiner. Not an easy job certainly. Thanks.

13 Any discussion by Commissioners or proposed
14 action?

15 COMMISSIONER HANSON: Mr. Chairman, I always
16 show deference to my chair or my vice chair before I
17 speak. So if one of you have something to say, by all
18 means.

19 CHAIRMAN JOHNSON: Commissioner Hanson, I have
20 to tell you it's nice of you to do that because
21 Commissioner Kolbeck and I when we've been third man on
22 the totum pole I haven't shown you that deference.
23 Thanks.

24 COMMISSIONER HANSON: Mr. Chairman, and ladies
25 and gentlemen of both sides of the aisle here, I do very

1 much appreciate the process that we went through here and
2 all of the information that was provided to us. I am
3 especially pleased with the amount of work that PUC Staff
4 went through and the analysis that they did and provided
5 to us and the witnesses' presentations to us. I think
6 that it was extremely valuable to all of us. At least it
7 was to me.

8 The questions, I won't reiterate them because
9 they've been spoken so many times. But, Mr. Chairman, in
10 my -- at least in my process of analyzing this as it has
11 been presented and as I have read it, I would just submit
12 to you as we work through a process for a Motion that I
13 do believe that the evidence shows it was reasonable for
14 Black Hills Power to build the Wygen III plant to meet
15 the ongoing future needs of its customers.

16 In fact, I believe that Plains Justice
17 witnesses' testimony supports that need in the
18 questioning that I proposed to them. And, frankly, I
19 think reliability is one of the most important issues
20 that we have to be considering here. Certainly cost is
21 of high priority, but without reliability, it doesn't
22 matter how much or how little electricity costs if it's
23 not provided in a timely and safe fashion.

24 Additionally, I believe the evidence proved that
25 the implementation of cost-effective energy efficiency

1 measures by Black Hills Power would not have eliminated
2 the need for Wygen III. The fact is that, again, in my
3 question -- in the questioning of the Plains Justice
4 witnesses, it supported that, the fact that there would
5 not be enough electricity available to the citizens
6 without Wygen III being built, unless there was some
7 other capacity. And that certainly would place Black
8 Hills Power customers at risk if they did not have a
9 reliable power source.

10 It's also interesting -- a third point that I'll
11 make is that the return on equity and the capital
12 structure that was recommended by Commission Staff in the
13 Stipulation was actually corroborated by, to a great
14 extent, if not 100 percent, by the Peace & Justice
15 Center's witness, as was alluded to by Mr. Magnuson.

16 And so I just frankly, in going through this
17 entire process, see no reason why we would not support
18 the Stipulation that Staff and Black Hills Power agreed
19 to.

20 The questions for me at this juncture is how to
21 provide for the refund and the difference, not whether or
22 not it should be supported.

23 Thank you, Mr. Chairman.

24 CHAIRMAN JOHNSON: Shall we presume that that is
25 a Motion to approve the Joint Motion for Approval of the

1 Settlement Stipulation, Commissioner?

2 COMMISSIONER HANSON: If I did not make that
3 Motion, which I don't think I did, I make that Motion at
4 this time.

5 CHAIRMAN JOHNSON: Okay.

6 COMMISSIONER HANSON: And I assume there will be
7 friendly amendments to it because we will -- or
8 subsequent amendments, subsequent motions because we need
9 to decide the rate that is charged on the -- provided to
10 and how the return is provided to the citizens.

11 CHAIRMAN JOHNSON: My thought would be that we
12 would take action on the pending Motion. And then if a
13 refund is necessary, we can take that up as an action
14 subsequent to, if that makes sense to you all.

15 Okay. There is a Motion on the floor. Other
16 discussion on the pending Motion?

17 Go ahead, Commissioner.

18 COMMISSIONER KOLBECK: The Motion would be to
19 approve the Settlement Stipulation; correct? Just flat
20 out.

21 CHAIRMAN JOHNSON: Uh-huh.

22 COMMISSIONER KOLBECK: I think that South Dakota
23 Peace & Justice system has put on a good argument, but I
24 do not feel that the Settlement is inadequate. I
25 definitely don't feel that Staff's work for the nine

1 months has been woefully inadequate. I do not feel that
2 way. I think that Black Hills Power has met their burden
3 of proof, as Mr. Magnuson has argued. And the evidence
4 is there in that record that Wygen is necessary in my
5 opinion.

6 I also feel that Black Hills Power has given up
7 more than legally obligated to do, namely in their power
8 marketing. So I commend them for that. And I also
9 commend our Staff for sticking with this for nine months
10 and eliminating over half of the requested amount that
11 was -- half of the requested increase has been
12 eliminated.

13 I don't see how that can be viewed as woefully
14 inadequate. I believe the return on equity is also fair
15 so I will support the Motion.

16 CHAIRMAN JOHNSON: I wonder about one thing. A
17 suggestion was made that perhaps the next -- a number of
18 suggestions were made by South Dakota Peace & Justice.
19 One of them I feel like is most appropriate for us to
20 consider, and that would be that the next rate case by
21 the Applicant at the very least be filed with a report
22 detailing their energy efficiency and DSM efforts and the
23 impacts of those efforts.

24 Of course, the difficulty in messing with a
25 Settlement Stipulation is they always seem to contain

1 these provisions but if you mess with it, you can capsize
2 the whole house of cards.

3 It seems to me that that one minor amendment --
4 maybe I won't call it minor, but that one amendment I
5 think is not unduly burdensome, and my hope would be that
6 the parties to that Settlement Stipulation would not view
7 it as a deal breaker.

8 Maybe prior to making that amendment formally I
9 will check with my colleagues to see if that finds favor
10 with them.

