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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PETITION FOR
DECLARATORY RULING OF BLACK HILLS
POWER, INC., REGARDING THE PROPOSED
BLACK HILLS POWER WIND PROJECT

EL11-007

=====

Transcript of Proceedings
May 31, 2011

COPY

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BEFORE THE PUBLIC UTILITIES COMMISSION,
STEVE KOLBECK, CHAIRMAN
GARY HANSON, VICE CHAIRMAN
CHRIS NELSON, COMMISSIONER (by telephone)

COMMISSION STAFF
Rolayne Ailts Wiest
John Smith
Karen Cremer
Kara Semmler
Greg Rislov
Dave Jacobson
Jon Thurber
Brian Rouns
Bobbi Bourk
Ryan Soye
Brittany Mehlhaff
Demaris Axthelm

APPEARANCES

Lee Magnuson, Black Hills Power

Reported By Cheri McComsey Wittler, RPR, CRR

1 THE PUBLIC UTILITIES COMMISSION
2 OF THE STATE OF SOUTH DAKOTA

3 =====
4 IN THE MATTER OF THE PETITION FOR
5 DECLARATORY RULING OF BLACK HILLS
6 POWER, INC., REGARDING THE PROPOSED EL11-007
7 BLACK HILLS POWER WIND PROJECT

8 Transcript of Proceedings
9 May 31, 2011
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33 Reported By Cheri McComsey Wittler, RPR, CRR
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35

1 CHAIRMAN KOLBECK: EL11-007, in the matter of
2 the Petition for Declaratory Ruling of Black Hills Power,
3 Inc., regarding the proposed Black Hills Power Wind
4 Project.

5 The question today is shall the Commission grant
6 the Motion to Dismiss?

7 The Motion was made by Staff so we will turn to
8 Staff first.

9 MS. SEMMLER: Thank you, Mr. Chairman and
10 Commissioners. This is Kara Semmler, and I will be
11 making the presentation today on behalf of Staff.

12 You know, I think the parties' briefs and
13 arguments contained therein do really clearly present the
14 question in front of the Commission today. And as
15 complicated as some of those arguments get, I think the
16 question's pretty simple. And the question as Staff sees
17 it is whether Black Hills Power has asked this Commission
18 to render a decision that's outside its jurisdiction.

19 Due to the short time frames we're dealing with
20 in the context of a declaratory ruling, Staff did not
21 file any written comments to Black Hills Power's brief so
22 I'll use this time, Commissioners, to address some of the
23 points they made.

24 In its Petition Black Hills Power asks this
25 Commission to determine the prudence of an investment

1 APPEARANCES BY TELEPHONE
2 Mindy Bowar
3 Larry Janes
4 Bob Towers
5 Chuck Loomis
6 Chris Daugaard

7 =====

8 TRANSCRIPT OF PROCEEDINGS, held in the
9 above-entitled matter, at the South Dakota State Capitol
10 Building, 500 East Capitol Avenue, Pierre, South Dakota,
11 on the 31st day of May, 2011, commencing at 2:07 p.m.

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1 It's not yet made. Further, the Petition indicates that
2 without your blessing today, Commissioners, it may not
3 make that investment.

4 This sort of general preapproval request as put
5 forth by the company runs contrary to the statutory
6 structure that's in place. The request essentially puts
7 this Commission in a utility management role that's just
8 inconsistent with our regulatory framework.

9 Now with that said, I think Staff and Black
10 Hills Power certainly agree regarding several points that
11 were made. One of those being that this Commission has
12 very broad authority over South Dakota regulated
13 utilities.

14 This Commission has broad authority. It does
15 not, however, have the ability to make any decision
16 regarding any matter brought before it. This Commission
17 is limited to the jurisdiction given it through the
18 legislative process. And, likewise, South Dakota
19 regulated utilities must carry out their responsibilities
20 as has been given to them through the legislative
21 process.

22 This Commission's role is not to plan utility
23 investments. Rather it's to ensure utility rates are
24 just and reasonable through an entirely different process
25 at an entirely different time in an investment's

1 lifetime.

2 In determining just and reasonable rates this
3 Commission examines utility decisions. It's not,
4 Commissioners, that you lack authority to determine the
5 prudence of an investment. This Commission does not,
6 however, have jurisdiction at this juncture to make that
7 decision.

8 Although Black Hills Power asserts otherwise in
9 its brief, Staff also agrees that this Commission has
10 authority to make declaratory rulings. The Public
11 Utilities Commission's rulings must, however, pertain to
12 issues within its jurisdiction. Declaratory rulings
13 cannot be used to receive a decision or a determination
14 the Commission would not otherwise have authority to
15 make.

16 The statute at issue charges the utility with an
17 analysis and ultimately a decision. The legislature left
18 utility planning to the utility despite the presence of a
19 Renewable Objective. This Petition, Staff argues, goes
20 beyond the statute and now asks the Commission to engage
21 in a cost-effectiveness, cost-benefit analysis and to put
22 itself in the utility's place for utility planning.

23 The Commission, the PUC, simply does not have
24 jurisdiction to undergo that analysis and to make that
25 decision at this time in the process.

1 We further agree with Black Hills Power that
2 they are not asking for rate treatment at this time.
3 However, Staff argues that Black Hills Power is
4 attempting to resolve an issue that's very central to
5 rate proceedings. The analysis they're asking this
6 Commission to make is the same regardless of when the
7 rate would go into effect.

8 In a totally different context and by way of
9 example, this Commission has siting jurisdiction over
10 utility projects. The burden of proof a utility must
11 present in a siting Docket has four elements. This
12 proceeding is comparable to a company's request for a
13 declaratory ruling before the filing of a siting
14 application for resolution of one of those four
15 elements.

16 None of the elements of the siting request nor a
17 rate proceeding should be resolved outside the scope of
18 the entire filing. The analysis you are asked to perform
19 now cannot be done in isolation, and there simply is no
20 jurisdiction to do it at this juncture.

21 Staff also agrees with the company that no other
22 agency is charged with the authority to regulate the
23 Renewable Objective. The fact remains, however, that the
24 statute also fails to give this Commission a role pre
25 rate treatment. This Commission has no role pre rate

1 treatment regarding utility investments, regardless of
2 whether the Renewable Objective is at play or not.
3 The Renewable Objective does not change the
4 utility and the PUC roles regarding investment planning.
5 To ask the Commission now to render a decision pursuant
6 to the Renewable Objective statutes gives this Commission
7 a jurisdiction over subject matter it simply doesn't
8 have.

9 The chapter of laws related to rate making and
10 to utility prudence must be read as a whole. The
11 Renewable Objective statutes are not a separate analysis
12 to be handled in isolation. Rather they're very much
13 related to rate making and simply provide for an added
14 voluntary objective the utility should engage in when it
15 plans its investments that are best to meet customer
16 needs.

17 This project if good for the utility and good
18 for the rate payers, as the utility states, will stand on
19 its own in a rate proceeding at the time when it's
20 appropriate for this Commission, at a time when this
21 Commission does have jurisdiction to review the utility's
22 investments. Preapproval, therefore, Staff argues is not
23 only legally inappropriate, but it's unnecessary at this
24 time.

25 Staff also agrees with the company that large

1 investments of this type must be carefully examined. We
2 don't agree, however, that merely because of the
3 Renewable Objective, renewable investments are different.
4 The Renewable Objective does not provide this Commission
5 with a different type of Commission review than any other
6 project or any type of review it would otherwise have.

7 And, finally, Staff agrees that utility
8 investment and economic development oftentimes go hand in
9 hand, and they oftentimes do compliment each other. The
10 presence, however, of potential construction or economic
11 development simply does not change the Commission's role
12 and does not provide jurisdiction. We do not have siting
13 authority over this project, and as such the company does
14 not need our permission or approval to build it.

15 Potential economic development does not change
16 the utility's responsibilities regarding rates and does
17 not modify the Commission's regulatory framework.

18 Regardless of the investment type, any sort of
19 utility development could result in economic development.
20 The mere presence of economic development has not
21 historically and does not now change this Commission's
22 jurisdiction.

23 So, in conclusion, Staff stands by its arguments
24 presented in its initial brief. Regardless of the
25 subject matter, whether we're talking about renewable

1 development or not, Black Hills Power has failed to state
2 a claim upon which relief can be granted as nothing in
3 South Dakota Code gives this Commission the authority to
4 make utility investment decisions. This Commission has
5 no jurisdiction over the subject matter of project
6 preapproval.