11 COMMISSIONER HANSON: Mr. Chairman, I find that
12 appropriate.

13 CHAIRMAN JOHNSON: Any concerns, Commissioner
14 Kolbeck?

15 COMMISSIONER KOLBECK: I don't necessarily have
16 concerns. I was actually looking for it in the
17 Settlement Stipulation. I think it was Mr. Rislov who
18 had brought that up, and Mr. White read that. That
19 actually -- that's good with me. That's enough for me.

20 CHAIRMAN JOHNSON: It is. And I will
21 acknowledge that it is unfair to both Commission Staff
22 and to the Applicant. They have labored, no doubt,
23 through hundreds of hours to get the Settlement
24 Stipulation and then for us at the last minute to swoop
25 in and make changes to it is unfair.

1 That being said, I think I would have more
2 confidence that the rates in effect with this Settlement
3 Stipulation -- not only with this Settlement Stipulation
4 but with other rate cases in the future are more likely
5 to be just and reasonable if we begin to in a more
6 thorough and substantive way collect information on the
7 impacts of energy efficiency efforts.

8 So I will make the Motion to amend the
9 Settlement Stipulation in that way, to require -- maybe
10 I'll make the Motion more formal.

11 I move the Settlement Stipulation as amended so
12 that the next rate case filed by the Applicant must
13 include, in addition to statutory requirements, a report
14 detailing their energy efficiency and DSM efforts and
15 impact of those efforts.

16 Any further discussion on the pending Motion?

17 COMMISSIONER KOLBECK: Is that with the
18 Settlement Stipulation Motion? Is that a subsequent
19 Motion or --

20 CHAIRMAN JOHNSON: I'd like it to be, I guess, a
21 friendly amendment to Commissioner Hanson's. I guess it
22 doesn't have to be friendly. We'll take a vote on it.
23 It's an amendment to his proposed Motion. It will make
24 our approval of this Settlement Stipulation contingent
25 upon that change.

1 COMMISSIONER HANSON: Mr. Chairman, I find it as
2 a friendly amendment. I -- at first blush I was feeling
3 that, well, we'll just intimate to any future Applicant
4 that they need to provide that to us.

5 At the same time, I recognize that any one of us
6 are -- all of us may not be here the next time that
7 occurs. So I think that's a -- it's a sensible way to do
8 it. So I appreciate it being memorialized in that
9 fashion.

10 CHAIRMAN JOHNSON: I would go a step further,
11 Commissioner Hanson. Although I hope to have a long and
12 productive career on the Commission, I hope I'm not on
13 the Commission when the next Black Hills Power case is
14 filed.

15 Although Commissioner Hanson indicated that
16 would be a friendly amendment, let's go ahead and vote
17 anyway.

18 Is there any further discussion on the proposed
19 amendment to the Motion?

20 Hearing none, we'll proceed to vote.

21 Hanson.

22 COMMISSIONER HANSON: Aye.

23 CHAIRMAN JOHNSON: Kolbeck.

24 COMMISSIONER KOLBECK: Aye.

25 CHAIRMAN JOHNSON: Johnson votes aye. The

1 Motion carries 3-0.

2 With that, I do have some comments on the Motion
3 that's been made. Of course, the worst part of being a
4 utility regulator, as any PUC Commissioner in the country
5 will tell you, is rate cases.

6 There are a lot of local and global factors that
7 are pushing rates up. We all know that. And there are
8 very few factors or forces pushing rates down. And as a
9 result, increases of filings of the kind we have before
10 us are, therefore, not surprising and, unfortunately,
11 they're not unusual.

12 I do think a little context here is helpful,
13 though. If this Settlement Stipulation is approved,
14 electric bills will be, in reality, lower than they were
15 after the last major Black Hills Power rate increase in
16 1995. How can that be? What do I mean by lower?

17 Well, since 1995 the consumer price index has
18 increased by 45 percent. After adjusting for that
19 inflation, a residential consumer using 600 kilowatt
20 hours a month would be paying by my calculation
21 11 percent less under this Settlement than they were in
22 1995. And I think that relative deflation is remarkable
23 when you look at what else has happened in the energy
24 space in the last 15 years.

25 In 1995 gasoline was a dollar 30 a gallon. I

1 suspect we all remember paying that. Today it's double
2 that. Natural gas prices in 1995 were half what they are
3 today. And that's true with the measure at the wellhead
4 level or at the residential rate level.

5 Now when -- of course, when Black Hills Power
6 filed this rate case there was substantial consumer
7 concern, and I do have to say to my colleagues I think
8 they were very patient, very open-minded in hearing out
9 those consumer concerns. Literally hundreds of phone
10 calls and e-mails and letters. Walking through the malls
11 or at Mount Rushmore or almost anywhere that we might be
12 it was a topic of conversation that citizens were more
13 than happy to ex parte us on a little bit.

14 I think, though, we heard three primary messages
15 from consumers. One, that they thought an increase of
16 26.6 percent, a base increase of that size, was too much.
17 Number two, they asked the PUC to be thorough and to dig
18 deep. And, number three, they said they didn't want to
19 pay for any unreasonable expenses.

20 And if the Settlement is approved, I think it
21 should be very clear to those consumers that they were
22 heard in a very real way by this Commission. This
23 Settlement calls for a base increase of 12.7 percent,
24 which is less than half the requested amount.

25 PUC in-house and outside Staff invested more

1 than 2,600 hours digging into the filing. They located
2 literally hundreds of costs that needed to be excluded
3 from rate payers' bills. Staff negotiated this
4 Settlement removing almost \$17 million from Black Hills
5 Power's revenue requirement. And I'd like to spend just
6 a little while talking about where that \$17 million came
7 from.

8 Some of the adjustments -- and, you know, we
9 talk about 62 adjustments, and nobody knows better than
10 Staff that's not really 62 adjustments. Something like
11 cash working capital can be literally dozens of
12 calculations, sometimes hundreds of calculations. And
13 something like cash working capital can have a -- or more
14 than a million dollar impact to rate base.

15 Now those are great technical adjustments. And
16 I don't expect that most citizens who frankly don't have
17 the time or expertise to dig into that. I don't inspect
18 them to understand what was done with those big picture
19 adjustments.

20 But I do think that citizens benefit from having
21 an experienced and diligent and qualified PUC Staff as
22 the one we've got. Of course, other proposed adjustments
23 are ones that the citizens do understand and, in fact, in
24 a very loud and clear voice asked this Commission to
25 make. And the Settlement Stipulation makes those

1 requested adjustments. I'll give you just a few
2 examples.

3 Black Hills Power requested a 9.27 percent rate
4 of return on the rate base. This Settlement reduces that
5 return to 8.26 percent. 100 percent of economic
6 development costs, 98 percent of advertising costs, and
7 100 percent of financial-based incentive compensation are
8 disallowed under this Settlement. The incentive
9 compensation disallowance alone has an impact of almost
10 \$800,000 a year. The adjustments that the citizens asked
11 for and that were appropriate to make are not small
12 peanuts.

13 Of course, it should be noted that Staff dug
14 deep enough to even eliminate \$3,000 worth of expenses
15 for a company picnic.

16 Citizens also told us they were concerned about
17 Wygen III and they didn't want to pay for any more of
18 that plant than was necessary. Off the top almost half
19 of that plant wasn't a part of the request because the
20 electricity wasn't going to help South Dakota customers.

21 With regard to this Settlement, it depreciates
22 Wygen III over 50 years, a move that saves rate payers
23 significant money. Outside experts retained by this
24 Commission agreed that Wygen III was needed, but the
25 experts did call into question the timing of the

1 construction. And as a result, and as there's been a lot
2 of discussion around, this Settlement calls for an
3 unprecedented credit of \$6.75 million to rate payers.
4 That's money that flows back to consumers over the next
5 three years until Wygen III is expected to be needed to
6 serve retail loads alone.

7 Consumers had concerns that this Wygen III was
8 built just so that Black Hills Power could go sell a
9 bunch of energy -- electricity, rather into the market
10 and make a lot of money that way. Again, outside experts
11 retained by this Commission said that that was not the
12 case.

13 But in another substantial benefit to rate
14 payers, the first 65 cents of every \$1 that Black Hills
15 Power earns by selling power into that wholesale market
16 is going to flow back to rate payers. And even if the
17 company receives no income from those sales, rate payers
18 will still receive a minimum of \$2 million of credit
19 every year this rate is in effect.

20 I did think one thing was made very clear by
21 Mr. James' testimony, and that is that Black Hills Power
22 I think has not had as robust energy efficiency effort as
23 they should have and as we would like. And I do think
24 the company must do a better job in the future.

25 But that fact alone doesn't mean that this

1 rate -- or that the rate proposed by this Settlement is
2 unjust and unreasonable. I don't think there's any
3 evidence to that. I do think that as a state, I mean,
4 this -- this blame -- this concern about not enough
5 energy efficiency really doesn't belong on the shoulders
6 of Black Hills Power alone.

7 They operate within a legislative -- or rather a
8 statutory regime and within a regulatory regime where
9 those in public office and citizens indicate to them what
10 their priorities should be. And there isn't anything --
11 I don't see anywhere that the company has been in
12 violation of state statute or by Commission policy in how
13 it has in the past addressed energy efficiency and DSM.
14 I do think those things provide great opportunities for
15 the future.

16 So I will close by saying that these
17 adjustments, all of these adjustments we've been talking
18 about, while sizable, obviously don't eliminate the
19 burden on rate payers. The 12.7 percent base increase
20 when coupled with the fuel clause rider which will expire
21 in February will increase rates in the short-term by
22 19.4 percent. That, I think we all know, is a sizable
23 increase.

24 But the facts in this case have shown that
25 although BHP has not shown it was deserving of a

1 26.6 percent increase, it has shown that a 12.7 percent
2 base increase is justified under state law. And as such,
3 Commissioner, I will be supporting your Motion to approve
4 the Settlement Stipulation.

5 Other discussion on the pending Motion?

6 Hearing none, Commissioners, then we will
7 proceed to vote on the Motion as amended.

8 Hanson.

9 COMMISSIONER HANSON: Aye.

10 CHAIRMAN JOHNSON: Kolbeck.

11 COMMISSIONER KOLBECK: Aye.

12 CHAIRMAN JOHNSON: Johnson votes aye. The
13 Motion carries 3-0.

14 We do have the issue of refunds. The rate that
15 we have just put into effect is lower than the interim
16 rate. And unless you have other suggestions, I would
17 turn at this time to the parties to see how they
18 recommend handling the refund.

19 Black Hills Power.

20 MR. MAGNUSON: Thank you, Chairman Johnson. I
21 apologize for the delay. I needed to check on one thing.
22 And if I could just present a question on the friendly
23 amendment. And that is do I assume correctly then that
24 with regard to the costs that will be incurred by Black
25 Hills Power with regard to the friendly amendment, that

1 we will be entitled to apply for and receive -- or put
2 those costs into our revenue requirements and rate
3 base -- or excuse me. Revenue requirements?