7 I look forward to your questions,
8 Commissioners.

9 CHAIRMAN KOLBECK: All right. Thank you.
10 Black Hills.

11 MR. MAGNUSON: Thank you, Chairman Kolbeck. My
12 name is Lee Magnuson. I'm with the Lynn, Jackson, Shultz
13 & Lebrun law firm in Sioux Falls, South Dakota. I'm here
14 today representing Black Hills Power.

15 Also with me is Glenda Rahn, in-house counsel
16 for Black Hills Power. And then also with me
17 representing Black Hills Power is Kyle White, the vice
18 president of resource planning and regulatory affairs for
19 Black Hills Power. And Mr. White will be available to
20 answer any questions that you might have in addition to
21 myself.

22 The customers of Black Hills Power and Black
23 Hills Power have been presented with an opportunity to
24 build a wind project. Like many opportunities, time is
25 of the essence, and we are, in fact, asking for an

1 expedited decision. And while an opportunity exists for
2 Black Hills Power and its customers, an opportunity also
3 presents itself to this Commission for an opportunity to
4 address the South Dakota Renewable Objective that was
5 adopted by the legislature back in 2008.

6 And the decision we are asking for today is for
7 the Commission to go forward and hear Black Hills Power's
8 Petition for Declaratory Ruling.

9 Briefly, what Commission Staff is attempting to
10 do is to narrow the issue to the point where it's too
11 narrow. We need to take a look at the broad powers of
12 this Commission, and that indicates that the Commission,
13 in fact, has the authority.

14 It's clear from the statutes, the administrative
15 rules, and from case law that the Commission has inherent
16 authority, has the expertise, and has the power to
17 address issues like this. It is within the Commission's
18 authority. And, frankly, now is the time to address the
19 issues with regard to the South Dakota Renewable
20 Objective. There's no place else to turn. There are no
21 other agencies who have the authority to address the
22 issues that have been presented by Black Hills Power's
23 Petition for a declaratory ruling. Staff's Motion should
24 be denied.

25 I would like to briefly review the project that

1 we're talking about here and, of course, all of this
2 information is set forth in the Petition for Declaratory
3 Ruling. I won't repeat that entire Petition, but we have
4 attempted to provide this Commission with all of the
5 information that it would need, and if that information
6 isn't available, Black Hills Power remains eager to
7 answer any data requests that might come from Staff or
8 from the Commission.

9 The Petition for Declaratory Ruling was filed on
10 April 28 of 2011. It was a Petition for a Declaratory
11 Ruling, and it's the request that the Commission
12 determine whether Black Hills Power properly determined
13 that the wind project described in the Petition to be
14 reasonable and cost-effective in light of the
15 alternatives under the South Dakota renewable statutes.

16 The wind project itself is going to be
17 approximately 20 megawatts. It can be expanded to
18 include another 30 megawatts for a total potential of
19 50 megawatts. We are looking at 7 to 12 wind turbines.
20 The project is located north of Belle Fourche. The
21 estimated construction cost is \$38 million. And
22 Black Hills Power has entered into a written option to
23 purchase this wind project. And that option to purchase
24 has been filed on a confidential basis with the
25 Commission.

1 Frankly, Black Hills Power is being proactive on
2 this matter. Black Hills Power has traditionally done a
3 good job on supply side. It has sufficient capacity in
4 the near term, and we believe in the medium term and, of
5 course, with good planning, in the long-term to serve the
6 energy needs of its customers.

7 We have requested a decision date of September 1
8 of 2011, and we understand that that is an expedited date
9 and, of course, the reason why we have indicated that we
10 need a response by that date is that because of the
11 unique opportunity that presents itself, construction
12 must be completed by the end of 2012. Therefore, we have
13 worked backwards from that date and have determined that
14 September 1, 2011 is the last date by which we would need
15 a ruling from this body to go forward with the wind
16 project.

17 The question arises why is this such a unique
18 opportunity? And I'll just briefly call your attention
19 to page 4 of the Petition which sets forth why right now
20 is the best time for the company to add wind generation
21 to its resource mix.

22 And, very briefly, those reasons include that
23 there are federal production tax credits that are
24 available for projects placed in service before
25 December 31 of 2012. That would reduce the cost of

1 adding wind generation to the company's resource mix.
2 Number two, bonus depreciation for federal tax
3 purposes is available for projects completed by the end
4 of 2012.

5 Number three, wind turbines, generators, and
6 ancillary equipment are generally available at reasonable
7 and good prices right now and lower than has been
8 recently experienced.

9 Number four, there is presently available a
10 favorable opportunity to contract with Western Area Power
11 Administration to use cost-effective hydroelectricity
12 with regard to the regulation of the wind project that
13 Black Hills Power set forth in its Petition.

14 Fifth, there is the potential to buy what we
15 believe one of the best wind project locations located in
16 or about Black Hills Power's service territory.

17 Sixth, the company and especially its customers,
18 will receive the benefits of diversification by adding
19 wind generation to its resource mix.

20 And then, finally, and perhaps most importantly,
21 the addition of a wind project to Black Hills Power's
22 resource mix is what we believe to be an appropriate and
23 timely response to what is really an ever changing energy
24 environment.

25 The South Dakota Renewable Objective, as this

1 Commission knows, was adopted in 2008, and basically
2 provides that the goal is -- and it's a voluntary
3 objective -- that by 2015 all retail providers of
4 electricity in the State of South Dakota will reach
5 10 percent of renewables.

6 At the present time Black Hills Power is at
7 approximately 6 percent. With the addition of this wind
8 project that would put Black Hills Power at approximately
9 9 percent.

10 The issues that have been presented by Staff is
11 whether or not Black Hills Power stated a claim upon
12 which relief can be granted and whether or not this
13 Commission has subject matter jurisdiction. I'm going to
14 rely upon our opposition brief. I'm not going to repeat
15 everything that is in that brief.

16 But as I mentioned before, Staff is attempting
17 to narrow the issues trying to narrow the authority of
18 this Commission. Now I think we probably both agree or
19 Black Hills Power agrees with Staff that there's no case
20 law supporting the proposition that it would be
21 inappropriate for the Commission to make a declaratory
22 ruling.

23 Therefore, what we urge this Commission to do is
24 to take a look at the statutes, the administrative rules,
25 and the case law that is out there and to determine that,

1 in fact, it does have subject matter jurisdiction. Let's
2 start with the basic proposition, and that is that this
3 Commission regulates utilities.

4 Pursuant to statute and case law, it has the
5 inherent authority with regard to utility matters. And,
6 as noted, the Commission shall regulate as provided in
7 chapter -- the chapter that was cited, and that is the
8 chapter that includes the South Dakota Renewable
9 Objective.

10 The South Dakota Legislature has delegated the
11 authority for state agencies to make declaratory rulings
12 and has indicated that commissions such as the Public
13 Utilities Commission are to adopt Administrative Rules
14 that allow for declaratory rulings. That is what has
15 happened here, and that has been made and the Petition
16 was made pursuant to those statutes.

17 Now there has been mention with regard to the
18 siting statutes. And I just want to make sure that
19 everybody is clear. Black Hills Power is not required to
20 request a permit under the siting statutes that are set
21 forth in South Dakota Law because of the size of the
22 project. And so it was not necessary that we apply for
23 those permits.

24 Frankly, we looked at a couple of options. We
25 looked at the possibility of applying for a permit of

1 siting, a voluntary Petition. We also looked at the
2 possibility of using the rate stability statutes.
3 However, this opportunity raised itself in an expedited
4 manner, and we needed an expedited decision. And,
5 therefore, neither one of those possibilities would work
6 from a timing standpoint.

7 I would urge the Commission to take a look at
8 the Northern States Power case that was cited in our
9 brief. And I'd like to just call your attention to a
10 couple of things in that case that I think are
11 particularly relevant here.

12 Looking at the very last page of that decision,
13 the South Dakota Supreme Court indicated that the trial
14 court concluded the policy decision to adopt the MLT in
15 this case was purely within the PUC's area of expertise
16 and, therefore, within the PUC's discretion. We agree.
17 This court has previously stated that the PUC is deemed
18 to be an administrative tribunal with expertise.

19 And then later in that same case it indicates
20 SDCL Chapter 49-34A evidences a legislative intent for
21 PUC to have broad, inherent authority in matters
22 involving utilities in this state giving the appropriate
23 deference to PUC's expertise and special knowledge in the
24 field of electric utilities, and it goes on from there.

25 What I would point out is two particular things

1 from that decision. First it indicates, as has been
2 previously discussed, that Public Utilities Commission
3 has broad inherent authority in matters involving
4 utilities in this state.

5 And, second, the South Dakota Supreme Court has
6 recognized that expertise of this agency in matters
7 involving utilities. And, as mentioned, if this
8 Commission doesn't make a decision on this declaratory
9 ruling, there's no other agency out there that can do
10 that.

11 I believe it's clear from our brief, Black Hills
12 Power is not asking for rate recovery. What we're
13 looking for is a decision with regard to the wind project
14 on whether or not it's reasonable and cost-effective in
15 light of the alternatives. Black Hills Power has made
16 its evaluations and has made those determinations.

17 Frankly, we think that it's prudent for
18 Black Hills Power to look for guidance from this decision
19 that has jurisdiction before it spends \$38 million.
20 That's the bottom line. And we believe that it's clearly
21 within the Commission's power to make a declaratory
22 ruling.

23 And as indicated in our opposition brief, what
24 Black Hills Power is looking for is instruction,
25 guidance, insight, and perspective. The South Dakota

1 Renewable Objective is relatively new. This Commission
2 has not had the opportunity to set forth its guidance,
3 its instruction on those statutes, and that's what we're
4 asking for here.

5 Black Hills Power's Petition was driven by two
6 things. It was driven by an opportunity, and it was
7 driven by public policy. And we think the public policy
8 is that there's an opportunity that exists now and
9 Black Hills Power has respectfully brought that
10 opportunity to this Commission. Black Hills Power
11 believes this decision is the best for its customers, but
12 without guidance or direction from this Commission, it's
13 very difficult to undertake that opportunity.

14 Just to give you an example of some of the
15 things that we would be looking to this Commission for,
16 and I've outlined some of those questions in our brief,
17 is, for example, is this Commission going to approve a
18 wind project such as this unless there is no increase in
19 customer rates?

20 In other words, if customer rates are going to
21 increase, are you not going to approve a wind project?
22 Or are you going to approve a wind project if there's a
23 slight increase in customer rates?

24 Another question is, is it reasonable to add
25 wind when a utility is adequately meeting the energy --

1 presently meeting the energy needs of customers.
2 Black Hills Power needs input on those and other types of
3 questions.

4 There are other considerations that I would call
5 your attention to. They're set forth in our supplement
6 to our Petition on page 1. I'm not going to repeat those
7 here. But as this Commission knows, the environment for
8 energy planning is ever changing. And there are a number
9 of questions such as is there going to be a state
10 renewable mandate? Is there going to be a federal
11 mandate? What's going to happen to the cost of natural
12 gas, to the cost of coal? Many questions that arise.
13 This is a continuous evaluation.

14 So, bottom line, the South Dakota Legislature
15 has charged this Commission with regulation of public
16 utilities. The South Dakota Legislature has also adopted
17 the South Dakota Renewable Energy Objective. This
18 Commission has the expertise. It's been granted the
19 inherent powers. The statute and rules provide for
20 declaratory ruling.

21 Now is not the time to dismiss Black Hills
22 Power's Petition. Rather, now is the time to proceed
23 with the hearing and provide guidance, instruction, and
24 perspective to Black Hills Power and to the other
25 utilities that are charged with meeting the South Dakota

1 Renewable Objective.

2 As I mentioned before, I'm available for
3 questions, as is Mr. White.

4 CHAIRMAN KOLBECK: Thank you, Mr. Magnuson.
5 Anyone else wishing to comment on the Docket?
6 If not, any Commissioner questions?

7 COMMISSIONER NELSON: This is Commissioner
8 Nelson.

9 CHAIRMAN KOLBECK: Sounds good.
10 Go ahead, Commissioner Nelson.

11 COMMISSIONER NELSON: Mr. Magnuson, one
12 question. You referenced on page 4 of the Petition the
13 various factors that are arguing in favor of the project.
14 And Factor D states that there's available opportunity to
15 contract with WAPA, use cost-effective hydroelectric for
16 the regulation of the wind project.

17 Can you expand on those contractual
18 relationships and exactly how that would work? I'm
19 cognizant that in the Northwestern part of this country
20 there is a significant dispute right now between
21 hydroelectric and wind producers. And this is indicating
22 at least in this part of the country, you know, that type
23 of thing can be worked out. And I'm wondering if you can
24 expand on that.

25 MR. MAGNUSON: I could, but I think you'd be

1 more satisfied with the answer of Kyle White who is much
2 more of an expert with regard to regulation of wind
3 projects. And so I would turn it over, with your
permission, to Kyle White.

4 COMMISSIONER NELSON: Certainly.

5 MR. WHITE: Good afternoon.

6 One of the key elements of our ability to move
7 forward with this project has been the identification of
8 the regulation service from the Western Area Power
9 Administration. We currently utilize that service for
10 Cheyenne Light, for the Happy Jack and the Silver Stage
11 projects just outside of Cheyenne.

12 What regulation service provides is that
13 moment-to-moment, minute-to-minute variation in the wind
14 capability so that we maintain a stable power supply.

15 Oftentimes that regulation service is provided
16 with natural gas fired generation, by utilities that have
17 national gas fired generation on margin or as part of
18 their regular service portfolio.

19 Black Hills Power has relied historically on
20 coal-fired generation. Coal-fired generation is not very
21 effective in providing this regulation service.

22 So if we were not to have the Western Area Power
23 Administration regulation service, this project would not
24 be cost-effective because it would require us to put

1 natural gas-fired generation into service to meet
2 customer needs on a 24-hour-a-day basis. That is not
3 cost-effective with regard to our other resources so the
4 Western Area Power Administration when we learned that
5 this service was available that was when we felt that it
6 was prudent for us to move forward and continue
7 evaluating the economics of this project. Prior to that
8 we had really no interest or opportunity to pursue this
9 on behalf of our customers.

10 COMMISSIONER NELSON: Mr. White, if I could
11 follow up on that. And so what I'm understanding is when
12 we're talking about regulation service we're literally
13 talking about that minute-by-minute balancing as opposed
14 to a wholesale swapping of when the turbines are
15 generating 20 megawatts the dams go down 20 megawatts in
16 production; is that correct?

17 MR. WHITE: Yes. The regulation service is that
18 second-to-second, minute-to-minute variation in the wind
19 speed and the generation output, and it really does not
20 deal with the 15-minute or hourly schedule of power from
generation sources.

21 COMMISSIONER NELSON: Very good. Thank you.

22 CHAIRMAN KOLBECK: All right. Thank you,
23 Commissioner Hanson. I made a mistake in the protocol.
24 I should have given Staff an opportunity to rebut. Would

1 you like that?

2 MS. SEMMLER: Thank you, Commissioner. I'll be
3 very brief.

4 Just wanted to agree with the company again that
5 this Commission has broad powers and expertise in the
6 area, but that power and expertise is limited to the
7 powers as was granted by the Legislature. We can't
8 expand that authority absent an act of law change.

9 And we do have a structure to review -- a
10 structure that includes expertise to review company
11 investments. It just doesn't happen according to our
12 statutes in a prospective fashion.

13 Staff also agrees this is a great unique
14 opportunity. Unique opportunities, however, don't change
15 the statutory structure and the review structure by which
16 this Commission analyzes company decisions.

17 All that good stuff's going to be relevant in a
18 rate proceeding, and all of that good stuff is going to
19 be looked on favorably by Staff at a time when it can
20 legally and appropriately make the review.

21 I do disagree that Staff has narrowed the issue.
22 I agree the Commission can make declaratory rulings and
23 they can make declaratory rulings pursuant to these
24 statutes. This Commission just cannot answer the
25 question it's being asked to answer. This Commission

1 cannot make a preapproval decision.

2 The statute does apply to the company and the
3 company has done what it believes the statute requires
4 and I think the analysis ends there. The Commission
5 can't put itself in the company's shoes.

6 Finally, the environment is ever changing, and I
7 agree there are a lot of questions. We share many of the
8 same questions that the company does. We simply aren't
9 in a position to answer them, and this is one question
10 we're not in the position to answer.