4 CHAIRMAN JOHNSON: Are you talking about for
5 this -- for this rate that's in effect?

6 MR. MAGNUSON: No. The energy efficiency in
7 DSM -- friendly amendment that you made to the initial
8 Motion.

9 CHAIRMAN JOHNSON: I will tell you that my
10 Motion did not in any way make any predetermination on
11 rate treatment. I will just speculate a little bit, and
12 that is if in the test year the company does have some
13 costs associated with the tracking of the impact of their
14 energy efficiency and DSM costs, I don't think it would
15 be unusual for that to be considered a reasonable expense
16 within the historic test year.

17 But the Commission Motion didn't have any --
18 advance a determination of treatment. I should give my
19 colleagues an opportunity to respond. They're two-thirds
20 of the power behind --

21 COMMISSIONER KOLBECK: No. That would be my
22 thoughts also.

23 MR. MAGNUSON: Thank you.

24 COMMISSIONER HANSON: Excuse me, Mr. Chairman.
25 Mr. Magnuson, I understood your question to be that could

1 the costs that Black Hills Power would incur in complying
2 with that amendment be applicable for the next rate
3 request.

4 MR. MAGNUSON: That was stated much better than
5 I stated it. Thank you.

6 COMMISSIONER HANSON: All right. Well, that's
7 the way --

8 MR. MAGNUSON: And that was the question.

9 COMMISSIONER HANSON: Okay.

10 CHAIRMAN JOHNSON: That was better.

11 COMMISSIONER HANSON: Practicing my law here.

12 MR. MAGNUSON: So I apologize. Now that I've
13 gotten that out of the way, the question to be addressed
14 at this point?

15 CHAIRMAN JOHNSON: Refund. You had indicated
16 last week that you would discuss with Staff and keep RCC
17 apprised of your proposal and suggestion for how to
18 handle the refund of the excess charge to consumers
19 during the interim period.

20 MR. MAGNUSON: Thank you. And I'll try and
21 address that briefly.

22 Yes. We are in a position now that this has
23 been approved and assuming that the friendly amendment
24 will be acceptable, that starting on July 12 we would
25 make refunds to customers as a credit on their bill,

1 except for those customers that have moved. But it would
2 be a credit on the bill at 7 percent interest. And we
3 will issue checks to those people that are no longer
4 customers of Black Hills Power. The other refunds will
5 be shown as a credit on the bill.

6 CHAIRMAN JOHNSON: I do have a series of
7 questions, but perhaps we should wait to hear from the
8 other parties before we start Q and A time.

9 Staff.

10 MS. CREMER: Staff would agree with Black Hills'
11 proposal. We would agree with the 7 percent. And if you
12 would like an explanation of why we picked 7 percent, I
13 can give that, or I can wait and see what your questions
14 are.

15 CHAIRMAN JOHNSON: RCC, any comments?

16 MR. KHOROOSI: Well, I guess I'm not sure myself
17 where the 7 percent is coming from quite.

18 I guess I would --

19 CHAIRMAN JOHNSON: Mr. Khorroosi, you can proceed
20 if you want or if you want, Ms. Cremer can answer your
21 question for you again.

22 MR. KHOROOSI: Okay. Well, I guess I would be
23 curious about where it comes from.

24 MS. CREMER: And I believe, Sam, I did tell you
25 this last week when we talked about it that it's based on

1 the rule that we have regarding deposits, that we have a
2 7 percent in our rules that when customers have a deposit
3 with a utility they get a 7 percent interest rate on
4 that. And then it is also tied to the fuel clause. Is
5 that correct? And that's where that comes from.

6 And then we also discussed that you had talked
7 about the statutory percentage rate, one being 5 percent,
8 and I believe you thought the other was 10 percent. And
9 I told you I think that's the third place where we came
10 up with the 7 percent is kind of a midrange of that.

11 MR. KHOROOSI: Well, I think what I said during
12 our conversation was that we would have to get back and
13 look at the interest rates.

14 I mean, respectfully what I found when I was
15 able to go to the statutes is that where there's no rate
16 specified, the statute applies the Category C rate of
17 interest. And that's contained in SDCL 54-3-4.

18 The Category C rate of interest is 12 percent
19 per year. And although this is -- there certainly isn't
20 any statute requiring a -- or specifying the rate of
21 interest that should be applied in this case, should the
22 Commission think it somehow too burdensome for the
23 utility or inappropriate otherwise, I would suggest that
24 this be treated as a judgment and be accorded the
25 Category B rate of interest, which is 10 percent. So I

1 would suggest a rate between 10 and 12 percent as opposed
2 to 7.

3 CHAIRMAN JOHNSON: Mr. Khorroosi, one issue I
4 think we've got to weigh here is that one would think
5 similar rates should be used when customers owe the
6 utility -- you owe the utility money as when the utility
7 owes the customer money.

8 We deal with these interest rates so much that I
9 just want to tell you I have some trepidation to moving
10 to 10 percent because that is going to give the company
11 that many more opportunities in the future to say that
12 they deserve 10 percent.

13 There are many instances just because of the
14 nature of the fuel clause when customers ultimately owe
15 them money. And as you're fully aware of, I mean, that's
16 6.7 -- it's a big ticket item in a proceeding -- in this
17 proceeding.

18 Do you have any concerns that selecting such a
19 high rate of interest may in the long run cause more harm
20 to rate payers than --

21 MR. KHOROOSI: Well, I would certainly hope it
22 wouldn't. I mean, I think that's a matter that's well
23 within the purview of the Commission. I mean, I think
24 there are enough inequities between the utility as a
25 whole and your average individual rate payer where an

1 unequal application of an interest rate would be
2 considered fair.