11 CHAIRMAN KOLBECK: Thank you. We'll go back to
12 Commissioner questions.

13 I just have a couple. You spoke about
14 generation that you have, wind generation, I believe you
15 said in Wyoming. Is there a review in that state?

16 Did you pursue anything similar to this in other
17 states?

18 MR. WHITE: Wyoming does not have either a
19 renewable portfolio standard or a renewable portfolio
20 objective. And at the time we entered into those
21 contracts for electric service from two wind farms we
22 found those to be very attractive pricing. And we had a
23 different natural gas price environment at the time and
24 maybe a little bit more certainty as to what the
25 direction of clean energy or CO2 taxes might be moving

1 forward.

2 So those projects clearly were ones where the
3 utility was comfortable with its analysis in how it would
4 be treated for rate making. In this case because we have
5 an uncertain future and because we have a close call, I
6 would say, on the economics favoring customers as to
7 maybe opposed to customers, and maybe even our most
8 recent rate case experience has changed our perspective
9 on the addition of renewables at this time in
10 South Dakota.

11 CHAIRMAN KOLBECK: If everything that happens
12 that's in the hopper, and that's a big if, but if it
13 does, South Dakota could potentially, if we could use it
14 all, create about 50 percent of our electricity from the
15 wind that's up there, that would be up in the state.
16 Never has this Commission told any of those companies
17 that it would -- how it would treat rates if they
18 invested in that.

19 Other IOUs have built that. They have gone
20 forward. So 700 megawatts of wind that's already come,
21 and then we come in with 50 over -- with Black Hills
22 Power. I'm just trying to understand why this is
23 different than what has gone on in the past, the
24 renewable -- you know, the RTO's been out there. Other
25 companies have been doing it.

1 Can you try to set yourself apart for me why
2 they did it without this and you need this?

3 MR. WHITE: Well, it's possible that it's
4 different circumstances. You have wind sites that have
5 better capabilities than this site. It's a strong site,
6 but it's not a high capacity wind generation site.

7 You have utilities that are operating in other
8 states that have mandated renewable portfolio standards,
9 and so they become more comfortable possibly with the
10 addition of those resources.

11 The Renewable Portfolio Objective has not been
12 specifically addressed in South Dakota. We also are a
13 utility that because we have a mix of primarily
14 coal-fired generation, we do not have as much opportunity
15 to offset natural gas-fired generation. So it changes
16 the economics a bit for our utility.

17 And all of these things would be considerations
18 for you, should you go forward and have the hearing and
19 make a review of the decision that Black Hills Power has
20 presented before you. And that's all we ask for today is
21 that we get that opportunity to go through that
22 discussion and that review and a decision from you.

23 CHAIRMAN KOLBECK: One thing that -- on my
24 worries, I guess, about this is if we were to say yes on
25 this and this was to go forward, how would we set a

1 threshold?

2 In other words, we've got 50 megawatts of wind.
3 Would we go into 50 megawatts of methane digestion?
4 Would we go into 75 megawatts of solar? What would the
5 threshold be to determining on when this process would
6 start? In other words, if we said yes, we're obviously
7 setting a precedent this is what needs to happen.

8 Have you given any consideration to the
9 investments less than 38 million wouldn't count,
10 investments over would, any type of threshold?

11 MR. WHITE: We really haven't considered this as
12 precedential or outside the bounds of the Commission that
13 we ask you to make.

14 We have a project. We have certain economics.
15 We have certain opportunities and time lines that are
16 within the bounds of this decision. And so we have not
17 looked at it as necessarily that you take it so that
18 you're giving guidance to the rest of the state as to we
19 would encourage you to meet your Renewable Portfolio
20 Objective by 2015 and we encourage you to do it with
21 cost-effective resources at a certain dollar per megawatt
22 hour or anything like that.

23 What we have asked is, for this circumstance,
24 are we in bounds or are we out of bounds in our thinking
25 with regard to the Renewable Portfolio Objective and

1 meeting our obligation to serve Black Hills Power's
2 customers?

3 And so I think it would be up to you to decide
4 how far beyond answering our question you might want to
5 go.

6 MR. MAGNUSON: If I could add to that, I would
7 just say we don't believe because of the unique set of
8 circumstances here that there would be much precedential
9 value that is set. But basically you would be giving
10 guidance on policy.

11 So it's entirely possible that by taking and
12 doing this declaratory ruling that you may reduce the
13 number of potential filings down the road for later
14 petitions for declaratory ruling because of the guidance
15 that you've been able to give on this case.

16 CHAIRMAN KOLBECK: So in a sense we need to
17 interpret what the Legislature intended. Is that what
18 you're telling me?

19 MR. WHITE: I think that's correct in that, you
20 know, did the Legislature intend that renewables be
21 considered for economic development purposes, for
22 example?

23 Did they intend that renewables should be up to
24 10 percent of your total energy mix?

25 It's a voluntary standard, and so where is our

1 obligation to meet a voluntary standard and what's
2 reasonable when you consider the question that's posed in
3 the legislation, and that's reasonable and cost-effective
in light of alternatives.

4 We have alternatives. We can burn coal-fired
5 generation, and we can meet our customers' needs. But we
6 believe that because there is a -- an attractive price
7 for wind turbines today because of a depressed market for
8 turbines, because there are production tax credits
9 available for customers that expire at the end of 2012,
10 because we have a developer that has a site that they now
11 understand has limited capabilities to sell to any other
12 utilities, has given us an opportunity to buy it very
13 cost effectively.

14 Those things are all favoring a decision to move
15 forward today so that if there are changes in CO2
16 regulation or taxes, we have renewables in our portfolio
17 in a cost-effective way. If there is a Federal Clean
18 Energy Standard that we're required to meet, that's maybe
19 15 percent or higher, we will have already put some in
20 the bank ready to meet that standard instead of meeting
21 it when all other utilities are demanding renewable
22 energy.

23 We think that to a certain extent this project's
24 on sale. It's not inexpensive, but it's on sale.

1 CHAIRMAN KOLBECK: I do have some other concerns
2 too about it. One is what I consider to be a slippery
3 slope.

4 One of the first things that I was taught when I
5 became a Commissioner is a different Commission and a
6 different time and a different person. Obviously
7 10 years ago the Commission had a different makeup. And
8 it probably goes back to the prudence thing.

9 If we were to determine we would go forward with
10 this and give our blessing for that, does that open the
11 door for another Commission another time to say I want
12 all nuclear energy. So, no, we will not have all nuclear
13 energy. I want all coal. I want all solar. I want all
14 whatever.

15 Does it open up the door for another Commission
16 another time to say I want 90 percent wind on your
17 system?

18 Now I may consider that to be crazy, but does
19 the next guy consider that to be crazy? I worry about
20 setting that precedent.

21 MR. WHITE: Well, that's one of the reasons why
22 this Petition for Declaratory Ruling is tied to a
23 Renewable Portfolio Objective. It does limit the scope
24 of this decision. And it likely doesn't get into a
25 discussion as to preapproval for coal-fired generation or

1 preapproval for natural gas-fired generation or whether
2 nuclear is the right option.

3 This state has elected not to get in the
4 business of resource planning with the exception of this
5 Renewable Portfolio Objective, and so that's why we're
6 here essentially seeking guidance on what is good
7 business decision for this utility with regard to meeting
8 this public policy objective.

9 CHAIRMAN KOLBECK: All right. Thank you.
10 Any other Commissioner questions?

11 COMMISSIONER HANSON: I have tons of them, but
12 I -- it's very interesting listening to the discussion
13 here and the give and take and trying to figure out how
14 to untie this -- is it the Gregorian knot?

15 And it's also interesting listening to what
16 Commissioner Kolbeck said that the first thing he was
17 taught or the first thing he learned when he was elected
18 to the PUC. I think we all learn something new the very
19 first time we get into public office, and the first thing
20 I learned as a State Senator 31 years ago was that I
21 spoke too much and that if I listened, I learned a lot
22 more.

23 So I have a tendency to be studious at least
24 during these hearings. And I'm listening more than I
25 speak. But, unfortunately, I have a lot of things to ask

1 right now, and I'll probably talk more than I want to
2 right now.

3 The question on the 38 million, the question
4 pertaining to the number of turbines, that's for seven
5 turbines, the 38? Or is that for the full 12 turbines?