3 I certainly understand the rationale, but I
4 would -- I would hesitate to say that it absolutely means
5 higher interest rates for rate payers in the future. But
6 I would ask the -- I would certainly ask the Commission
7 to consider it. And if the Commission deems the
8 7 percent rate appropriate, of course, that's up to you
9 to determine. But I would deem an appropriate rate in
10 this case to be 10 to 12 percent.

11 CHAIRMAN JOHNSON: And I would just, you know,
12 reiterate my concerns about unintended consequences of
13 such a high rate. Maybe I'll just ask one question,
14 and then we can see if there are others from the
15 Commission.

16 It has not -- if memory serves, it has not been
17 typical for in refund situations for the Commissions to
18 require that the utility company send checks to those
19 people who are no longer customers, that in the past that
20 has been argued that it carries with it some substantial
21 administrative burden, which ultimately, you know, is not
22 in the best interest of rate payers as a whole.

23 Black Hills Power, can you explain why it is
24 appropriate in this instance?

25 MR. WHITE: This is Kyle White. We have the

1 ability in our billing system to do so. We expect that
2 for those customers that have left they're going to be
3 relatively small dollar amounts. We thought that it may
4 be the Commission's preference that we work to find
5 customers to get the refund from them.

6 Certainly the cost to the company is less if we
7 don't need to go through that process. Certainly those
8 credit amounts could just be applied to something else
9 like the fuel and purchase power adjustment for refund to
10 customers. That would be satisfactory for us. We're not
11 looking to incur additional expense.

12 COMMISSIONER KOLBECK: Do you have any dollar
13 amount? Have you done any workups on how much the refund
14 is going to mean to your customers?

15 MR. WHITE: We were talking about that generally
16 last night. And the typical residential customer might
17 see a refund in the neighborhood of \$10. So customers
18 that have left us between April 1 and today would see
19 checks that are less than that.

20 COMMISSIONER KOLBECK: And I guess that's what
21 my concern is about the checks. 42 cents a stamp. Be
22 sending people 30 cents with a 47 cent stamp, or do you
23 anticipate that to be a large problem or no problem?

24 MR. WHITE: I think that it will be regularly
25 what happens to customers that have left our service

1 territory. As far as the number of customers that are
2 transient and out of our service territory, we did not
3 look at that. Quite often customers move from one
4 location to another so they're still within our
5 territory.

6 COMMISSIONER KOLBECK: That was going to be my
7 next question, how many disconnects you had that left
8 your service territory. Is that even possible to track?

9 MR. WHITE: It is possible to track. We just
10 did not do so in advance of this hearing.

11 COMMISSIONER KOLBECK: And how long do you
12 anticipate -- the July 12, which is just a few days from
13 now, you're fully confident that you can get this
14 resolved in the next five days?

15 MR. WHITE: Yes. We filed the Settlement
16 Stipulation on May 14. And we have been anticipating
17 that the Commission may approve this. And so we've gone
18 through the process of entering the rates and testing
19 them and testing the refund mechanisms.

20 I might add when we talk about an interest rate
21 that should be effective on this I find it very
22 unreasonable to look to 10 to 12 percent, particularly
23 when a lot of the time period that the refund's going to
24 be necessary for is the direct result of having to wait
25 to have this hearing with South Dakota Peace & Justice.

1 COMMISSIONER KOLBECK: That's duly noted. I
2 like the fact that the refunds would come in a high use
3 time. That would help people on their next month's
4 billing.

5 Have you given any thought to the people that
6 have left the territory? Have you given any thought to
7 any other banking -- simply banking transactions, direct
8 deposit transactions? Would that be way too cumbersome
9 or burdensome to them?

10 MR. WHITE: We generally don't keep that kind of
11 information with our customers. It's only those that
12 have arranged for a paid-by-bank relationship with us.
13 About 15 percent of customers would we have knowledge of
14 their banking accounts.

15 So either provide a credit on the bill, which
16 will apply to a majority of our customers, or issue a
17 check to the last known address of customers that have
18 left our service territory.

19 COMMISSIONER KOLBECK: All right. Thank you.

20 COMMISSIONER HANSON: This is a sticky wick.
21 You shouldn't ask me to say anything.

22 When checks are sent out to reimburse for
23 deposit or for overpayment, whatever, and you can't find
24 the individual, then that ends up going to the State of
25 South Dakota and ultimately doesn't help the citizens.

1 Excuse me. It, of course, helps the -- it ultimately
2 does not go directly to those people who have paid it
3 anyway.

4 So from my standpoint when I was looking at this
5 potentially I was looking at it, frankly, at 7 percent,
6 and I was looking at it from a standpoint that you just
7 credit bills to basically every meter.

8 Granted, there are going to be some people who
9 have moved, somebody goes to Chicago and doesn't get his
10 12 cents or dollar and a half or whatever it might be. I
11 don't think that's tragic by any means.

12 It makes as much sense as sending a check for a
13 dollar and a half and spending all the cost of
14 administration to produce it and to mail it and they
15 don't receive it and it ends up being sent back and then
16 it's handled and sent back up to Pierre. It goes through
17 all of that process.

18 From that standpoint the person who has moved to
19 Chicago doesn't get his dollar and a half anyway. And it
20 costs all of the other rate payers in South Dakota \$3 or
21 \$4 to go through that process. And it just seems more
22 sensible to credit every meter.

23 Can we do that legally?

24 MR. WHITE: Well, we would agree that your
25 decision as to what the just and reasonable rates are is

1 what is relevant here. You have complete authority as to
2 how to issue a refund order or decision for us.

3 I believe it would be reasonable, given the
4 short time frame of the period from April 1 to July and
5 August bills, that you could make a decision that refunds
6 will only go to existing customers and that the interest
7 rate shall be 7 percent on an annual basis.

8 COMMISSIONER HANSON: Help me with the math just
9 one time. If this is a 12 plus percent rate increase
10 with a fuel adjustment clause on top of it -- not on top
11 of it, but obviously that would take place regardless of
12 what the percentage is for the rate, that amounts to just
13 under 20 percent.

14 So even if someone had had three months of a
15 \$100-per-month bill, wouldn't they be paying -- have the
16 difference here credited to them of about a dollar and a
17 half? I mean, should I be throwing in the fuel
18 adjustment clause that way or not?

19 MR. WHITE: Well, I think the way that the
20 difference will be calculated is base rates to base
21 rates. The energy adjustment clause applies to a prior
22 period.

23 COMMISSIONER HANSON: Thank you. So it will be
24 about 7 percent?

25 THE WITNESS: Yes.

1 COMMISSIONER HANSON: Great. Thank you. Thank
2 you, Mr. Chair.

3 CHAIRMAN JOHNSON: And I do think that that was
4 a good question because I do think it shows what's being
5 refunded. The difference between the 12.7 percent and
6 20 percent is what's being refunded. I think that's
7 clear.

8 I wonder -- and I know Commissioner Kolbeck has
9 some comments as well. I might throw out a straw man
10 here to see whether or not it would be acceptable. I do
11 hate the idea of mailing checks of -- if somebody moved
12 the day after the rate went into effect. I mean, I will
13 move that there is a credit to the bill of existing
14 customers, that the 7 percent interest will be used, the
15 checks will be sent to those customers who have moved but
16 with a \$5 threshold.

17 So, you know, you got 7 bucks, you get a check
18 for 7 bucks. If it was, you know, \$2.15, then
19 essentially that dollar amount will just flow through the
20 next fuel clause.

21 So even before hearing -- well, if the
22 Commissioners want to go first, great, but at some point
23 we should see what the other parties think about that.

24 COMMISSIONER HANSON: Many facetious thoughts
25 cross my mind on that whether we should hear what they

1 have to say or not.

2 Having operated three utilities myself,
3 municipal ones, one would think that, gosh, you're
4 operating a municipal utility. You should be able to
5 find those folks pretty easily. They live in your town
6 and you have multi meters and such. I've experienced
7 this. I've gone through it myself.

8 And you will have the fun and argument of those
9 people who were going to get a 4.99 one and they didn't
10 get theirs but the guy with the 5.01, two cents more, he
11 got his. And you just -- there's a lot of checks to be
12 sent out in this type of a situation. You have 60,000
13 customers. I forgot how many are in South Dakota. Most
14 of them?

15 MR. WHITE: About 64,000 customers in
16 South Dakota.

17 COMMISSIONER HANSON: Okay. So that's a lot of
18 checks. That's a lot of hassle and a lot of
19 administration for those things to be bounced around.
20 And it's just so much easier to credit the meters and
21 everybody who's going to get hit with the rate increase
22 gets a deduction.

23 You know, it just helps all of the South
24 Dakotans while you're doing it. Somebody moves to L.A.,
25 that's too bad. They don't get their 4 bucks.

1 CHAIRMAN JOHNSON: Commissioner Kolbeck, if you
2 want to speak on the pending Motion, you can. Otherwise,
3 I was going to look to the parties to see if they had any
4 comment on it. And then you could speak after that if
5 you'd like.

6 COMMISSIONER KOLBECK: Yeah. Well, I guess my
7 first question -- Mr. White, you had anticipated \$10 per
8 customer, 64,000. Are you anticipating this to cost you
9 \$640,000?

10 MR. WHITE: Well, it may actually be more than
11 that. Because of the commercial and large industrial
12 customers.

13 COMMISSIONER KOLBECK: And the reason I ask that
14 is about the -- pertains to the interest rate. So that's
15 why I wanted to ask that question before I forgot.

16 I'll speak to the credit. I would think that we
17 would credit meters. Only the people we can't find we
18 send them a check. I would think we send -- if it's
19 10 cents, we send them a check for 10 cents. I know that
20 seems, you know -- seems ridiculous. However, I mean, I
21 still think that's the way it should be.

22 CHAIRMAN JOHNSON: Well, and I will give the
23 parties an opportunity to speak here. I -- we have three
24 different flavors of ice cream here. I'm seeing if I can
25 pick up a vote as I go here.

1 Another option that I would be open to is that
2 you get it -- number one, the only people who would get
3 checks is people who don't have meters to be credited any
4 longer. So hopefully the number of checks is relatively
5 small. We don't know that.

6 My thought would be that there would be a \$5
7 threshold. But that -- I mean, Commissioner Hanson's
8 point about \$4.99, you're exactly right. There will be
9 people who will complain about that. And you want
10 everybody who gets a check to get one.

11 So I wonder if you can't say you have a 30-day
12 period, and if you have a refund that's less -- we would
13 never tell you about it but if you're reading in a
14 newspaper there's a refund available and if you get
15 4 bucks and you contact Black Hills Power within 30 days,
16 you can get that check. But if you don't contact them,
17 then that money goes back to the fuel clause after
18 30 days.

19 That still seems to me to be less cumbersome
20 than sending everybody a check, even though it's for
21 10 cents. Now the company may disagree. They may hate
22 that.

23 COMMISSIONER HANSON: I would hate it if I were
24 running the utility. Now how do I receive that data,
25 that information? Do I receive 64,000 phone calls of

1 people, or how do I ascertain -- you know, do I put it in
2 the bill you're entitled to this much money if you call
3 back?

4 I wouldn't want to say, hey, let's be quiet. We
5 can't tell our customers about this. I feel like I've
6 got a responsibility to let them know.