6 I was looking at megawatts there. And to me if
7 you're going to come up with 50 megawatts, you certainly
8 can't get that for 38 million, can you?

9 MR. MAGNUSON: The difference there is that
10 we're looking at 7 to 12 turbines. And the number of
11 turbines -- whatever we end up getting -- should total
12 approximately 20 megawatts. So it really depends on the
13 size of the wind turbine generator.

14 COMMISSIONER HANSON: So your first 20 megawatts
15 are going to cost 30?

16 MR. MAGNUSON: That's right. That's all we're
17 looking at right now is 20 megawatts.

18 COMMISSIONER HANSON: I was curious because
19 that's in line with the cost I'm familiar with. And if
20 you're putting out 50 megawatts for 38 million, then
21 you've got a pretty good deal going here.

22 You had gone through seven benefits and as you
23 have -- as you filed. Could you expand just a little bit
24 on the second one?

25 I'm curious. There's the -- the second one you

1 talked about, you talked about the production tax credit
 2 first. And then there are two other. There's a bonus
 3 depreciation, I think it is. You get to accelerated cost
 4 depreciation of some sort. And then there's an either/or
 5 of a 30 percent. You're not accessing the Fed's
 6 30 percent depreciation that you're allowed? I believe
 7 that's in either PBC or the 30 percent? Is that correct?

8 MR. WHITE: That's correct. As we evaluated
 9 this project, it became obvious that the customer
 10 economics were best if we addressed the production tax
 11 credit. And so we will access the production tax credit
 12 of something more than 2 cents per kilowatt hour produced
 13 in the first 10 years for this project.

14 COMMISSIONER HANSON: Thank you, Mr. White.
 15 Commissioner Nelson was asking questions similar
 16 to what I was curious of in relationship to the
 17 hydroelectricity from WAPA. Where is that being
 18 accessed?

19 It exists at the present time. There isn't a
 20 new hydro dam being built. So there's hydroelectricity
 21 available right now which is being displaced as a result
 22 of this project. At least my assumption is that there is
 23 hydroelectricity that will not be available to some other
 24 location if it is used here; is that correct? Are we
 25 trading hydro for wind here?

1 MR. WHITE: I don't believe so. We are on the
 2 western transmission grid, and so we work with the
 3 Western Area Power Administration office out of Loveland.
 4 And what they then are doing is looking at the changes in
 5 generation from the wind turbines on a second-to-second,
 6 minute-to-minute basis and essentially because sometimes
 7 it drops and sometimes it goes higher, I would expect
 8 that you typically are averaging out. And so what
 9 they're doing is just making up the deviations on a
 10 minute-to-minute basis.

11 And so there is not a hydro is curtailed so that
 12 wind can be out or hydro runs so that wind can -- or
 13 however the reverse is. I think it's just that --
 14 maintaining the minute-to-minute schedule and so there
 15 should be no displacement per se.

16 COMMISSIONER HANSON: Where is the
 17 hydroelectricity -- can you tell me where the electrons
 18 are coming from?

19 MR. WHITE: I cannot, but I would expect that
 20 it's on the Missouri River dams that are on the western
 21 transmission grid. So most likely up in Montana.

22 COMMISSIONER HANSON: I was hoping you would say
 23 Montana. I was hoping you'd say we'd get a little bit of
 24 their hydroelectricity in South Dakota because it's so
 25 inexpensive.

1 Mr. Magnuson, in your arguments when you're
 2 talking about rates isn't this somewhat of a preapproval
 3 of the -- I mean, isn't it preapproval basically?

4 MR. MAGNUSON: I appreciate the question,
 5 Commissioner Hanson. But, no, it's not preapproval from
 6 a rate making standpoint.

7 Certainly the analysis here may be similar in
 8 some respects but not in all respects. There are still a
 9 number of questions that would have to be presented to
 10 this Commission in a rate making proceeding, including
 11 whether or not we managed our expenses appropriately and
 12 things like that.

13 All of those things would have to be addressed
 14 in a rate making proceeding, not in this Petition for
 15 Declaratory Ruling. This is not a preapproval of rates.
 16 What we're looking for is guidance on what we need to do
 17 as far as this wind project.

18 Yes. Some of the analysis is going to be
 19 similar, but a rate making procedure is necessary to get
 20 those costs into rates, and that analysis is going to
 21 require different things including looking at whether or
 22 not we managed our costs and those type of things.

23 COMMISSIONER HANSON: So you don't look at this
 24 declaratory ruling as a mini rate case?

25 MR. MAGNUSON: I do not look at it as a mini

1 rate case. There will be a separate later proceeding for
 2 rate making.

3 COMMISSIONER HANSON: Ms. Semmler, looking
 4 through this, if one reads just 49-34A-104, it seems very
 5 clear that the retail provider makes the decision,
 6 evaluates if it's what they want to use for renewable
 7 energy, and after they make the evaluation, then it's up
 8 to them -- well, then it states they may use it. It
 9 seems really, really clear. However, it does not allow
 10 for cost recovery in this paragraph. It -- in this
 11 statute. It simply says they may use.

12 So if they may use it, why would we want to not
 13 allow them to do that and then make a declaratory ruling
 14 that that's fine, you read the statute correctly, and
 15 we'll evaluate whether or not you get rate recovery when
 16 it comes to us?

17 MS. SEMMLER: I think the problem, Commissioner,
 18 is that, as Mr. White indicated, they see this as a
 19 resource planning statute. And I argue that the statute
 20 is not that. It is not a resource planning statute.

21 But beings as the utility sees it as such and
 22 has argued as such, that's one of the decisions that is
 23 made in a rate case. Resource planning is one of those
 24 many decisions. While there are still many to be
 25 answered, that's a big one. And that question will be

1 off the table if the Commission makes that decision now.
2 Now, as I said earlier, if you limit your
3 decision and do not actually answer the question that's
4 being asked by the company, I don't think you are
5 limiting, and I don't think that will affect a rate case
6 in the future. But I think the exact question that's
7 being asked in their Petition is dangerous.

8 COMMISSIONER HANSON: I'm still trying to -- I'm
9 sure you answered this question just now as you were
10 speaking, but I'm having trouble getting the ends put
11 together.

12 If we don't have the authority to do it now, how
13 do we have the authority in the future?

14 MS. SEMMLER: Don't have the authority to?

15 COMMISSIONER HANSON: To make the decision
16 whether or not this was -- if it states very clearly that
17 the retail provider gets to make the decision, if we
18 don't have the authority to say no now, then how can we
19 say no later?

20 MS. SEMMLER: I think, as I indicated in my
21 argument earlier, the entire --

22 COMMISSIONER HANSON: I'm sure you did. I'm
23 sure you articulated it very well.

24 MS. SEMMLER: No. The prudence obligations,
25 that whole chapter needs to be read as a whole, and no

1 one statute can be read in isolation. And this is a
2 decision the utility needs to make so as to receive rate
3 treatment.

4 So as they make this decision now and if this
5 Commission analyzes that decision and puts itself in the
6 utility's shoes in this statute and makes that decision
7 for the utility, you've removed the ability to do that
8 later when it makes its rate filing.

9 In a rate filing the Commission will have the
10 benefit of many other studies, many other papers, much
11 more testimony. We don't have the benefit of any of that
12 now. And our structure is set up such that, as we heard,
13 Ms. Cremer asked for a filing fee for a different case, a
14 different company, our structure is set up such that we
15 receive a filing fee, we do analysis. Our structure is
16 set up to do that at the time of a rate filing.

17 We're not set up to do this analysis now. And
18 the statute doesn't require us to do it. The statute
19 requires the company to do it. So a declaratory ruling I
20 think would be appropriate if it is, yes, the statute
21 applies to you and, yes, you tell us you did it. End of
22 story.

23 I don't think a declaratory ruling is
24 appropriate to answer the question, however, that's been
25 asked by the company.

1 Does that help at all?

2 COMMISSIONER HANSON: It does. It does. I'm
3 just trying to figure out whether or not the company --
4 first of all, they can certainly amend their request, but
5 at the same time by rephrasing it, that doesn't
6 necessarily help them in getting the answer that they
7 need to obtain.

8 MS. SEMMLER: Right.

9 COMMISSIONER HANSON: I was on the Commission
10 when this legislation came forth, and we had a number of
11 discussions about it then and about how we were not happy
12 with it and argued to an extent against it in and out of
13 the committee meetings. And I didn't like it then, and I
14 don't like it now. So I'm struggling with it.