7 CHAIRMAN JOHNSON: Well, the customers would --
8 it would never be a part of the bill because if you're
9 getting a bill, it's just going to show up as a credit.
10 It would only be for that gal who moved to L.A. that
11 finds out from her cousin and is upset, as you indicated
12 and Commissioner Kolbeck indicated she would be if she
13 didn't get her check.

14 I mean, to me I guess I would be surprised if
15 they get very many phone calls. We've got to get two
16 votes somehow so I'm trying to be a little creative
17 here.

18 COMMISSIONER KOLBECK: Okay. I have a -- what
19 was the date they went into effect?

20 MR. WHITE: April 1.

21 COMMISSIONER KOLBECK: How many college students
22 is that going to affect?

23 MR. WHITE: Well, you've got probably in our
24 service territory 3 or 4,000 college students. Some of
25 them in dormitories, which it would not affect. Many of

1 them sharing houses or apartments with others. So it's
2 going to shrink that number down quite a bit. Most of
3 them probably are on annual leases so they're likely to
4 be there with us. So we're basically talking about those
5 that drop out at the end of the semester or those that
6 graduate. We're talking about April 1 to whenever they
7 left. So it's maybe a 45- to 60-day period of time.

8 What I might suggest is a bit of a compromise.
9 Chairman Johnson recommended that it be a credit to all
10 customers that continue to take service from Black Hills
11 Power at the time of the refund, which will begin
12 shortly, and that we issue checks to anyone that would be
13 entitled to a \$3 refund or more with the 7 percent
14 interest but that we not go to the administrative cost of
15 trying to figure out the ones that are less than \$3 and
16 add \$253.17 to the fuel clause.

17 So that would be my suggestion is we just set
18 that kind of \$3 threshold, and anything less than that
19 honestly people shouldn't have too big of objection
20 associated with it.

21 CHAIRMAN JOHNSON: So just so I can make sure,
22 we're going back to sort of what I had originally said in
23 brainstorming -- not my most brainstorm but the original,
24 only moving the threshold from \$5 to \$3?

25 MR. WHITE: Yes.

1 CHAIRMAN JOHNSON: Okay. Mr. Khorroosi?

2 MR. KHOROOSI: Well, aside from the fact that I
3 would respectfully disagree with the 7 percent rate, I
4 think the method of administration is perfectly
5 reasonable.

6 And just understand it's your -- you're issuing
7 a credit for meters where -- or you're issuing a credit
8 to most of the meters presumably; correct? And then
9 you're issuing checks to those who don't reside there
10 anymore above that \$3 threshold. I don't have an
11 objection to that.

12 CHAIRMAN JOHNSON: Staff.

13 MS. CREMER: That's fine with Staff. Thank you.

14 CHAIRMAN JOHNSON: Any thoughts, Commissioners
15 Hanson, Kolbeck, or advisors?

16 COMMISSIONER HANSON: I just felt myself roll
17 over.

18 CHAIRMAN JOHNSON: All right.

19 COMMISSIONER KOLBECK: I got a little problem
20 with the whole deal that people are going to be owed
21 money and never get it, even though it is a small amount.
22 But I think what would -- what calms me about it is the
23 administrative costs are going to cost you more which is
24 going to cost rate payers more in the end. So I'll go
25 with the \$3 thing.

1 CHAIRMAN JOHNSON: Well, and I don't want to
2 keep you up at night, but the nature of these bills, you
3 know, this is an annual fuel clause for this particular
4 company, but every one of our six investor-owned
5 utilities has a fuel clause. And none of those are real
6 time rates. They all lag to some greater or lesser
7 extent.

8 So, again, I don't want to keep you up, but if
9 you really kept a totally detailed ledger, it's tough to
10 say how many tens of thousands of people either owe
11 Black Hills Power tiny little bits of money or Black
12 Hills Power owes them tiny little bits of money, as
13 you've sort of alluded to in the interest of
14 administrative efficiency. Sort of say it washes in the
15 end.

16 COMMISSIONER KOLBECK: Well, the only thing that
17 I'm kind of comparing it to in my own mind, the co-op
18 model when they pay dividends. I mean, when they find
19 those people, those people will go 10, 15 years, they
20 find them, they send them a check no matter the amount.
21 There is no cutoff on that. So that was what I was
22 thinking in my mind.

23 But in this situation it's a different
24 situation, I think, because of the minute amount and the
25 college student scenario where people got out of college.

1 That adds to the numbers, which adds to the cost of the
2 minimal amount that's going to be given out.

3 So in the interest of rate payers from today on,
4 it would be -- it would not be cost-effective to try to
5 find those because of the unique nature of college
6 students graduating or leaving or coming back for the
7 summer. And those -- that amount of people adds to the
8 cost. So I'm okay with that.

9 CHAIRMAN JOHNSON: Well, and even for the co-op
10 model, although from the dividends perspective or, I
11 guess, the capital credits you're right. There is a
12 trueing up.

13 But, again, on the cost of energy, you know, you
14 still have a lag. Those rates are in effect for a period
15 of time and don't always adequately reflect the costs
16 incurred by the customer. But I see your point, I mean,
17 absolutely.

18 Well, unless there's objection by some
19 Commissioner, then the Johnson amendment will be amended
20 to \$3 as the threshold.

21 Any discussion on the new Motion?

22 Hearing --

23 COMMISSIONER KOLBECK: Could you just refresh my
24 memory on -- we're not voting on the interest rate.
25 We're just voting on who gets paid.

1 CHAIRMAN JOHNSON: Yes. If you would like, we
2 can bifurcate that question. At this point the Motion as
3 amended would provide for a credit to the bill of
4 existing customers as well as checks to those customers
5 who have moved, although with a \$3 threshold, utilizing a
6 7 percent interest. And if you would like the issue
7 bifurcated, I'll drop the 7 percent.