15 Thank you, Mr. Chair.

16 CHAIRMAN KOLBECK: Yes. Thank you. Any other
17 questions?

18 Yes, Mr. Rislov.

19 MR. RISLOV: This is Greg Rislov. You know,
20 maybe -- there's been some confusion. Maybe I'm the one
21 confused. But we understand there's not rate treatment
22 that would be passed under your proposal now, but you
23 were asking for the Commission to determine this is a
24 prudent project, aren't you?

25 MR. MAGNUSON: What we think is that it's

1 appropriate for a utility such as Black Hills Power --
2 that it's prudent for us to come to the Commission to get
3 its input on whether or not we should go forward with
4 this project.

5 MR. RISLOV: Which is you're asking for a
6 prudence decision out of this Commission then at this
7 point, aren't you? Isn't that what that would mean if we
8 go through a rate proceeding?

9 MR. MAGNUSON: Well, certainly if we go to a
10 rate proceeding, what happens in this declaratory
11 Petition is going to be particularly relevant,
12 absolutely.

13 MR. RISLOV: Yes. If the Commission says this
14 is a wonderful project at this point, even if it turns
15 out to be an absolute dud down the road, and I'm not
16 saying it would, but if that would happen, this
17 Commission's hands would be tied because it determined
18 now that this project was prudent and there would be an
19 order stating such, wouldn't there?

20 MR. MAGNUSON: I don't think that there would be
21 an order from this Commission stating that this project
22 is deemed to be prudent.

23 What we're asking for as set forth in our
24 Petition is whether or not it's reasonable and
25 cost-effective in view of the other alternatives. That's

1 the question that has been answered -- or that's been
2 asked. Excuse me.

3 MR. RISLOV: Bottom line, and I'll put this in
4 street language not being an attorney, the effect is that
5 the Commission would essentially be saying that this is a
6 prudent project, wouldn't they? Or am I missing
7 something here?

8 You know, I understand, Mr. Magnuson, that I may
9 be missing some legal niceties here, but it appears to me
10 the effect would be the same.

11 MR. WHITE: Certainly we would have a review of
12 our decision-making process and an affirmative
13 confirmation that the decision-making process was good
14 quality and came out with the right decision.

15 With regard to prudence in its entirety, we
16 still have to construct the project. We still have to
17 contract with Western Area Power Administration and get
18 the regulation service. We still have to contract with
19 wind turbine manufacturers. We still have to get it done
20 before December 31, 2012 to qualify for the production
21 tax credits.

22 So I would agree it's a limited prudence as to
23 the decision to build but not a complete prudence over
24 the project because we still have a lot to perform under
25 it.

1 MR. RISLOV: And I understand that. I
2 appreciate that explanation. But as I look at our
3 neighbors to the north in North Dakota and our neighbors
4 to the east in Minnesota, the utility, they call it
5 prudence review. In North Dakota it's public convenience
6 and necessity. But essentially all that means is the
7 utility has to carry forward on what it promised, so to
8 speak, in the prudence review.

9 So it would be expected, I believe -- and they
10 term it a prudence review probably, shorthand street
11 language. Again, you'll have to excuse me for that. But
12 that's inherent in every state that has preapproval
13 authority, isn't it, to do what you just said?

14 MR. WHITE: In the states where we have a
15 requirement for these major projects to get a certificate
16 of public convenience and necessity, it is a review of
17 the decision-making process and a determination that the
18 resource that's proposed will meet the needs of the
19 utility customers. And so there's a reasonableness
20 associated with it.

21 There is always then a rate case that follows
22 subsequently, usually two or three years later, that
23 recognizes the need but then evaluates the execution of
24 the construction of the project.

25 MR. RISLOV: And essentially that's the process

1 you're asking us to mirror here, isn't it?

2 MR. WHITE: We would be very happy with that
3 type of result.

4 MR. RISLOV: I have a concern here. A little
5 speech. Excuse me. But, you know, we've reviewed this
6 and won't get into ancient history number of years ago
7 when there were a lot of states that had projects that
8 didn't work out, should we say, back in the late '70s and
9 early '80s. And some of those states took over
10 preapproval, I'll call it, prudence reviews, whatever the
11 case may be.

12 But both utilities oddly enough and the
13 Commission resisted that here in South Dakota. And I
14 just have a question. And I understand you couch that
15 only in terms of this law, which I understand there's
16 just nothing on the books at this time. And that's why
17 we have no precedent, I believe, because we haven't had a
18 chance to test the law.

19 But, nonetheless, there was an agreement that we
20 should let the people who are trained and experts to run
21 the utilities run the utility and let the Commission not
22 get into the decision-making element, preapproval
23 element, of utility rate making -- or not rate making but
24 utility operations. And I just can't fail to see that
25 you're opening this door. And if the Commission makes

1 this decision, although the law may not support it, where
2 does that end?

3 Couldn't the Commission look at virtually any
4 element of the company's operation if they chose to
5 expand that doorway?

6 MR. WHITE: Well, we specifically addressed this
7 to the Renewable Portfolio Objective where we believe
8 there is a public policy consideration that we need
9 guidance under.

10 Black Hills Power does prefer to manage its
11 utility and to bring forth its rate cases for the review
12 of its operations and the prudence of those operations
13 and the reasonableness of cost. This one was brought
14 before you because of the public policy consideration and
15 the fact that if we were to do this, rates would rise
16 slightly under the assumptions that we've made in the
17 economic study.

18 As to whether the door is open on preapproval or
19 prudence, we cracked that door open with the rate
20 stability plan legislation back in 1992. That's been
21 available for utilities to use. It was used only once
22 and was not seen to a conclusion. So there is a vehicle
23 where utilities can get an understanding from major
24 projects and get construction work in progress through
25 rate phase-ins already on the statutes. And yet that

1 hasn't broken down the door with utilities coming in
2 asking for preapproval through that mechanism.

3 We think this is very limited, and we hope that
4 it's limited to this renewable portfolio project and that
5 the Renewable Portfolio Objective.

6 MR. RISLOV: Doesn't the rate stability plan
7 allow the Commission to bill the utility for an
8 examination of that particular alternative?

9 MR. WHITE: Yes.

10 MR. RISLOV: How long would that hydro
11 regulation contract extend? Would it be for the life of
12 the wind facilities?

13 MR. WHITE: We have not had the opportunity to
14 negotiate the contract yet.

15 MR. RISLOV: Is there any expectation of how
16 long that would be effect? Would it be a year or two
17 years or 10? Do you have any expectations?

18 MR. WHITE: Our expectation is that it would be
19 available at least until there was a change in Black
20 Hills Power's generation portfolio so that natural gas
21 was part of the resource mix.

22 MR. RISLOV: You know, I'm going to state,
23 Mr. Magnuson, I have -- we discussed this with the recent
24 Otter Tail case, but there's very little guidance for
25 both the Staff and the companies when it comes to the

1 renewable projects mainly because the law is new. We
2 haven't really had time to test it.

3 With that said, did you happen to look at the
4 facts in the case of the recent Otter Tail case where
5 there was a decision made?

6 MR. MAGNUSON: We have had the opportunity to
7 review that case. And we had people here at the time the
8 settlement was approved, and, frankly, from our
9 perspective it would have been nice if that case would
10 have gone to hearing because I think it would have
11 provided more information, number one.

12 Number two, the Otter Tail operation is so much
13 different than Black Hills Power because they're in other
14 states that do have mandated renewable energy standards.
15 So I think it was significantly different so that it may
16 have provided some guidance but certainly not sufficient
17 guidance for us to interpret what this Commission would
18 do with the South Dakota Renewable Energy Objective.

19 MR. RISLOV: And I understand so much it would
20 be nice to know exactly what the Commission's looking at.
21 But absent a thorough IRP analysis, and we're talking
22 about a 38 to \$40 million investment, it would be a very
23 difficult decision for the Commission to make on whether
24 or not something is prudent given the short period of
25 time.

1 Normally the rate case, and I won't get into all
2 the legal theory, but between Kara and you, I definitely
3 have an opinion on it one way or the other but not
4 graduating from law school.

5 And I understand the difficulty. But in general
6 I was here when you added Wyodak a couple years ago. And
7 I was here when you added all the subsequent plants. And
8 for none of those, which were considerably more expensive
9 than this particular project, did the Commission issue,
10 you know, a prudency type decision.

11 And I'm just wondering ultimately if what I
12 thought happened in the early '80s with regard to the
13 statutes and what the utilities intended really leaves us
14 in a position to do what you're asking us to do.

15 I mean, having had worked with these over the
16 years, I'm somewhat taken aback by your filing, but I
17 understand why you made it. Just because there isn't a
18 lot of guidance out there.

19 MR. MAGNUSON: Well, we appreciate your
20 comments. But it certainly comes down to are the public
21 policy considerations -- and those considerations are
22 here because of South Dakota Renewable Energy Objective
23 and were not there for Wyodak or the building of the
24 Wygen III plants. Those had nothing to do with the
25 energy renewable objectives.

1 You mentioned, well, we're doing this without an
2 IRP analysis. That is exactly the type of input that
3 we're looking for from the Commission, and that's why we
4 want this case to proceed and the Commission to give us a
5 declaratory ruling.

6 If the Commission is going to look at this
7 strictly from the standpoint of you need an IRP and the
8 IRP needs to show that you need to have this resource
9 mix, we'd like to hear it. Because there is an
10 additional public policy consideration here that we've
11 looked at, and we've determined that an IRP is not
12 necessary because of the public policy decision -- input
13 and part that can be dealt with here.

14 So you bring up the IRP. That's exactly the
15 type of input or questions that we would like to have
16 answered by this Commission, and that's why we urge this
17 Commission to go forward with the Petition for
18 Declaratory Ruling.

19 MR. RISLOV: I understand that. It's a
20 difficult -- it's a difficult cat to skin no matter what.
21 But I will say this in regard to wind and public policy.
22 I'm thinking we're seeing the point in wind development
23 where, you know, to say it's public policy it's not just
24 guiding the system.

25 I mean, I think the Commission in its decision

1 on Otter Tail was hopeful that adding that wind was a
2 good decision for both, you know, the rate payers and the
3 company.

And, frankly, you know, I think that's for every
4 decision we'll make, not just add wind to add wind but
5 add it because it's beneficial and makes sense. And I
6 think after reading through your filing that you're
7 hopeful that it does. Beyond a public policy viewpoint,
8 it's just a good decision for the utility.

9 But I just want to make that clarification. I
10 understand your public policy argument but -- and now
11 I've held the microphone way too long. Thank you.

12 CHAIRMAN KOLBECK: Any other questions?

13 Could you tell me how much extra generation you
14 have right now?

15 MR. WHITE: Mr. Chairman, I'm not certain, but
16 in the shoulder months, the spring and the fall, we
17 certainly have extra power available to sell to the
18 marketplace.

19 One of the considerations of renewable
20 generation is the time when renewable generation's
21 available, and that often is in those off-peak periods of
22 the shoulder months in the spring and the fall. And so
23 that's one of our considerations as well.

24 This would not make us particularly long. We're

1 talking about 20 megawatts on a 350 megawatt to 400
2 megawatt system and at a -- I believe we said 36 to
3 38 percent capacity factor.

4 So it's not, per se, a decision as to whether
5 we're going to be long energy. It's are we incorporating
6 the right mix of energy into our resource portfolio given
7 the uncertainty about some of the environment regulations
8 that might be coming.

9 CHAIRMAN KOLBECK: Correct me if I'm wrong but
10 there is no penalty for not meeting the South Dakota RTO;
11 correct?

12 MR. WHITE: There is no stated penalty. It is a
13 voluntary objective. But as we've learned to recognize,
14 there are always results in rate cases through regulation
15 as to the decisions utilities make whether they choose
16 not to build wind generation or whether they may choose
17 to build wind generation.

18 And so essentially this filing seeks guidance
19 before we invest \$38 million and come back to you in a
20 couple of years asking to recover that in customer rates.

21 CHAIRMAN KOLBECK: Okay. Any other questions?

22 Hearing none, is there any action?

23 COMMISSIONER NELSON: This is Commissioner
24 Nelson.

25 CHAIRMAN KOLBECK: Yes, Commissioner Nelson. Go

1 ahead.

2 COMMISSIONER NELSON: I would move to dismiss
3 the request by Black Hills Power, Inc. for a declaratory
4 ruling in EL11-007 based on the failure to make a claim
5 in which relief may be granted. And I have some
6 follow-up comments.

7 Black Hills Power asked whether they made proper
8 evaluations and determinations under SDCL 49-34A-101 and
9 104 regarding a proposed Black Hills Power wind project.
10 I do not believe that the statutes provide the PUC with
11 the authority to issue a declaratory ruling on that
12 question.

13 SDCL 49-34A-104 provides authority to the retail
14 provider, in this case Black Hills Power, to make
15 specific evaluations regarding whether a renewable
16 project is reasonable and cost-effective considering
17 other electricity alternatives.

18 The filings associated with this Petition show
19 the Black Hills Power has made the determinations
20 required under this statute. Black Hills Power outlined
21 six factors supporting their determination that this
22 project is reasonable and cost-effective considering
23 other electricity alternatives.

24 I would note that these factors exist regardless
25 of the renewable energy objective. Considering this

1 project would be part of complying with that objective is
2 yet another factor to be considered by the company. The
3 final sentence of SDCL 49-34A-104 gives the retail
4 provider broad latitude in selecting the best alternative
5 to meet their resource needs. This statute requires an
6 evaluation but does not require a retail provider to base
7 resource decisions solely on that evaluation.

8 In this case Black Hills Power has determined
9 that this wind project is an appropriate alternative to
10 meet their resource needs. The statute does not give the
11 PUC the option of second-guessing the determination or
12 the decisions of the company.

13 In fact, the 2008 legislative history of this
14 statute argues quite the opposite. Testimony given to
15 the Legislature supporting passage of this statute
16 repeatedly emphasized that the purpose of the statute was
17 not for the Government to interfere in the
18 decision-making process of utility businesses.

19 The bill sponsor, Representative Joel Dykstra,
20 said in Committee testimony, and I quote, "We do not
21 propose to require the energy companies to uproot their
22 business plans and supply models." His stated desire was
23 to and, again I quote, "allow power companies to make
24 sensible business decisions."

25 He further testified that the purpose of these

1 renewable energy statutes were not to inject "the heavy
2 hand of State regulation" in the decision-making
3 process.

4 At that same Committee hearing the
5 investor-owned utilities attempted adding an amendment to
6 the renewable energy objective statute for interim rate
7 recovery. The Legislative Committee hearing that
8 amendment specifically rejected the proposal and thus the
9 involvement of PUC prior to project construction.

10 Commenting on the amendment, Commissioner
11 Dusty Johnson told the Legislative Committee the proposed
12 amendment was all about "regulatory certainty."

13 The Legislature rejected that regulatory
14 certainty in 2008, and the PUC in 2011 has not been given
15 the authority to provide the regulatory certainty which
16 Black Hills Power is asking for today.

17 The statutes in place today clearly only provide
18 authority for the PUC to review project investments after
19 the project is placed in service and a request is made to
20 include the cost in the rates. The law does not allow
21 for pre-prudency determination as requested by Black
22 Hills Power.

23 Black Hills Power stresses in their filing that
24 they are not asking the PUC to make a final, and I under
25 line the word "final," determination on whether the cost

1 associated with this project should be approved for rate
2 recovery. It is apparent to all that such a
3 determination is one of the objectives of this Petition.
4 Any decision that would be made by the PUC at this point
5 would certainly weigh heavily in a formal rate case
6 proceeding.

7 Black Hills makes a couple of interesting point
8 in their Brief in Opposition to the Motion to Dismiss.
9 One of the questions that they ask is "How can any
10 utility make a \$38 million investment in renewable
11 generation without some indication from the Commission
12 that the utility has made the right decision?"

13 My response today would be utility companies
14 routinely make large investment decisions without
15 preapproval from the PUC. This decision is no
16 different.

17 Black Hills also asks if adding wind generation
18 would only be supported by the Commission if customer
19 rates do not increase as a result. And my response to
20 that would be one only has to review a recently concluded
21 rate case with another investor-owned utility to
22 understand that such a question has already been publicly
23 answered by this Commission.

24 One final point. Black Hills states that a
25 Motion to Dismiss would stifle construction of renewable

1 generation and economic development in western
2 South Dakota. I understand those are very weighty
3 statements. The PUC does not want to stifle renewable
4 generation or economic development, and this Motion
5 should not, and I repeat not, have that effect.

6 As has been stated, Black Hills is empowered by
7 the statutes to make their own determination regarding
8 the prudence of this project for their renewable
9 portfolio. They have made that determination, and their
10 answer is yes. Any decision by Black Hills to not move
11 forward with this project would seemingly violate the
12 rationale that they have strenuously argued for in this
13 Petition. The decision to build this project is that of
14 Black Hills Power. It is not a decision of the PUC.

15 This Motion to Dismiss should in no way be
16 interpreted as a judgment on wind energy or economic
17 development. The PUC supports both. It is strictly a
18 Motion based on the lack of proper legal authority.

19 Thank you, Mr. Chairman.

20 CHAIRMAN KOLBECK: Thank you. So we have a
21 Motion to grant the Staff's Motion to Dismiss; is that
22 correct?

23 COMMISSIONER NELSON: That is correct.

24 CHAIRMAN KOLBECK: Thank you. Just to clarify.
25 We have a Motion.

1 Discussion?

2 COMMISSIONER HANSON: I suspect Commissioner
3 Nelson has stated his peace just now, and he articulated
4 it very well.

5 I think that the utility has made a very
6 reasonable and practical request of the Commission of,
7 which I would certainly want to do too if I were a
8 utility in this type of situation. I continue to
9 struggle with trying to find a window or a doorway of
10 some sort, a crack, that -- in 49-34A-104.

11 I recognize all the little land mines that we're
12 talking about about preapproval and rate cases and such,
13 and I think that we can get through that during the rate
14 process.

15 I think it was extremely clear from the
16 Legislature when they passed that law, that statute, that
17 they intended to leave the PUC out of it, that the intent
18 was to stimulate renewable energy and to encourage it,
19 removing all impediments. And, unfortunately, it appears
20 to have probably created some other challenges. Perhaps
21 the law needs to be revisited. Unfortunately, can't do
22 that in this time line. Need to get past that.

23 I'm sorely tempted to vote my conscience as
24 opposed to how I feel I must as a Public Utilities
25 Commissioner. I do not in any way want to create

1 challenges for renewable energy. However, I think the
2 statute is just as clear as it possibly can be. And
3 having participated in that discussion at that time and
4 attempted to get that amendment made so that we could be
5 more a part of it, I recognize that they simply did not
6 want us to be a part of it. They wanted the utility to
7 make that decision and to go forth and not have a heavy
8 hand of regulation that you are now asking for,
9 unfortunately.

10 And so I, Mr. Chairman, will be supporting the
11 Motion.

12 CHAIRMAN KOLBECK: Anymore discussion?

13 I'll just add two comments quick. One would
14 be the mention of business decisions, and the
15 conversation makes me very, very nervous. I've always
16 considered the PUC to be the backstop that stops the wild
17 pitch. Do I consider this wind farm to be getting past
18 the catcher?

19 I don't know. However, that's a business
20 decision that I think the company should be allowed to
21 make without the Commission being involved in them.

22 And I really do have a very genuine concern
23 about a different Commission and how they would view it
24 as compared to this Commission. You may get a more
25 liberal Commission that wants more wind or more

1 conservative that may not want it or who knows. But I do
2 think that this determination, this declaratory ruling,
3 would crack that door for that. It could let in some
4 unwanted thoughts, and it could let in some very
5 powerful opinions from people who are yet to sit on this
6 bench.

7 For those reasons I think that I just don't
8 think that the Legislature intended us to be in this --
9 making this determination. Nor do I think that they
10 should have let us in. I think they're into business
11 decisions, and Mr. White knows 10,000 times more things
12 about electrical business than I do. However, I might
13 know one more thing than he does about rate making. So
14 hopefully that will even it out. I doubt if I do, but
15 it's possible.

16 So although I appreciate everything the
17 company's gone through, I appreciate the dialogue here
18 today, I'll be supporting the Motion also.

19 Any other discussion?

20 Hearing none, we'll continue to vote.

Commissioner Nelson.

22 COMMISSIONER NELSON: Aye.

23 CHAIRMAN KOLBECK: Commissioner Hanson.

24 COMMISSIONER HANSON: Aye.

25 CHAIRMAN KOLBECK: Commissioner Kolbeck votes

1 aye also.

2 (The proceeding concluded at 3:23 p.m.)
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1 STATE OF SOUTH DAKOTA)

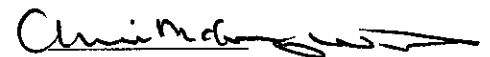
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3 COUNTY OF SULLY)
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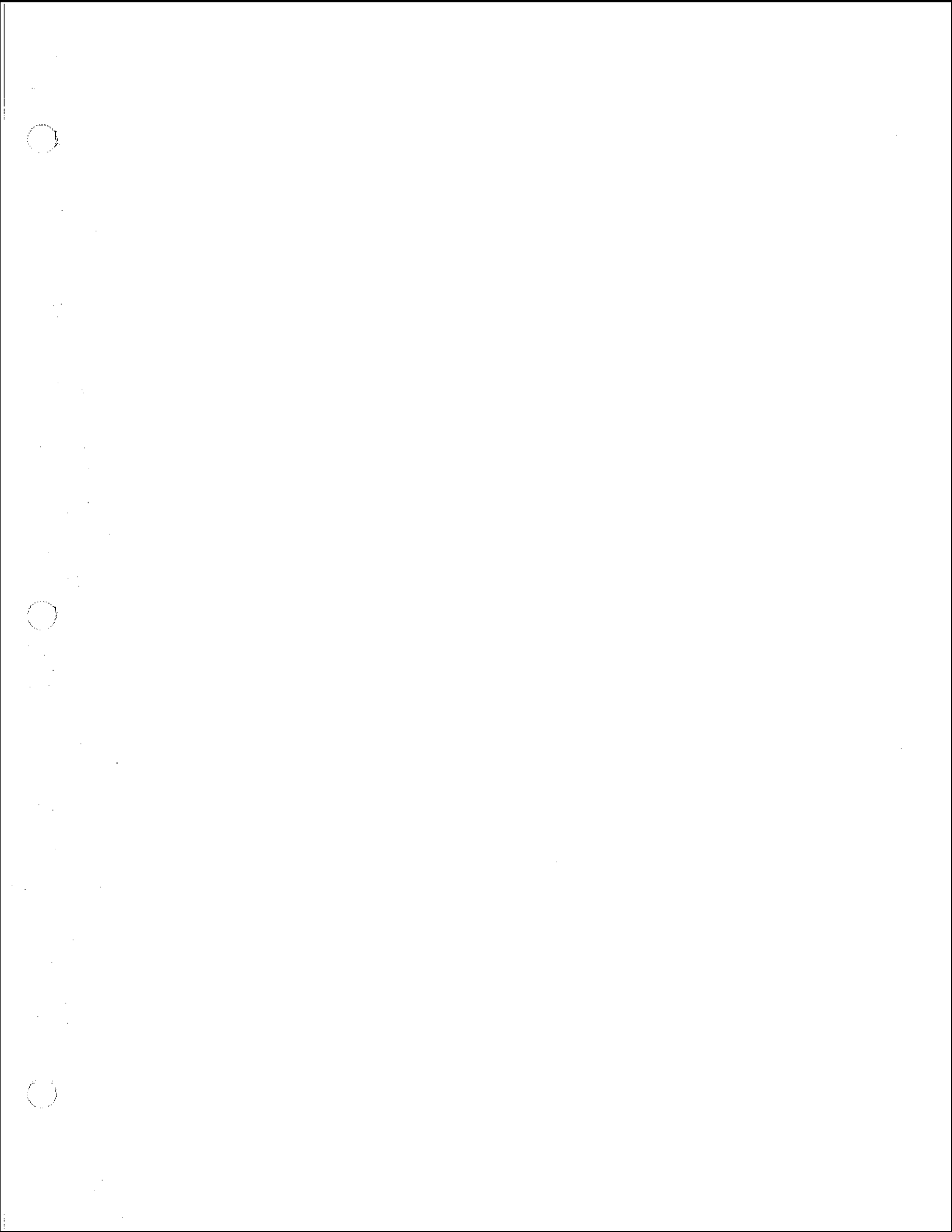
5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 31st day of May,
11 2011, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 14th day of
14 June, 2011.
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18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter
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