8 COMMISSIONER KOLBECK: With the remaining funds
9 going into the fuel clause; correct?

10 CHAIRMAN JOHNSON: Yes. I should have mentioned
11 that. That's a good catch. Yeah.

12 I will address maybe one more time, probably
13 redundantly, the 7 percent. These are small dollars
14 that -- I mean, I haven't calculated the difference
15 between 10 percent and 7 percent on what might be an
16 average of \$9.42, but it's going to be quite small. And
17 7 percent has become a -- not -- a rather standard rate
18 for use in our regulatory regime here.

19 Moving that to 7 or 12 percent I fear carries
20 with it too much of a risk of unintended consequences.
21 Having a higher rate apply not to small numbers but to in
22 some cases much, much larger numbers that ultimately --
23 in many cases will accrue to the benefit of the company.

24 And so, Mr. Khoroosi mentioned inequities. It
25 does seem to me that the 7 percent I think is most likely

1 to minimize the impact of inequities, at least those
2 flowing to the benefit of the Applicant.

3 So any further discussion on the amended Motion?
4 Hearing none, we'll proceed to vote.

5 Hanson.

6 COMMISSIONER HANSON: Aye.

7 CHAIRMAN JOHNSON: Kolbeck.

8 COMMISSIONER KOLBECK: Aye.

9 CHAIRMAN JOHNSON: Johnson votes aye. The
10 Motion carries 3-0.

11 Is there any further business to come before the
12 Commission on this matter?

13 Mr. Magnuson?

14 MR. MAGNUSON: Could I have a moment to visit
15 with my client, please.

16 CHAIRMAN JOHNSON: Yes.

17 MR. MAGNUSON: Thank you.

18 (Pause)

19 MR. MAGNUSON: Thank you, Chairman Johnson. At
20 this time what I would like to do, I think from a
21 procedural standpoint, the Settlement Stipulation that
22 was entered into by Staff and Black Hills Power was
23 approved but with a friendly amendment.

24 And so from a procedural standpoint, I guess I
25 would like the record to reflect that I have had a chance

1 to visit with Black Hills Power, and Black Hills Power
2 does, in fact, accept the friendly amendment.

3 CHAIRMAN JOHNSON: Thanks very much.

4 Staff, are you prepared to make any comments on
5 that?

6 MS. CREMER: Yes. Staff also does not have an
7 issue with the friendly amendment.

8 And then I had another issue, though. But I
9 don't know if you needed -- do you want to hear it now?

10 CHAIRMAN JOHNSON: We will in just a second.

11 With that then, it will be made clear that the
12 Settlement Stipulation, that the rates that it proposes,
13 you know, will be in effect as envisioned by the
14 Settlement Stipulation.

15 Ms. Cremer, additional comments?

16 MS. CREMER: Yes. Thank you. When you're done
17 with -- Staff would request that when Black Hills is done
18 with their refunding or what they believe to be -- they
19 have refunded all they're going to and have gotten
20 everyone if we could get some sort of report that we
21 could just file away and review that for compliance
22 purposes.

23 MR. MAGNUSON: That's acceptable to Black Hills
24 Power. We will do that.

25 CHAIRMAN JOHNSON: Okay. Other business dealing

1 with this Docket?

2 Mr. Magnuson, anything additional?

3 MR. MAGNUSON: No. But thank you for your
4 consideration and your time.

5 CHAIRMAN JOHNSON: Mr. Khorroosi.

6 MR. KHOROOSI: Nothing further. Thank you.

7 CHAIRMAN JOHNSON: Okay. Ms. Cremer and Staff,
8 anything further?

9 MS. CREMER: Staff has nothing. Thank you.

10 CHAIRMAN JOHNSON: Okay. I would just -- I
11 think we all know because it's the way we do business
12 here, but Mr. Smith will draft for the review of
13 Commissioners a final Decision and Order.

14 And, Mr. Smith, do you feel as though you have
15 had enough specific direction from the Commissioners as
16 to how that Order should be drafted?

17 MR. SMITH: Well, yes. I think so.

18 CHAIRMAN JOHNSON: Okay.

19 MR. SMITH: Yeah. And to the extent I need to
20 consult with you in so doing, I will do so.

21 CHAIRMAN JOHNSON: Okay.

22 MR. SMITH: But your comments were fairly
23 extensive, and I think I know generally where you're
24 coming from. So yes.

25 CHAIRMAN JOHNSON: And, of course, any

1 consultation you'll have with the Commissioners will be
2 on a one-on-one basis.

3 MR. SMITH: Absolutely.

4 CHAIRMAN JOHNSON: We know that, but we'll just
5 make it clear. You may consult with all three
6 Commissioners but never with more than one at a time.

7 MR. SMITH: Well, in the end the Decision I
8 choose to draft is subject to each of your approval. So
9 in the end it will end up being the way you want it.

10 CHAIRMAN JOHNSON: We do need to sign on the
11 line.

12 And I had something else and cannot think of it.
13 So, Commissioners, anything else?

14 COMMISSIONER KOLBECK: No. I just want to thank
15 everyone, Mr. Khorroosi and Black Hills Power and Staff,
16 for doing a very exceptional job. This is why we come do
17 these things. This is why we're here, to do this
18 hearing. So I appreciate everything.

19 CHAIRMAN JOHNSON: With that, if there's no
20 further business to come before this Commission, then
21 this hearing is done. Have a great day, everyone.

22 (The hearing is concluded at 3:02 p.m.)
23
24
25

1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY)

4

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 7th day of July,
11 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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Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter