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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION EL14-026
OF BLACK HILLS POWER, INC., FOR
AUTHORITY TO INCREASE ITS ELECTRIC
RATES

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Transcript of Proceedings
January 27 & 28, 2015

Volume I of II
January 27, 2015
REDACTED PUBLIC TRANSCRIPT

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BEFORE THE PUBLIC UTILITIES COMMISSION

CHRIS NELSON, CHAIRMAN
KRISTIE FIEGEN, VICE CHAIRMAN
GARY HANSON, COMMISSIONER

COMMISSION STAFF

John Smith
Karen Cremer
Greg Rislov
Tina Douglas
Katlyn Gustafson

APPEARANCES

Amy Koenig and Lee Magnuson, Black Hills Power, Inc.
Mark Moreno, Andrew Moratzka, and Chad Marriott, Industrial
Interveners
Caitlin Collier, Dakota Rural Action
Karen Cremer, Public Utilities Commission Staff

Reported By Cheri McComsey Wittler, RPR, CRR

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TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the Joe Foss Building,
Matthews Training Center, 523 East Capitol Avenue,
Pierre, South Dakota, on the 27th day of January, 2015.

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(Joint Exhibits 1 through 6 are marked.)
(BHP Exhibits 1 through 73 are marked.)
(BHII Exhibits 1 through 4 are marked.)
(Staff Exhibit 1 is marked.)

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1 CHAIRMAN NELSON: Good morning, everyone.
2 Welcome.

3 We will begin the hearing in Docket EL14-026,
4 In the Matter of the Application of Black Hills Power,
5 Inc. For Authority to Increase its Electric Rates.

6 The time is approximately 9:00 a.m. The date
7 is January 27, 2015, and the location of the hearing is
8 the Matthews Training Center at the Joe Foss Building,
9 523 East Capitol Avenue, Pierre, South Dakota.

10 I'm Chris Nelson, Commission Chairman.
11 Commissioners Kristie Fiegen and Gary Hanson are also
12 present.

13 I'd also like to welcome those of you who are in
14 attendance here at the hearing and thank you for your
15 interest in the matter.

16 I am presiding over the hearing. The hearing
17 was noticed pursuant to the Commission's Order for and
18 Notice of Hearing issued on December 30, 2014.

19 The issues at this hearing are, one, shall the
20 Commission grant the Joint Motion for Approval of
21 Settlement Stipulation and approve the Settlement
22 Stipulation as just and reasonable and as its decision in
23 this matter, including the approval of the Contract with
24 Deviations between Black Hills Power and the South Dakota
25 Science and Technology Association, or, two, what rates,

1 terms, and conditions shall the Commission approve as
2 just and reasonable and in accordance with the standards
3 set forth in SDCL 49-34A-8.4.

4 If the Applicant -- it is the Applicant that has
5 the burden of proof, and under 49-34A-8.4 that burden of
6 proof is to establish that the underlying costs of the
7 rates approved in the Stipulation are prudent, efficient,
8 and economical and are reasonable and necessary to
9 provide service to the public utilities customers in this
10 state.

11 All parties have the right to be present and to
12 be represented by an attorney. All persons testifying
13 will be sworn in and subject to cross-examination by the
14 parties. The Commission's final decision may be appealed
15 by the parties to the State Circuit Court and State
16 Supreme Court.

17 John Smith, the Commission's counsel, will act
18 as Hearing Examiner and will conduct the hearing subject
19 to the Commission's oversight. He may provide
20 recommended rulings on procedural and evidentiary
21 matters. The Commission may overrule its counsel's
22 preliminary rulings throughout the hearing. If not
23 overruled, Mr. Smith's rulings will become final
24 rulings.

25 One housekeeping matter that's been passed on to

1 me. There will be several folks testifying via
2 telephone. I'm told when those folks are speaking all of
3 us must have our microphones off or there gets to be an
4 echo and a feedback that just doesn't work.

5 And that will be a little bit awkward when we go
6 through questions and answers, but we're going to have to
7 make it work and accommodate those folks.

8 With that, one matter of housekeeping. I will
9 turn the gavel over to Mr. Smith.

10 MR. SMITH: Cheri, just one quick question on
11 the telephone. I know in the past you have not been able
12 to do the swearing in.

13 Is that still the case?

14 THE COURT REPORTER: Right.

15 MR. SMITH: Mr. Chairman, you will have to do
16 the swearing in.

17 With that, let's begin by taking the appearances
18 of the parties.

19 Mr. Magnuson, we'll start with you on behalf of
20 Black Hills Power. Please introduce the folks you have
21 with you.

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

23 Lee Magnuson with Lindquist & Vennum Law Firm in
24 Sioux Falls, South Dakota. I'm here with my co-counsel
25 today, Amy Koenig, in-house counsel for Black Hills

1 Power.

2 Would you like me to introduce the remainder of
3 the people?

4 MR. SMITH: Not unless you feel the need to.

5 MR. MAGNUSON: Will there be an opening
6 statement?

7 MR. SMITH: We'll discuss that. I'll take that
8 up with you guys in a second.

9 MR. MAGNUSON: Okay. I'll go ahead and
10 introduce everybody in the event there's not an opening
11 statement.

12 With us at counsel table today -- first is
13 Kyle White, who is the Vice President of Regulatory
14 Affairs for Black Hills Corporation. He's on my
15 immediate left.

16 To my far right is Jon Thurber, Manager of
17 Regulatory Affairs for Black Hills Power.

18 We have several people in the hearing room today
19 that if it's okay, we'll go ahead and introduce. First
20 we have Chris Kilpatrick, Director of Regulatory. We
21 have Vance Crocker, Vice President of Electric Operations
22 for Black Hills Power. We have Mark Lux, who is the
23 Vice President and General Manager of Regulated and
24 Nonregulated Generation for Black Hills Corporation.

25 We have Todd Brink who is Senior Managing

1 Counsel for Black Hills Corporation. And we have
2 Marnie Miller Jones, Director of Revenue Requirement.

3 Thank you.

4 MR. SMITH: Thank you.

5 Mr. Moreno.

6 MR. MORENO: Thank you, Mr. Smith.

7 I'm Mark Moreno. I'm local counsel for the
8 Black Hills Industrial Interveners. I practice in the
9 law firm here in Pierre of Moreno, Lee & Bachand.

10 Next to me is Drew Moratzka, and next to him is
11 Chad Marriott. They're with the Stoel Rives Law Firm,
12 and they will be taking the laboring oar here during the
13 course of this hearing over the next two or three days.

14 As a housekeeping matter, I should say both
15 Mr. Moratzka and Mr. Marriott have been admitted
16 pro hac vice. They also have a sales tax license with
17 the State so those preliminary matters incident to their
18 ability to appear here today and practice in this state
19 have been taken care of.

20 As a housekeeping matter, as some of you know,
21 some may not, I also have another job besides the
22 practice of law. I'm a United States Magistrate Judge.
23 And, as such, I have certain judicial duties that I have
24 to perform typically on a daily basis.

25 Now in taking on the role as local counsel, I

1 take that very seriously. And I have told Mr. Marriott
2 and Mr. Moratzka that I will be here as long as I can. I
3 have set aside at least a half a day to be here because I
4 take that role seriously.

5 But I ask the Commission and counsel's
6 indulgence if I have to leave from time to time. If I
7 do, rest assured I'll be handling judicial business and
8 being a public servant like all of us are here today.
9 And I would appreciate that indulgence.

10 MR. SMITH: Thank you.

11 Is there any objection, Mr. Magnuson?

12 MR. MAGNUSON: No objection. Thank you.

13 MS. COLLIER: No objection.

14 MR. SMITH: Ms. Cremer.

15 MS. CREMER: No objection.

16 MR. SMITH: Thank you. I think that's just fine
17 here.

18 MR. MORENO: One last matter. And I know
19 counsel just mentioned that you will take up the opening
20 statement matter, but there is a Motion that we have
21 filed for briefing that may very well be mentioned during
22 the course of the opening statement, if allowed. But
23 that's something that we would like to have ruled on
24 ultimately during the course of this hearing.

25 And we recognize that briefing is a

1 discretionary matter with the Commission, but we just
2 wanted to raise that and preserve that matter and make
3 sure that it's not overlooked.

4 MR. SMITH: Thank you.

5 And I was going to discuss motions here in just
6 a second and how we should handle those.

7 Ms. Collier.

8 MS. COLLIER: Caitlin Collier, attorney at law
9 appearing for Dakota Rural Action, Intervener.

10 MR. SMITH: Thank you.

11 Ms. Cremer.

12 MS. CREMER: Thank you.

13 Good morning. This is Karen Cremer of Staff.
14 And with me today are Staff Analysts Pat Steffensen and
15 Eric Paulson, and our consultant Dave Peterson is on the
16 phone.

17 Thank you.

18 MR. SMITH: Okay. Let's proceed on to the
19 motions now.

20 At least logically to me at least -- definitely,
21 two of the motions to me can really not be heard until
22 the evidence has been heard. And I'm talking about the
23 two Settlement Stipulation motions. They certainly
24 can't.

25 And it occurs to me that with respect to your

1 Motion to do some posthearing scheduling, Mr. Moreno,
2 that we might as well see how things go there too, I
3 would say, so we know how things have gone and what we're
4 looking like. And then we'll take that up following the
5 hearing. Because at that point we'll kind of know where
6 we stand here in terms of how things have gone.

7 Does that make sense?

8 MR. MORENO: Very well. That will be
9 acceptable.

10 MR. SMITH: So don't let me forget at the end of
11 the hearing to remember to do that. You guys remember to
12 slap me upside the face, if need be. I might need it.

13 Okay. Well, we'll do that.

14 One thing here too. Just a word or two about
15 the way we deal with things because I think there's a
16 couple of people in the room that haven't really dealt
17 with one of our hearings before.

18 When we deal with hearings involving cases in
19 which we've had prefiled testimony and in this case we
20 just had massive quantities of it, generally what we try
21 to do, I try to encourage people to keep the direct case
22 relatively brief and relatively in a summary form to the
23 extent possible.

24 Because I think with all the prefiled, to go
25 over an extremely arduous direct -- that's one of the

1 reasons we do prefiled, frankly, is to try to shorten the
2 amount of time we have to deal with on direct testimony.

3 Any thoughts on that, counsel?

4 MR. MAGNUSON: Absolutely agree. Thank you.

5 MR. SMITH: Okay.

6 Mr. Moreno? Mr. Moratzka.

7 MR. MORENO: Likewise.

8 MR. SMITH: Okay.

9 Ms. Collier.

10 MS. COLLIER: Agree.

11 MR. SMITH: Ms. Cremer.

12 MS. CREMER: Staff is in agreement.

13 MR. SMITH: Okay.

14 Why don't we move on now to do we have any
15 prehearing stipulations, et cetera, anything of that
16 nature concerning admissibility of exhibits?

17 MR. MAGNUSON: If I might, I think I can speak
18 on behalf of the parties. We've had general discussions,
19 perhaps not all as a group but individually.

20 I believe that the parties are prepared to
21 stipulate to the admission of all of the exhibits that
22 were prefiled.

23 And so, for example, that would be Joint
24 Exhibit 1 through 6, and for Black Hills Power that would
25 be Black Hills Power Exhibit No. 1 through 73.

1 Now we have actually indicated that there are
2 four additional exhibits, but those were not part of the
3 prefileds so we'll wait to move for the admission of
4 those documents if and when we use them.

5 Otherwise, I believe the parties have stipulated
6 that prefiled exhibits can be admitted into evidence.

7 MR. SMITH: And does that -- that includes also
8 Black Hills Industrial Interveners and Staff.

9 MR. MAGNUSON: Yes. That is correct. I don't
10 believe that Dakota Rural Action has any exhibits, but
11 per the exhibits of Staff and Black Hills Industrial
12 Interveners, those were all prefiled exhibits, and we
13 would stipulate to the admission of those.

14 MR. SMITH: Are you in agreement to that?

15 MR. MORENO: I am. There's no objection from
16 the Interveners as to the prefiled exhibits.

17 MR. SMITH: Ms. Collier.

18 MS. COLLIER: Yes. It was discussed ahead of
19 time, and we are in agreement.

20 MR. SMITH: Okay.

21 Ms. Cremer.

22 MS. CREMER: Yes. That's accurate from Staff's
23 point of view.

24 MR. SMITH: Okay. We will admit all of the
25 prefiled exhibits, and those on the exhibit list is what

1 that is, that you've sent in. We will admit all of those
2 exhibits into the record.

3 I think we'll turn to opening statements. And
4 generally I offer parties the option. And, first of all,
5 do you want to do opening statements? And --

6 MR. MAGNUSON: Mr. Smith, I'm sorry to
7 interrupt. Just a couple more housekeeping matters,
8 perhaps, before we get to that.

9 I think I would like to clarify also in our
10 witness list we identified certain witnesses that are
11 going to adopt the testimony of other witnesses. And per
12 the agreement of the other parties, it's my understanding
13 that they have stipulated that the adoption of testimony
14 as set forth in our witness list is acceptable.

15 MR. SMITH: Do you agree with that Mr. Moratzka,
16 Mr. Moreno?

17 MR. MORENO: We do.

18 MR. SMITH: Ms. Collier.

19 MS. COLLIER: I do.

20 MR. SMITH: Ms. Cremer.

21 MS. CREMER: Yes.

22 MR. SMITH: Okay. We will permit that testimony
23 to be adopted then.

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

25 One more housekeeping matter. The parties have

1 stipulated that individuals may testify by telephone.
2 For example, we do have some witnesses that will be
3 available if there are questions, but principally that
4 comes down to two witnesses. We will have John Spanos,
5 our depreciation expert, testifying by telephone. And I
6 understand that Staff will have Dave Peterson testifying
7 by telephone.

8 The parties have stipulated too that they may
9 testify by telephone.

10 MR. SMITH: Okay. Is that --

11 MR. MORENO: That's correct.

12 MR. SMITH: Ms. Collier.

13 MS. COLLIER: Yes.

14 MR. SMITH: Okay. Ms. Cremer.

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

16 MR. SMITH: The Chairman here will have to do
17 the swearing in because whatever the court reporter's
18 association doesn't permit that yet.

19 So, with that, are we ready to move into
20 discussing opening statements, whether you want to do
21 them and then the order you want to do them in?

22 MR. MAGNUSON: We would request a very, very
23 brief opening statement. Thank you.

24 MR. SMITH: Okay. And then for the other
25 parties I usually give people the option of either doing

1 yours right up front or doing them at the introduction of
2 your -- at the commencement of your direct case.

3 MR. MORENO: We'll reserve on that, with
4 counsel's permission.

5 MR. SMITH: Okay.

6 MR. MAGNUSON: That's acceptable.

7 MR. SMITH: Other attorneys, is that okay?

8 MS. COLLIER: Yes.

9 MS. CREMER: And that's fine with Staff.

10 MR. SMITH: Okay. And so with that -- and I
11 don't know, Ms. Collier, you're not putting on a direct
12 case?

13 MS. COLLIER: That is correct.

14 MR. SMITH: Do you still want to do an opening
15 statement?

16 MS. COLLIER: I would like to reserve time and
17 do it later.

18 MR. SMITH: At that time. Okay.

19 Ms. Cremer, what's your thought?

20 MS. CREMER: I think I don't like this mic.

21 I will reserve and do my opening before we put
22 on Mr. Peterson.

23 Thank you.

24 MR. SMITH: Okay. Well, I think then we'll turn
25 to Mr. Magnuson, and please proceed with your opening

1 statement.

2 MR. MAGNUSON: Thank you, Chairman Nelson,
3 Commissioner Hanson, Vice Chair Fiegen, Staff, Counsel.
4 I appreciate the opportunity to be here today.

5 As I mentioned earlier, my name is Lee Magnuson.
6 I'm appearing here with co-counsel, Amy Koenig, who's
7 in-house counsel with Black Hills Corporation. Both of
8 us will be taking various witnesses throughout this
9 hearing. I've already introduced the people that are
10 here in the hearing room representing Black Hills Power.

11 The main purpose of this opening statement is to
12 just advise the Commission of what we expect for our
13 order of witnesses and who we expect to adopt what
14 testimony. So I'm going to go through that very
15 quickly.

16 Before I do I just want to indicate that
17 Chairman Nelson went through what we're here for today,
18 and, in fact, Black Hills Power is here to request
19 approval of the Settlement Stipulation between Black
20 Hills Power and Staff of the South Dakota Public
21 Utilities Commission. Black Hills Industrial Interveners
22 and Dakota Rural Action chose not to be a part of that
23 Settlement.

24 We believe that the record and our testimony
25 will show that the requested rates today are just and

1 reasonable.

2 In support of the Settlement Stipulation today
3 we intend to call five witnesses to provide testimony in
4 support of the adoption and approval of the Settlement
5 Stipulation.

6 Those five witnesses are, number one,
7 Kyle White. Mr. White will also adopt the testimony of
8 Laura Patterson, Charles Gray, Jill Tietjen, and
9 Brian Iverson.

10 Our second witness today will be
11 Chris Kilpatrick. Mr. Kilpatrick's going to testify as
12 to corporate cost allocations. The remainder of his
13 testimony, because he did prefile testimony, will be
14 adopted by Jon Thurber. And Mr. Kilpatrick likely will
15 be leaving sometime today before the conclusion of the
16 hearing because of time and schedule commitments back in
17 Rapid City.

18 Jon Thurber will testify as our third witness.
19 And as I noted earlier, he will be adopting the testimony
20 of Chris Kilpatrick, except as to corporate cost
21 allocation matters.

22 Our fourth witness will be John Spanos, who is
23 our depreciation expert. Mr. Spanos will be testifying
24 by telephone.

25 Our fifth and final witness, unless we have

1 rebuttal witnesses, will be Robert Hollibaugh, who is the
2 Director of Tax for Black Hills Corporation, and he will
3 be testifying today on tax matters. He's not presently
4 in the hearing room. He will be arriving at
5 approximately noon today and will be available to testify
6 today or tomorrow, as appropriate, given our order of
7 witnesses.

8 With regard to the availability of our other
9 witnesses that prefiled testimony in this matter, I would
10 refer you to our witness list that sets forth who those
11 other witnesses are and that, if necessary, and if there
12 are questions, we can make them available by telephone.

13 The one person that I would note is Bill Avera.
14 In the event there are questions for Bill Avera who is
15 our cap structure and ROE witness, he's only going to be
16 available later in the afternoon today. He's in
17 Washington, D.C. and will be testifying tomorrow. So if
18 there are any questions for him, we would need to ask
19 that the Commission get those questions to him later this
20 afternoon.

21 We've already been through the stipulation of
22 the exhibits so we won't be laying foundation. We've
23 already talked about the adoption of testimony.

24 So with that, thanks for the opportunity today
25 to present testimony in support of the Settlement

1 Stipulation.

2 MR. SMITH: Thank you.

3 And as I understand it, Mr. Moreno, you're not
4 going to do your opening now.

5 MR. MORENO: We're going to reserve it and do it
6 prior to the commencement of our case.

7 Thank you.

8 MR. SMITH: And the same thing with Ms. Collier
9 and Ms. Cremer.

10 MS. COLLIER: Yes.

11 MR. SMITH: Please proceed with your case.

12 MR. MAGNUSON: One last note. Mr. White
13 reminded me he also will be adopting the testimony of
14 Jen Landis. So I apologize for that.

15 Thank you.

16 MS. KOENIG: Good morning. Black Hills Power
17 calls Kyle White.

18 (The witness is sworn by the court reporter.)

19 DIRECT EXAMINATION

20 BY MS. KOENIG:

21 Q. Please state your name for the record.

22 A. Kyle D. White.

23 Q. Who's your employer?

24 A. I'm employed by Black Hills Service Company, a
25 wholly owned subsidiary of Black Hills Corporation.

1 Q. How long have you been employed by Black Hills
2 Corporation?

3 A. 32 years.

4 Q. What's your professional title?

5 A. I'm Corporate Vice President of Regulatory Affairs.

6 Q. Throughout the course of your employment how many
7 years have you worked in the regulatory arena?

8 A. I've had a consistent regulatory role during my
9 entire career.

10 Q. Have you testified before this Commission before
11 today?

12 A. Yes, I have.

13 Q. Were you involved in the preparation of the rate
14 case that is presently before the Commission?

15 A. Yes, I was.

16 Q. Please briefly summarize your involvement.

17 A. I provided strategy and support to the team that was
18 preparing the Application.

19 Q. Did you file direct testimony in this docket?

20 A. Yes, I did.

21 Q. Did you also file rebuttal testimony?

22 A. Yes.

23 Q. Are there any changes that you would like to make to
24 your rebuttal testimony?

25 A. Yes. On page 14 I would need to correct one of the

1 questions that relates to an answer I provided.

2 And which exhibit?

3 MR. MORATZKA: Excuse me, counsel. Page 14 of
4 direct or rebuttal?

5 THE WITNESS: Rebuttal.

6 MS. KOENIG: It's Exhibit 65.

7 A. On page 14 of my rebuttal testimony I filed on
8 January 15 I say "If Mr." -- or I did not say.

9 The question is "If Mr. Baron does not oppose the
10 class cost of service, then what actions has he
11 recommended that the Commission take on this subject?"

12 Mr. Baron, in fact, did reject the class cost of
13 service. What he, in fact, supported was the
14 apportionment of revenues that was provided for in the
15 Settlement Agreement.

16 There are a series of questions that relate to this.
17 So to the extent that the question addresses the class
18 cost of service provided for in the Settlement, there is
19 not one. There's only an apportionment of revenue.

20 So this series of questions should address not the
21 class cost of service in the Settlement but, in fact, the
22 apportionment of revenues agreed to by the parties.

23 Q. Are you indeed adopting the testimony of the other
24 witnesses that Mr. Magnuson indicated you would adopt
25 just a few moments ago?

1 A. Yes, I am.

2 Q. Are you also prepared to answer questions that
3 relate to testimony that was filed by any of the other
4 Black Hills Power sponsored witnesses?

5 A. I will attempt to do so for the convenience of the
6 hearing.

7 Q. Is there a Settlement Agreement presently pending
8 for approval before the Commission?

9 A. Yes, there is. There is a Settlement Agreement
10 between the Commission Staff and Black Hills Power.

11 Q. Were you involved in the efforts that culminated in
12 the Settlement Agreement that is before the Commission
13 for approval?

14 A. Yes. I functioned as the lead negotiator.

15 Q. Does Black Hills Power fully support the Settlement
16 Agreement?

17 A. Yes, we do.

18 Q. Are there terms in the Settlement Agreement that are
19 beneficial for the Industrial Interveners?

20 A. Yes. We believe so.

21 Q. With respect to the Settlement Agreement, what
22 action are you asking the Commission to take?

23 A. We're asking the Commission to approve the
24 Settlement Agreement and all of its provisions as
25 provided.

1 Q. In your opinion, if the Commission were to approve
2 the terms of the Settlement Agreement, do those terms
3 result in just and reasonable rates?

4 A. Yes, they do.

5 MS. KOENIG: At this time I'll tender Mr. White
6 for questions.

7 MR. SMITH: Thank you.

8 Mr. Moreno, Mr. Moratzka, Mr. Marriott?

9 MR. MORENO: Mr. Moratzka will be handling the
10 examination, counsel.

11 Thank you.

12 MR. SMITH: Please, proceed.

13 CROSS-EXAMINATION

14 BY MR. MORATZKA:

15 Q. Good morning, Mr. White.

16 A. Good morning, Mr. Moratzka.

17 Q. I have a few questions today.

18 I'd like to start, if we could, by pointing you to
19 page 2 of your rebuttal testimony.

20 A. So we're looking at Exhibit 65?

21 Q. Correct.

22 And if I look at lines 19 to 20 on page 2, it's
23 correct, is it not, that your assertion is that the
24 Industrial Interveners are the primary beneficiaries of
25 the Rate Mitigation Plan reflected in the Settlement?

1 A. I believe in comparison to the other classes, they
2 were consistently beneficial. As we did our rate
3 mitigation, the Black Hills Industrial consumers had some
4 significant benefits.

5 Q. And I guess the question is are they the primary
6 beneficiary?

7 A. I think they were equally beneficial to the
8 residential clients.

9 Q. I'm going to ask, Mr. White, if you could -- I don't
10 know if your counsel has the initial filing available,
11 but I'd turn your attention to Schedule O-1. I believe
12 that's exhibit --

13 A. It might be easier to get.

14 MR. MAGNUSON: It's Exhibit 5.

15 A. It's going to be more efficient to just look in
16 here.

17 Okay. Yes. I'm now looking at it.

18 Q. Would you please turn to page 35 of 35 of
19 Schedule O-1.

20 A. I now have it.

21 Q. And, for the record, could you confirm for me that
22 the Schedule O-1 is the Black Hills Power Pro Forma Class
23 Cost of Service Study?

24 A. Yes.

25 Q. Thank you. If I look at line 20 on page 35 of 35,

1 the description is the percent increase required; is that
2 correct?

3 A. Yes.

4 Q. And so if I go -- and look further to the right
5 under the columns Residential, General Service, General
6 Service Large, et cetera, the percentages that I'm
7 looking at are increases that would be required under
8 Black Hills Power's Class Cost of Service Study;
9 correct?

10 A. Yes.

11 Q. So, Mr. White, then for the residential
12 customers, the rate increase that would be required
13 under Black Hills Power's Class Cost of Service Study is
14 19.26 percent; is that correct?

15 A. We're looking at line 20?

16 Q. Correct.

17 A. Statement O, page 35 of 35?

18 Q. Correct.

19 A. This exhibit says 9.51 percent.

20 Q. Schedule O-1.

21 A. O-1. No.

22 All right. I'm not sure. I don't believe O-1 is in
23 the binder, but I can address it from the actual filing.

24 So if I look at Schedule O-1, page 35 of 35, it's
25 19.26 percent.

1 Q. Thank you, Mr. White.

2 Now shifting down in the description to line 29,
3 line 29 is the percent increase proposed by Black Hills
4 Power in its filing; correct?

5 A. Yes. And we have provided mitigation to the
6 residential and general service large classes.

7 Q. Thank you, Mr. White.

8 And so the rate mitigation proposed by the company
9 for the residential class is close to 9 percent. Would
10 you agree?

11 A. It's short of 9 percent. About 8 and a half.

12 Q. Thank you.

13 Now if I look, going back up to line 20 of the
14 percent increase required for the general service large
15 industrial contract classes, according to Black Hills
16 Power the increase required would be 15.44 percent; is
17 that correct?

18 A. Yes.

19 Q. And then looking down to line 29 under the rate
20 mitigation proposed by Black Hills Power, the increase
21 would be 9.71 percent; is that correct?

22 A. That's correct. About a percent less than asked for
23 from the residential class.

24 Q. And the difference, Mr. White, between the
25 15.44 percent and 9.71 percent is a little less than

1 6 percent.

2 A. That's correct.

3 Q. So just to be clear then, the rate mitigation
4 proposed by Black Hills Power in its initial filing for
5 the residential customers was greater than that proposed
6 for general service large?

7 A. It is greater based upon our Application, yes.

8 Q. And if I understand the Settlement correctly,
9 Mr. White, the Settlement makes a pro rata adjustment
10 from the proposed increases to account for the reduced
11 Settlement requirement?

12 A. Yes. The Rate Mitigation Plan is no class receives
13 less than 75 percent of the average increase, and no
14 class receives more than 120 percent of the average base
15 rate increase.

16 And my rebuttal testimony actually addresses
17 allocations beyond these classes. And then my statement
18 that primary beneficiaries would relate to my rebuttal
19 testimony as well.

20 Q. Mr. White, on your rebuttal testimony, Exhibit 65,
21 page 4.

22 A. I'm there.

23 Q. Line 5, it's my understanding that your testimony
24 with the Settlement Agreement will result in just and
25 reasonable rates.

1 A. Yes. I believe so.

2 Q. Later in your testimony you are suggesting, are you
3 not, that some changes to customer rates would be
4 accepted by Black Hills Power?

5 A. Yes. I believe the Commission has discretion, and
6 there's a range of just and reasonable rates that are
7 possible when you allocate the total revenue
8 requirement.

9 Q. And, Mr. White, wouldn't the flip side also be true?
10 In other words, if there's a range of rates that could be
11 considered just and reasonable by the Commission for
12 customers, then there is a range of revenue requirements
13 that could also be considered just and reasonable for the
14 company.

15 A. That's why we're here.

16 Q. Thank you, Mr. White.

17 Looking a little bit further down on lines 13 to 16
18 of page 4, Exhibit 65, I understand that you are agreeing
19 that the approval of -- if the Commission were to approve
20 the Settlement Agreement, that would not set precedent
21 for future rate cases; is that correct?

22 A. That's correct. As provided for in the Settlement
23 Agreement.

24 Q. Correct. Could I have you turn to page 8 of your
25 rebuttal testimony.

1 A. I'm there.

2 Q. And lines 20 to 22 it appears that you're referring
3 to prior rate case settlements as support for including
4 certain incentive compensation expense?

5 A. I'm indicating that there is no precedence and that
6 the parties can agree to include incentive comp and have
7 done so previously.

8 Q. But just to confirm, Mr. White, you're not saying
9 that prior case settlements have precedential value in
10 this proceeding?

11 A. I am not.

12 Q. Could I have you turn to page 12. Between lines
13 14 through 19 I understand your testimony to be that the
14 Wyoming Public Service Commission has approved
15 settlements that include 100 percent of the requested
16 incentive compensation?

17 A. Yes. And we have also had a recent decision from
18 the Colorado Commission where it was litigated, and the
19 Commission accepted 100 percent that the incentive comp
20 paid by our Colorado utility.

21 Q. And is that the decision provided for in the record
22 in this case?

23 A. It is not.

24 Q. In your testimony are you implying that the Wyoming
25 Public Service Commission has precedential value in this

1 proceeding?

2 A. I'm implying that other commissions have reviewed
3 the company's compensation practices and found them to be
4 acceptable and to be prudent.

5 Q. Have you included a copy of the Settlement referred
6 to on page 12 in the record?

7 A. I have not.

8 Q. So we have no evidence in the record to know why the
9 Office of Consumer Advocate agreed to 100 percent of
10 incentive compensation?

11 MS. KOENIG: Objection. Calls for a legal
12 conclusion.

13 MR. SMITH: I'm going to overrule it.

14 A. No. We have not provided the opinion of the
15 Office of Consumer Advocate, which was the party to the
16 Black Hills Power rate case or the Cheyenne Light rate
17 case. Nor have we provided the opinion of the
18 industrial customers that also were signatory to the
19 Cheyenne Light rate case.

20 Q. Thank you, Mr. White.

21 And just to circle back and talk about settlements,
22 the reason that settlements generally don't have
23 precedential value is because there is a give and a take
24 between the parties.

25 Is that fair?

1 A. Each party comes to the negotiation with their own
2 objectives, and generally in this kind of situation each
3 party has to have some compromise. And we were able to
4 reach those compromises with the Staff but not with your
5 clients in this case.

6 Q. And you would agree that parties' full or partial
7 resolution in one case may not be similarly resolved in
8 another case?

9 A. That's been my experience.

10 Q. Thank you, Mr. White.

11 If I could have you turn to page 7 of your rebuttal
12 testimony.

13 Are you there, Mr. White?

14 A. I am.

15 Q. Thank you.

16 On line 1 -- and I understand this is testimony
17 that's responsive to the Industrial Interveners' witness
18 Lane Kollen.

19 On line 1 my understanding of your testimony is that
20 you are stating that Mr. Kollen -- Mr. Kollen's testimony
21 is false.

22 A. I believe his statement that the request is
23 inappropriately open ended is false, and that's what my
24 testimony says.

25 Q. Under the -- and this is in regards to the

1 FutureTrack expense. Under the program as proposed you
2 would agree, wouldn't you, that the Black Hills Power can
3 defer amounts in excess of the amount allowed in this
4 case for recovery in future proceedings?

5 A. For requested recovery in future proceedings, yes.
6 There's no blank check that's provided for under this
7 proposal. It's an indicative amount looking at an
8 eight-year program looking at an expected retirement of
9 nearly 31 percent of our work force, 62 of them in
10 critical positions for reliable service.

11 The program costs have been defined as to what might
12 be available. Training, support.

13 The key element of this program is that because of
14 the nature of the positions, there is a learning period
15 for them. We do not believe the market will provide for
16 adequate people, and so we're being more aggressive in
17 our approach.

18 The Settlement does not provide for the recovery of
19 this program. But we believe that it was specifically
20 identified, specifically trackable, and we had the
21 ability to identify specific people in the program and
22 their related costs for future consideration by this
23 Commission.

24 Q. Thank you, Mr. White. And I appreciate the
25 background.

1 I guess what I'm focused on is the allegation that
2 the testimony's false.

3 A. He made the impression in his testimony that the
4 program was not defined in what positions would be
5 covered, what costs would be covered, and how those costs
6 would be recovered in rates in the future.

7 There's an annual report to the Commission. There's
8 an opportunity for a five-year review. The program has a
9 defined period of time of eight years. I cannot see that
10 the request is inappropriately open ended. It is
11 well-defined, and the Commission has the ability to look
12 at all elements of it and determine what would be
13 recovered in rates.

14 Q. Thank you, Mr. White. But the fact of the matter is
15 that we aren't -- Black Hills Power wasn't proposing to
16 set a defined amount. Black Hills Power is setting an
17 amount and asking for a deferral of costs above that
18 amount; correct?

19 A. Well, and also there would be a refund of any cost
20 below that amount. It was symmetrical because the
21 program costs are not predictable at this point with true
22 definition, but they certainly are identifiable in a way
23 that would recognize that the company's likely to have
24 challenges in hiring positions like this and that we
25 should address the retiring employees through a program

1 that would essentially hire people in advance to give
2 them training and experience prior to those people's
3 retirement.

4 Q. Thank you, Mr. White. But going back to the words
5 "open ended," we are not in this proceeding setting a
6 certain value on which Black Hills Power must manage its
7 expenses around; correct?

8 A. That's correct.

9 Q. And so, Mr. White, it seems to me that what we're
10 getting at here is that you and Mr. Kollen simply
11 disagree on what open ended means.

12 Is that fair?

13 A. I think that the program is well-defined, that the
14 Commission has full authority to decide what's allowed
15 and recoverable in rates in the future, and that his
16 statement that it's open ended and not within the control
17 of the Commission is false.

18 Q. I'd like to continue on, Mr. White, to your next
19 allegation that's covered through lines 6 to 11, same
20 page, page 7, in which you are again claiming that
21 Mr. Kollen's testimony is false.

22 A. Yes.

23 Q. Looking at your testimony here, it appears that you
24 are claiming that Mr. Kollen's testimony that the company
25 hasn't proposed a measurement baseline is false.

1 Could you point me to the place in Ms. Landis's
2 testimony that establishes the baseline?

3 MS. KOENIG: It's Exhibit 19.

4 A. So the question on line 18, "How does Black Hills
5 Power plan to track costs associated with the FutureTrack
6 Work Force Development Program?"

7 Identifying the positions and the nature of the cost
8 we believe sets the baseline. There are 62 retirement
9 positions that are anticipated to be part of this
10 program. That is the baseline. And then there would be
11 program costs associated with each of those positions.

12 In her Exhibit JC-1 she identifies specifically
13 positions that would be covered by this program: Line
14 mechanics, electricians, construction representatives,
15 energy service technicians, computer technicians, et
16 cetera.

17 We also have provided a forecast of the program. In
18 order to be eligible for the FutureTrack program a
19 supervisor will need to identify a position on this list
20 and identify them as be essentially a hire ahead for the
21 FutureTrack program.

22 As we go to the second page of her exhibit we talk
23 about participant criteria and selection. We talk about
24 program length. We talk about program components. And
25 then we also talk about the tracking and reporting. And

1 there will be an annual report. So we have a very solid
2 baseline of what the positions are and what the costs
3 are.

4 What we do not know is when those retirements will
5 happen. We know with some certainty that in our
6 corporation employees retire at approximately age 62.1
7 because that's when they're fully eligible for their
8 benefits under our defined benefit pension plan.

9 So as he says there is no baseline, I would agree
10 that there is not a dollar baseline. There is an
11 estimate of \$761,000, but there are definitely program
12 base lines that the company has identified how it will
13 identify these positions and track the related costs and
14 report them to the Commission.

15 Q. Thank you, Mr. White.

16 And if you could help me out a little bit on the
17 estimate that you've provided, is there anything in the
18 record that defines how the payroll and expenses,
19 expenses associated with this program, are going to be
20 differentiated from any other payroll and related
21 expenses?

22 A. There is. It's in Ms. Landis's testimony on
23 page 13. "Each FutureTrack employee in training will be
24 tracked using a custom field in our human resources
25 management system. FutureTrack has accounts created to

1 allow our financial system to capture and report all
2 expenses associated with the labor, benefits, relocation,
3 scholarship, and training of FutureTrack employees."

4 Q. Thank you, Mr. White.

5 And, as I understand Mr. Kollen's testimony -- and
6 perhaps you'd like a copy.

7 MR. MORATZKA: Counsel, do you have a copy of
8 Mr. Kollen's testimony?

9 MR. MAGNUSON: We can get one for him.

10 MR. MORATZKA: Please do.

11 A. Okay. I have the confidential document of
12 Mr. Kollen.

13 Q. Could I have you turn to page 29.

14 MR. SMITH: We'll have to make sure to be
15 cognizant of where the confidential chunks are in there.

16 THE WITNESS: Yeah. I don't believe there was
17 anything in FutureTrack that was addressed
18 confidentially.

19 Q. And, as I understand the testimony here on
20 Mr. Kollen's direct, on lines 8 through 12 Mr. Kollen is
21 acknowledging the fact that there is tracking. But the
22 fundamental problem is that the costs that are tracked in
23 this manner aren't subject to a defined measurement
24 baseline.

25 A. That's not what his testimony says.

1 "Second, the company has not proposed a measurement
2 baseline that defines how the payroll and related
3 expenses associated with the program can and will be
4 differentiated from any other payroll and related
5 expenses." Page 13 of Ms. Landis's testimony
6 specifically identifies how the company will measure
7 those costs to the baseline.

8 Q. Please continue reading, Mr. White, lines 8 through
9 12?

10 A. "The company's proposal to track the cost in a
11 regulatory asset," which we're tracking in much more than
12 a regulatory asset, "does not address or cure this
13 fundamental problem because the costs that will be
14 identified and tracked in this manner still will not be
15 subject to any defined or objective measurement
16 baseline."

17 I find that also to be false based upon her exhibit
18 and her testimony.

19 Q. So, Mr. White, as I understand your testimony, the
20 estimate that you've provided for this case, that
21 estimate is the baseline.

22 A. I believe the program and the positions are the
23 baseline and the related costs of the program. And what
24 we have done is looked at the eight-year period of time,
25 normalized the cost recovery, and in the future because

1 of the regulatory asset we will provide for either
2 refunds, if the program does not cost as much and there
3 actually are adequate employees to be hired for these
4 retirees, or if it costs more, then we'll have the
5 opportunity to come before the Commission and recover
6 those costs.

7 But it is essentially an indicative cost if the
8 Commission were to believe that it would be good policy
9 for the company to initiate more aggressive measures for
10 hiring people in the future.

11 The Settlement does not provide for this program.

12 Q. Mr. White, you would not disagree, would you, that
13 there could be alternative, different views on how to
14 define measurement baseline?

15 A. I believe the company provided for measurements and
16 standards for the Commission to judge the success and
17 cost of the program, and I don't believe that he
18 characterized our program or our testimony properly.

19 Q. Mr. White, let's move on.

20 Incentive compensation. Please turn to page 10 of
21 your Rebuttal.

22 Are you there, Mr. White?

23 A. I am.

24 Q. Is it your testimony that a utility's profitability
25 is primarily influenced by the level of its expenses?

1 A. Well, my testimony addresses the fact that
2 profitability is driven by revenues, expenses, and sales
3 growth. And expenses are a key contributor in the
4 company's profitability, given the difficulty of filing
5 rate cases and the infrequency that they occur.

6 Q. You're not disagreeing, are you, Mr. White, that
7 growing rate base has -- can have a dramatic effect on
8 the utility's profitability?

9 A. Yes. I've been a party of several rate cases where
10 new generation's been added, and when the investors make
11 additional investment they earn an additional return
12 which increases the earnings of the corporation.

13 Q. And would you agree, Mr. White, that Black Hills
14 Power's currently in an expansion mode?

15 A. Black Hills Power is, I believe, at the completion
16 of an expansion mode. Because we've had significant
17 capital infrastructure investments to make to meet our
18 obligation to serve.

19 We provide in the Settlement a two-year rate freeze.
20 That's not possible if we're continuing with significant
21 expansion.

22 Q. Mr. White, I'd like to draw your attention to
23 page 13 of your testimony.

24 Are you there?

25 A. I am.

1 Q. On lines 7 and 8 I understand your testimony to be
2 that you believe Mr. Kollen is recommending disallowance
3 of all of Black Hills Power's incentive compensation.

4 A. I struggled with what he was asking to have happen.
5 And so as I look at page 35 of his answer testimony, he
6 says "The company seeks recovery of 1.554 million in
7 incentive compensation, expense tied to operating
8 performance and financial performance."

9 That was the only number that I could identify. He
10 generally has said incentive compensation is not
11 appropriate for recovery in rates.

12 Q. Thank you, Mr. White.

13 I'd like to walk through what I understand the
14 figures to be.

15 MR. MORATZKA: And with the indulgence of the
16 Commission, I have a few discovery responses that
17 Black Hills Power provided, if I could approach the
18 witness and show those to Mr. White and potentially
19 offer them into the record.

20 MR. SMITH: Ms. Koenig, do you have an opinion
21 on that?

22 MS. KOENIG: No objection.

23 MS. COLLIER: No objection.

24 MR. SMITH: Yes, you may.

25 MR. MORATZKA: Thank you.

1 MR. SMITH: Are these docs. currently exhibits
2 or not at this point?

3 MR. MORATZKA: They are not.

4 MR. SMITH: Okay. Thank you.

5 (Exhibit BHII 5 is marked for identification)

6 MR. MORATZKA: Mr. Smith, the next chunk of my
7 cross-examination will refer to confidential exhibits.

8 MR. SMITH: Okay. If that's the case, we're
9 going to have to go into confidential session then.

10 I guess enlighten me as to who in the room is
11 bound by a confidentiality agreement at this point in
12 time.

13 MS. KOENIG: The Black Hills Power attorneys and
14 representatives in the room are bound by the agreement,
15 as are the Industrial Interveners' attorneys.
16 Ms. Collier for DRA as well.

17 MR. SMITH: Okay.

18 And so I guess we're down to the folks in the
19 audience who are not among the groups that are bound.

20 Any folks that are in the room that are not
21 subject to a confidentiality covenant, I think we're
22 going to have to have you leave the room during the
23 confidential part.

24 Are there people on the phone out there?

25 MR. PETERSON: Yes. Dave Peterson's here.

1 MR. SMITH: Okay. Well, you're okay.

2 Anybody else?

3 MS. CREMER: I don't know. I don't think we did
4 a phone rollcall at all. I don't know who else would be
5 on the phone at this point, though.

6 MR. SMITH: Okay. We're going to have Katlyn do
7 a check so we know.

8 Should we take a short break while we're doing
9 that?

10 Apparently we checked the phone lines, and we're
11 okay. We have only people that are us.

12 Are you ready to proceed, Mr. Moratzka?

13 MR. MORATZKA: I am. Thank you.

14 MR. MORENO: Just one comment, counsel.

15 The record should indicate that the members of
16 the public and those who are not subject to the
17 confidentiality provisions are no longer in the room.

18 MR. SMITH: Okay. The record will so reflect.

19 Thank you.

20 (Beginning of confidential portion of the transcript.)

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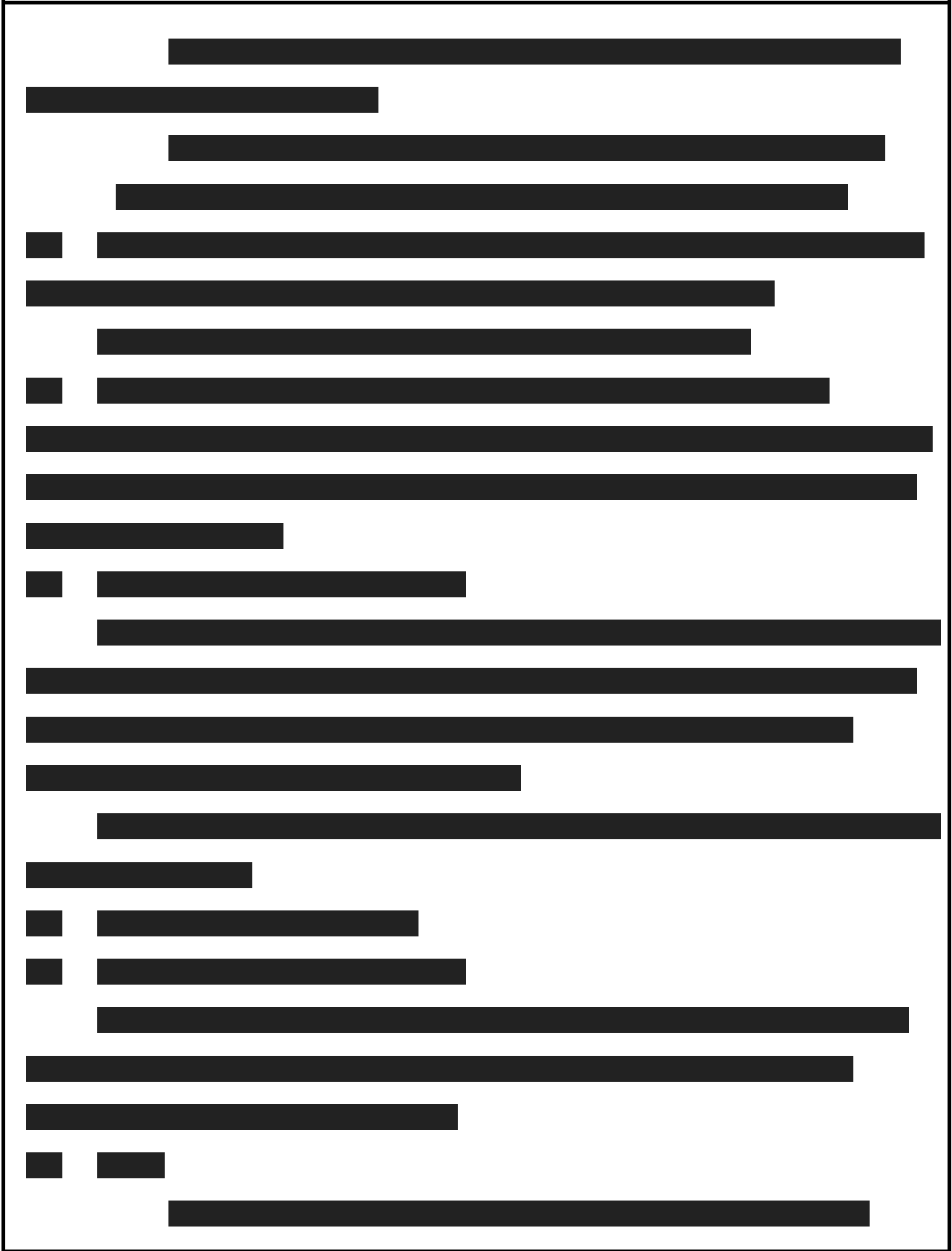
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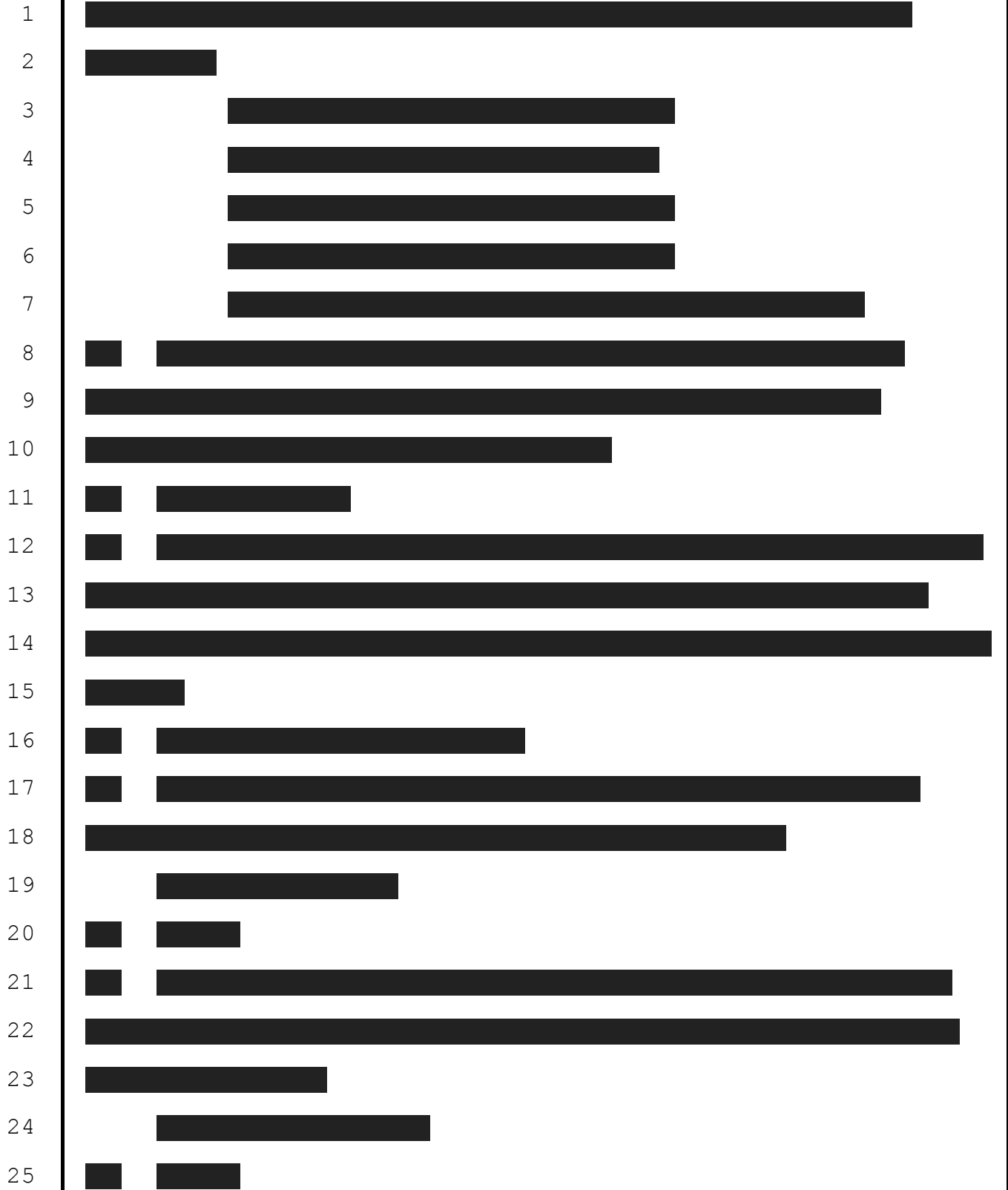
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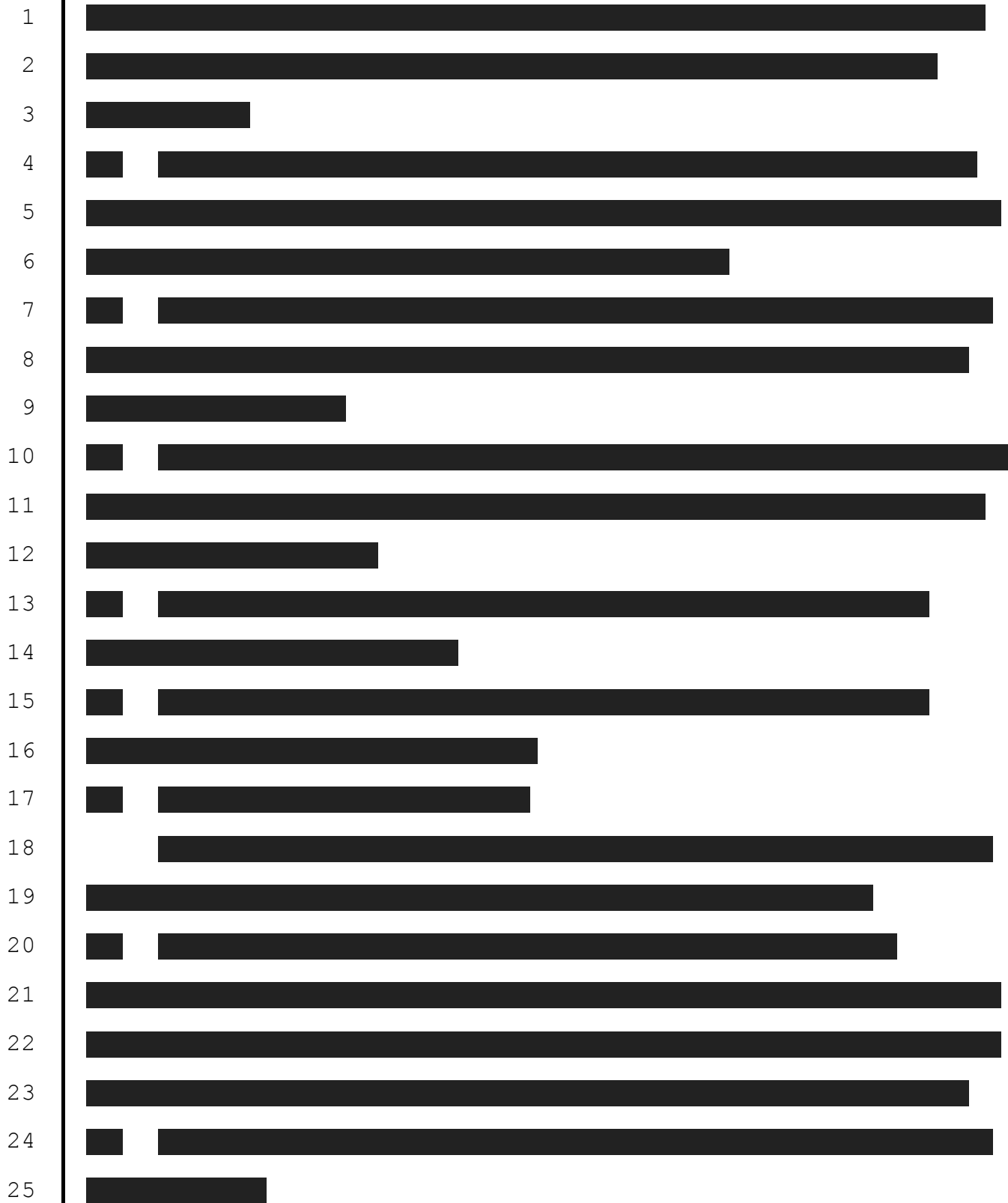




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1 (End of confidential portion of transcript.)

2 MR. SMITH: Okay. Please, proceed.

3 MS. COLLIER: Thank you.

4 CROSS-EXAMINATION

5 BY MS. COLLIER:

6 Q. Mr. White, I believe that you began -- some of your
7 testimony there was some explanation about your position
8 with Black Hills Power and your past experience.

9 Have you been with Black Hills Power in a regulatory
10 capacity since 2008?

11 A. Yes.

12 Q. And as part of that regulatory capacity with the
13 corporation have you regularly participated as you
14 testified you did in this rate request in providing
15 strategy and support for the Application?

16 A. Yes.

17 Q. Do you know how many times there has been a rate
18 increase request by Black Hills Power between 2008 and
19 2013?

20 A. There have been three requests to raise base rates.

21 Q. And have those been successful?

22 A. Largely.

23 Q. Do you know for residential customers what that
24 increase has been since 2008?

25 A. I have not calculated it, no.

1 Q. Do you believe that it is over 15 percent?

2 A. I suspect that it is over 15 percent.

3 MS. COLLIER: That is all the questions I have.

4 MR. SMITH: Commission Staff.

5 MS. CREMER: Staff does not have any questions.

6 Thank you.

7 MR. SMITH: Okay. Ms. Koenig, do you have
8 redirect?

9 MS. KOENIG: I do. Thank you.

10 REDIRECT EXAMINATION

11 BY MS. KOENIG:

12 Q. Mr. White, would you please pull out Black Hills
13 Industrial Interveners Exhibit 7.

14 Do you have it in front of you?

15 A. I do.

16 Q. Would you please turn to page 83 on the definition
17 of restricted stock and read that definition, please.

18 A. Yes. "Item 2.40. Restricted stock means an award
19 granted to a participant pursuant to Article 8."

20 Q. Have you had an opportunity to review Article 8
21 since the questioning regarding this exhibit earlier this
22 morning?

23 A. Yes. The rate was helpful in me getting familiar
24 with this document.

25 MR. SMITH: I note we're back into a

1 confidential document here. Thank you, Katlyn.

2 I mean, this thing hits me as borderline, but I
3 suppose you don't want industry or -- disclosure to
4 industry folks.

5 Should we go back into confidential?

6 MS. KOENIG: Yes, please.

7 MR. SMITH: Okay.

8 (Beginning of confidential portion of transcript.)

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1 (End of confidential portion of transcript.)

2 MR. SMITH: I think we're good to go,
3 Mr. Chairman.

4 CHAIRMAN NELSON: Thank you.

5 Are you the appropriate witness to talk about
6 Atlas storm damage?

7 THE WITNESS: I can talk about it generally, but
8 Mr. Thurber is also qualified.

9 CHAIRMAN NELSON: I think that will get me where
10 we need to go.

11 My recollection at the time, and it may or may
12 not be accurate, is there were some media discussions,
13 some statements made that Black Hills Power incurred 9 to
14 10 million dollars worth of storm damage.

15 Does that figure ring a bell at all of what
16 might have been thrown out at that time?

17 THE WITNESS: It's possible. There's always
18 estimates as to the work that's being done.

19 Mr. Thurber, I think, could probably specify
20 what's in the rate case.

21 CHAIRMAN NELSON: Well, my question was what
22 might have been thrown around at that particular time.
23 In the Settlement, as I understand, we're down to about
24 2.5 million.

25 Can you help me understand how we go from a

1 figure of 9 or 10 million at the time and now we're down
2 to 2.5?

3 That's a significant difference. Help me
4 understand that.

5 THE WITNESS: I think Mr. Thurber would be
6 better prepared to answer that for you, Chairman.

7 CHAIRMAN NELSON: I will save then those
8 questions for him.

9 We've spent quite a bit of time this morning
10 talking about incentive compensation. I want to talk
11 about salary just a little bit more generally.

12 A lot of the public comments that have come in
13 to us on this particular case from folks that are your
14 customers, there have been a lot of comments alleging
15 that Black Hills Power employees are paid too much.

16 And I can understand that, that some of that
17 may simply be jealousy, folks that maybe wish they had
18 Black Hills Power as their employer, as certainly a good
19 company.

20 The flip side of that might be it may be that,
21 you know, within the community these folks say, you know,
22 hey, maybe those salaries are too high.

23 And then this morning we spent a lot of time
24 talking about incentive compensation that goes on top of
25 that.

1 And so my first question is have you in any of
2 your discovery requests filed with us a list of your
3 salaries, perhaps by classification, job type, anything
4 in detail that would help us analyze really where you're
5 at with salaries?

6 THE WITNESS: I'm not recalling any, but
7 Mr. Thurber may be able to answer that question.

8 CHAIRMAN NELSON: Okay.

9 THE WITNESS: We have provided testimony that
10 talks about the documents that we use, the studies that
11 we use, the compensation philosophy of the corporation,
12 the fact that we target our compensation and benefits at
13 about the median for the industry. And so we do a
14 substantial amount of benchmarking. And the challenge is
15 many of those documents are confidential and proprietary.

16 CHAIRMAN NELSON: So how do you assure the
17 Commission then that your salaries are commensurate with
18 the industry? Is there anything in the record that would
19 help us be assured of that?

20 THE WITNESS: Well, there's our testimony. We
21 also make comparisons to other industries. But as far as
22 benchmarking in the record, nothing at this point.

23 What you'll see is a company that targets its
24 annual merit increases to the industry. We view our
25 compensation annually at the board. We maintain budgets.

1 We have to attract, hire, and motivate employees, and
2 we're successful largely in doing that but not on all
3 instances. We have difficult service territories to
4 attract people to, as I talked about in my rebuttal
5 testimony as well.

6 So our philosophy and our approach is to meet
7 our obligation to serve at basically a median
8 compensation level, which has worked successfully for us
9 in our service territory.

10 CHAIRMAN NELSON: There are several instances
11 where apparently in the Settlement there's been some
12 normalization of Worker's Comp cost and pension
13 normalization.

14 Are those questions for Mr. Thurber?

15 THE WITNESS: I could talk to the pension
16 normalization.

17 CHAIRMAN NELSON: Well, let me ask perhaps maybe
18 a more general question.

19 I mean, we take the test year pretty seriously.
20 I mean, that's what this is all based on. And yet as we
21 go through, we find these particular areas that seem to
22 be maybe cherry picked out of the expenses, a particular
23 account, and for those we decide, okay, those we're going
24 to normalize.

25 How do you decide which of those get picked

1 out as opposed to the one with the strict test year
2 number?

3 And I'll tell you I'm concerned about that
4 because I don't have a good understanding of how do we
5 decide what we cherry pick out and what we go with a
6 strict number.

7 THE WITNESS: Well, I wouldn't characterize it
8 as cherry picking.

9 CHAIRMAN NELSON: Well, explain to me why I'm
10 wrong on that characterization.

11 THE WITNESS: Yes. Businesses have certain
12 costs that are variable, depending upon the circumstances
13 that you're operating within. And so normalization
14 addresses those more variable areas.

15 And what you would do is you would look at the
16 history and look at several years and say, is there
17 volatility within this account? Is there volatility
18 within this rate base item? For example, materials and
19 supplies.

20 And then you would look to that and say we
21 should normalize this for common practice because there's
22 too much volatility within that particular expense,
23 within that particular part of the rate base.

24 For the purposes of the pension expense, it's
25 one that we see pretty high volatility. High volatility

1 driven in this case recently by two things:

2 First, we have a new actuary study. Our
3 employees are actually living longer. That increases the
4 expenses associated with the plan.

5 The second is there is an investment assumption
6 associated with the plan funds and what they're likely to
7 earn over the plan duration. Those change with changes
8 in the stock market, changes in interest rate, all
9 affected by inflation.

10 And so that's why you see quite a bit of
11 variability in the pension expense and why we saw more
12 than a million dollar increase from one year to the
13 next.

14 And Mr. Thurber can talk about the numbers more
15 specifically than I. But we agreed with Staff that
16 because of that variability, it would be appropriate to
17 normalize it on a five-year basis today, and we accepted
18 that for a five-year period all future rate cases filed
19 by the company would also recognize the five-year
20 normalization, thereby eliminating this idea of cherry
21 picking that you get it one time but you don't commit to
22 it next time.

23 We believe that's an account that has a high
24 enough volatility in it that's appropriate to
25 normalize.

1 CHAIRMAN NELSON: So how does that suggestion
2 that we're going to pick a particular account to
3 normalize come about? Is there a particular deviation
4 range that you look at or that our Staff looks at? Who
5 suggests that? Are these things that --

6 I'm assuming this happened in your settlement
7 negotiations. Is this something we can talk about in
8 public, or do we need to go into confidential?

9 Help me understand how that comes about, how
10 that comes into the settlement. And is it something you
11 propose or Staff proposes?

12 THE WITNESS: It happens both ways. And it's
13 based upon comfort level with whether or not the expense
14 represents a fair cost for inclusion in the revenue
15 requirement.

16 CHAIRMAN NELSON: So is there a particular
17 deviation level that would be your flag to let's look at
18 this, or how does that come about?

19 THE WITNESS: It's a materiality standard. So
20 it would largely depend on probably being a few hundred
21 thousand dollars difference of variability. You would
22 also look at trend lines.

23 Some of it is whether you can explain that the
24 volatility actually is recurring volatility. There's
25 some systematic situation that's happening, rather than

1 just, well, we contained expenses one year and the next
2 year they're up.

3 CHAIRMAN NELSON: This is a question I could
4 probably ask for any of the witnesses, and it's in regard
5 to a statement in the Settlement Stipulation, but I'm
6 going to ask you since you're here.

7 On page 15 under the category of Energy Cost
8 Adjustment it talks about -- it says the company proposed
9 the following change to the fuel and purchase power,
10 which is a component of the ECA.

11 Number 3, to eliminate the power marketing
12 credit minimum. What is that?

13 THE WITNESS: Okay. So Black Hills Power has a
14 generation dispatch and power marketing group. They're
15 responsible for dispatching our power generation, buying
16 purchase power to meet our load, and then also marketing
17 any excess power that might be available because the
18 company has generation. Because the loads vary
19 seasonally, and we have capacity built to meet our peak
20 demands.

21 What we have provided for in the past is
22 essentially a guarantee that we would reduce the fuel and
23 purchase power expenses by essentially a profitability
24 level. It was 2 million dollars.

25 We have seen changes in our resource portfolio

1 with the closing of coal-fired generation, with the loss
2 of reserve capacity integration agreement, and the
3 related 28 megawatts of capacity that went with that.

4 We're seeing power markets that are softer than
5 they used to be, particularly with lower natural gas
6 prices.

7 And so we felt uncomfortable with the returns
8 that are agreed to with Staff of guaranteeing that level
9 of commitment, and so we proposed to remove it. The
10 Settlement actually drops that number to a million dollar
11 guarantee, essentially.

12 CHAIRMAN NELSON: Thank you.

13 And I followed the amounts, but I wasn't
14 following exactly what it was for so I appreciate that
15 explanation.

16 I think the last question that I've got for you,
17 and this relates to your rebuttal testimony, page 23, and
18 the simple question is what's the company's view
19 regarding possible Commission modification to its
20 settlement of all rate case issues with the Commission
21 Staff?

22 And I think it's been acknowledged that there's
23 at least one cost factor in there that is acknowledged to
24 be too high, adding too much to the revenue. But I'm
25 understanding from this that you would not propose to

1 remove that; is that correct?

2 THE WITNESS: No. We believe the Settlement
3 revenue requirement will result in just and reasonable
4 rates, and it's a very strong number as to what the
5 company's costs to meet its obligation to serve are. And
6 I believe Staff's also supportive of the Settlement being
7 approved as it's been filed with the Commission.

8 CHAIRMAN NELSON: I think that's all the
9 questions I have.

10 Thank you, Mr. White.

11 THE WITNESS: You're welcome.

12 MR. SMITH: Other Commissioner questions.

13 COMMISSIONER FIEGEN: I'll have a question of
14 Mr. Thurber during his pension presentation.

15 And then you were incentive compensation,
16 Mr. White.

17 Are you also the salary package, or is that
18 going to be another witness?

19 THE WITNESS: I think it's me.

20 COMMISSIONER FIEGEN: Okay. So my question is
21 Commissioner Nelson already talked about how you view
22 salaries and that you hire, I believe, a national firm or
23 look at national studies.

24 THE WITNESS: Yes.

25 COMMISSIONER FIEGEN: In national studies

1 usually there is a cost of living adjustment for where
2 you live so South Dakota has a cost of living adjustment
3 for the rest of the country.

4 Do you know if you looked at that, number one,
5 and what percentage is that?

6 THE WITNESS: I don't know what the percentage
7 is, but we do adjust for local markets and local
8 conditions.

9 COMMISSIONER FIEGEN: So you do or your national
10 organization -- or the study that you --

11 THE WITNESS: It's probably both.

12 COMMISSIONER FIEGEN: Because usually
13 South Dakota's right around 88 percent. I just saw that
14 previously in my previous life, but I also saw it in the
15 paper the other day that it looked like it was about
16 88 percent.

17 THE WITNESS: And then it also is conditioned
18 upon where you're attracting the employees. Are you
19 attracting them more from a national market or a local
20 market. And we factor that into our compensation
21 practices as well.

22 But, for example, to attract executives to the
23 company you're not likely to find those down the street
24 in Rapid City. You're going to have to attract them from
25 a national market. So you look to where the employees

1 are likely to come from and then benchmark your
2 compensation practices to that.

3 COMMISSIONER FIEGEN: Okay. Thank you.

4 MR. SMITH: Any additional Commissioner
5 questions?

6 I'm not seeing any.

7 I think with that then, you know, how are you
8 guys fixed for lunch here? We should be just about done
9 with Kyle, I think. Should we forge ahead and get him
10 over with?

11 Okay. Well, I'm going to let you follow on,
12 Ms. Koenig, and -- maybe I'll do it the opposite. I'll
13 let you go, Andrew. Because -- and then I'll give
14 Ms. Koenig the final bite at the apple as her final
15 rebuttal. But I like to give you guys a chance to
16 respond to Commissioner questions.

17 MR. MORATZKA: Thank you very much.

18 RE-CROSS-EXAMINATION

19 BY MR. MORATZKA:

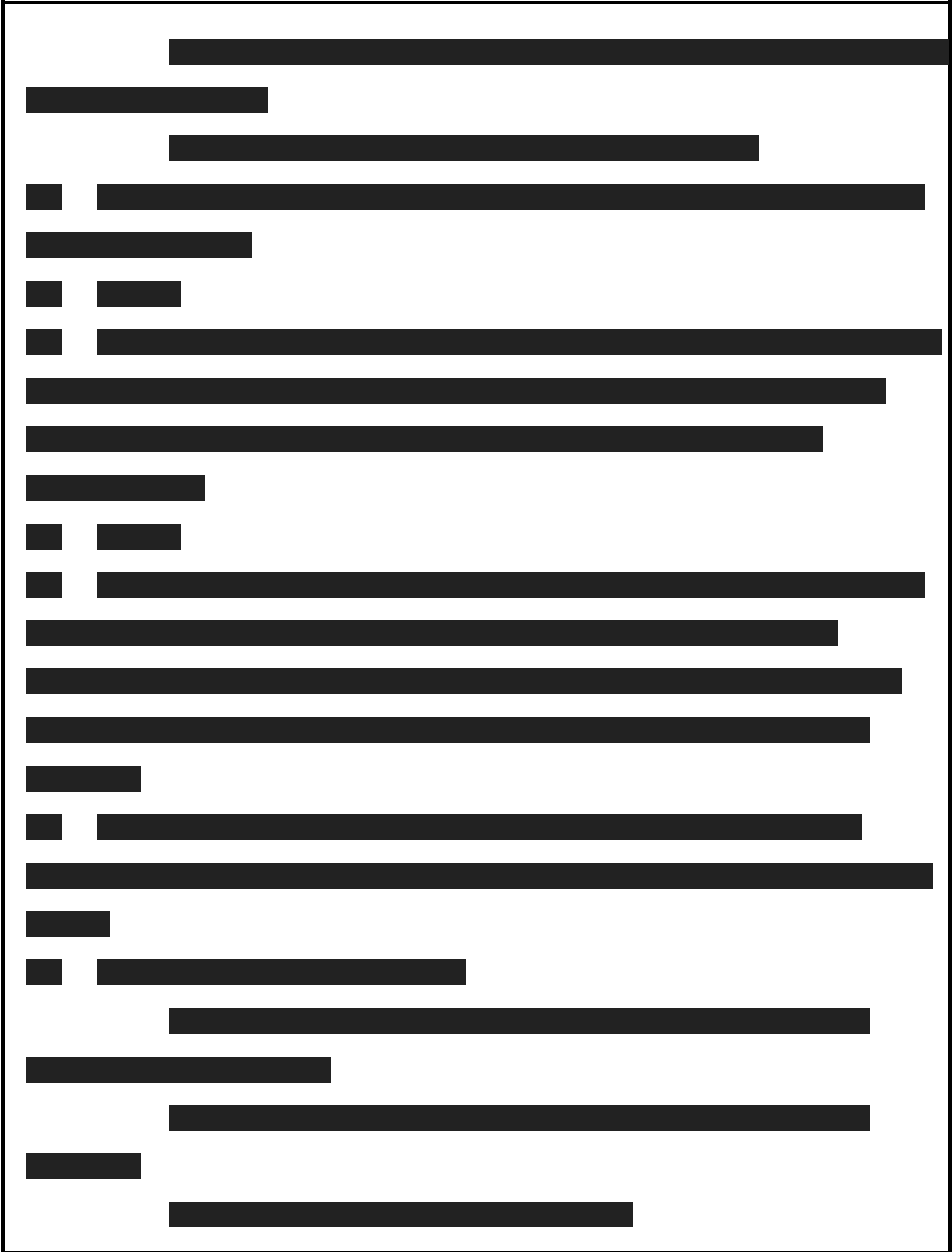
20 Q. Mr. White, just a very few brief follow-up
21 questions. They are going to touch briefly on
22 Confidential Exhibit Black Hills Industrial Interveners
23 No. 7.

24 MR. SMITH: Okay. We're going to have to go
25 into confidential again.

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1 (End of confidential portion of transcript.)

2 MR. SMITH: Okay. We're off confidential now.

3 Q. (BY MR. MORATZKA) Thank you.

4 And, Mr. White, it appears that you may have cleared
5 up a question for me, but I may have another on the
6 average rate issue so hopefully we can get to the bottom
7 of this.

8 If I could have you turn to Schedule O-1, page 35 of
9 35.

10 A. Okay. I have it.

11 Q. Thank you, Mr. White.

12 And if I look at the proposed sales revenues, which
13 is -- as I read it, is line 27, are you there?

14 A. Yes.

15 Q. And if I look over at Column H, which is the General
16 Large Industrial Contract, it appears as though the
17 proposed sales revenues are about 33.9 million dollars.

18 Is that fair?

19 A. Yes.

20 Q. And so if I took that figure in Column H and divided
21 it by the total proposed sales revenue in Column C,
22 would you agree with me that the average cost is right
23 around 6.4 cents per kWh?

24 A. That's the average cost for the base rates, I
25 believe.

1 Q. Right. Okay. And that's, I guess, what I'm getting
2 at, Mr. White, is that just so I'm clear, the proposed
3 sales revenues here in line 27 under total South Dakota,
4 that's exclusive of fuel and purchased energy?

5 A. That's correct.

6 Q. Thank you for the clarification, Mr. White.

7 Final question. There was some -- a bit of
8 questioning from the Commissioners on the energy cost
9 adjustment. I don't believe that's confidential.

10 A. No.

11 Q. Okay. There was a reference to the Settlement
12 Agreement from the last -- or at least from EL12-062.

13 Is that Settlement in the record of this case?

14 A. I'm not aware that it is.

15 Q. Would there be any objection to reference to it
16 since it's been filed with the Commission, if we want to
17 in briefing?

18 MS. CREMER: Just to clarify, I think 062 was
19 the phase-in, wasn't it? And 061 was the rate case.

20 Is that the one you want?

21 MR. MORATZKA: Well, it's my recollection or at
22 least as referred to here in the document, the credit, I
23 think, was from the phase-in.

24 MS. CREMER: Okay. I would think they could
25 take judicial notice if it's not in the record. I mean,

1 I'm not sure where you're going.

2 MR. MORATZKA: I just wanted to preserve my
3 right to be able to cite to it in briefing if we choose
4 to.

5 MS. CREMER: Okay.

6 MR. SMITH: Any objection?

7 MS. KOENIG: No objection of the Commission
8 taking judicial notice.

9 MS. COLLIER: No objection.

10 MR. SMITH: Okay. We'll take judicial notice of
11 that as an official document.

12 MR. MORATZKA: Thank you. That's all my -- I
13 have no further questions.

14 MR. SMITH: Okay.

15 Ms. Collier, do you have any follow-on
16 questions?

17 MS. COLLIER: No, I do not.

18 MR. SMITH: Staff?

19 MS. CREMER: No. Staff does not have any.
20 Thank you.

21 MR. SMITH: Okay, Ms. Koenig. I think we're to
22 the last segment here.

23 MS. KOENIG: I have no further questions for
24 Mr. White.

25 MR. SMITH: Okay. You may step down, Mr. White.

1 Thank you.

2 (The witness is excused.)

3 MR. SMITH: We are at 11:53. Should we take a
4 break before the next witness is called, everybody? Are
5 you ready?

6 Okay. I'm seeing the Chairman say yes so I
7 think we do. We'll be in recess until what should we
8 say, about -- should we reconvene, say 1:10, 1:15?

9 How about 1:15.

10 (A lunch recess is taken)

11 MR. SMITH: I'll call the hearing back to order
12 in Docket EL14-026, Black Hills rate increase request.

13 We were in Black Hills's direct testimony here,
14 and I will look to Mr. Magnuson and Ms. Koenig to take
15 the next step.

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

17 With the Commission's permission, there are two
18 brief procedural matters that I would like to cover
19 before we go on to our next witness, if that's
20 acceptable.

21 MR. SMITH: Sure. Unless -- you know, we'll
22 see. Why don't you explain them, and we'll see if
23 anybody objects.

24 MR. MAGNUSON: Okay.

25 The first item has to do with Exhibit 64. And

1 you will note in Exhibit 64 it was a letter to the
2 Commission dated September 24, 2014, signed by
3 Jon Thurber. And basically what we did was we updated
4 some tariff sheets with regard to the proposed
5 applicability provisions in the residential demand
6 service tariff.

7 And as part of that letter we indicated that
8 the company will move to strike the associated testimony
9 of Kyle D. White beginning on page 10, line 15 through
10 page 12, line 7 from the record. And we had failed to
11 move to do that.

12 And so we would make that motion now. And that
13 is with regard to prefiled direct testimony to strike
14 the associated testimony of Kyle D. White beginning on
15 page 10, line 15 through page 12, line 7. And for all
16 practical purposes, it's no longer applicable to this
17 hearing.

18 MR. SMITH: Mr. Moratzka, any objection? Do you
19 want to find it first or --

20 MR. MORATZKA: That would be helpful.

21 I'm sorry, counsel. What exhibit were you
22 referring to?

23 MR. MAGNUSON: 64.

24 MR. SMITH: Is that Kyle's direct in the
25 Application?

1 MR. MAGNUSON: That's correct.

2 MR. SMITH: The original direct.

3 MR. MAGNUSON: That is correct.

4 MR. MORATZKA: Mr. Magnuson, I have Exhibit 64.

5 I guess what I'm -- all right. It's set out in the
6 letter.

7 MR. MAGNUSON: Yes, it is.

8 MR. SMITH: It's the net metering stuff.

9 MR. MORATZKA: No objection.

10 MR. SMITH: Ms. Collier.

11 MS. COLLIER: I understand that that portion was
12 voluntarily -- that issue was voluntarily taken off the
13 table as far as an additional cost to those who want to
14 use solar panels. But net metering was not addressed.

15 I'm not clear why they're requesting to have
16 this other than is it just because it's not an issue at
17 this point in time?

18 MR. SMITH: It's because they've withdrawn it,
19 is my understanding. Right? It's been withdrawn from
20 the filing.

21 So, well, the issue of metering, you know, if
22 you want to have one of the witnesses here take it up
23 with somebody, subject to whatever objections, I think
24 that's fine.

25 But I think here it's just to make the exhibits

1 reflect what really exists at this point in terms of
2 request for approval by the Commission, that they're no
3 longer requesting that be a part of the filing.

4 MS. COLLIER: May I ask another question just
5 for clarification of the terminology?

6 We're not really talking about net metering
7 per se. We're talking about the additional amount that
8 would have been charged to those -- to those who were
9 putting solar energy back into that.

10 MR. MAGNUSON: Right.

11 MS. COLLIER: It's not really --

12 MR. SMITH: No. It's behind the meter
13 generation, yes. I'm sorry.

14 MS. COLLIER: I have no objection.

15 MR. SMITH: Okay. I had my glasses down, and
16 when I looked over there I couldn't read what it said.
17 My apologies.

18 Staff.

19 MS. CREMER: No objection.

20 MR. SMITH: Okay. Your Motion is granted.

21 MR. MAGNUSON: Thank you. And with the
22 Commission's indulgence, I would like to bring up one
23 more procedural matter.

24 MR. SMITH: Any objection, Commissioner?

25 Yes, sir.

1 MR. MAGNUSON: Well, it certainly pains me so
2 say this, but as might have been noted during Kyle
3 White's testimony, apparently some of the schedules that
4 were supposed to be in exhibit binder were not there.

5 And so what we will do with the Commission's
6 permission is that we will make sure that that exhibit
7 binder exactly matches the prefiled documents, and we'll
8 do that before the end of the hearing.

9 In the meantime we have one of our binders up
10 there that does have all of the schedules and statements
11 so that the witness can refer to that. And we'll make
12 sure to correct our court reporter's exhibit binder prior
13 to the end of the hearing, if that's acceptable.

14 MR. SMITH: You're talking the actual exhibit.

15 MR. MAGNUSON: Yes.

16 MR. SMITH: Because mine has it in there.

17 MR. MAGNUSON: Yes. It's not in the exhibit
18 binder that will be the official record for the court
19 reporter.

20 MR. SMITH: Okay.

21 Any objection, Mr. Moratzka?

22 MR. MORATZKA: No.

23 MR. SMITH: I think we want those in there.

24 MR. MAGNUSON: Yes.

25 MR. SMITH: Ms. Collier.

1 MS. COLLIER: No.

2 MS. CREMER: No objection.

3 MR. SMITH: Okay. That Motion is granted as
4 well.

5 And who is next? Is it Ms. Koenig or
6 Mr. Magnuson?

7 MS. KOENIG: It's me. And Black Hills Power
8 would like to call Chris Kilpatrick.

9 (The witness is sworn by the court reporter.)

10 DIRECT EXAMINATION

11 BY MS. KOENIG:

12 Q. Good afternoon. Please state your name for the
13 record.

14 A. My name is Chris Kilpatrick.

15 Q. Who is your employer?

16 A. I'm employed by Black Hills Utility Holdings, Inc.

17 Q. How long have you been employed by the company?

18 A. I've been employed now for 15 years.

19 Q. What is your professional title?

20 A. I am the Director of Regulatory.

21 Q. Please provide a brief summary of your professional
22 background.

23 A. I was in public accounting for about five years.
24 I've been a CPA for a little over 17 years. And I've
25 held various positions in Black Hills Corporation from

1 internal audit to a controller to a director of
2 accounting. And my current role in regulatory since
3 2008.

4 Q. Approximately how many rate cases have you worked on
5 through the your career?

6 A. I've worked on just over 15 rate cases now.

7 Q. Have you testified before this Commission prior to
8 today?

9 A. Yes, I have.

10 Q. Were you involved in the preparation of the rate
11 case that is presently before the Commission?

12 A. Yes, I was.

13 Q. Please summarize your involvement.

14 A. I helped provide guidance on developing the
15 schedules and statements for the revenue requirement and
16 the overall testimony as well.

17 Q. Did you file direct testimony in this Docket?

18 A. Yes, I did.

19 Q. Did you also file rebuttal testimony?

20 A. Yes.

21 Q. What issues are you prepared to address today?

22 A. I will be focusing on the Black Hills Utility
23 Holdings and Black Hills Service Company allocated costs
24 as represented in the Settlement.

25 Q. Were there other topics covered in your direct

1 testimony?

2 A. Yes, there were.

3 Q. For the purposes of this hearing is another witness
4 adopting the balance of your testimony?

5 A. Yes. Jon Thurber will be adopting the rest of my
6 direct testimony.

7 MS. KOENIG: At this time Mr. Kilpatrick is
8 available to answer questions regarding corporate cost
9 allocations.

10 MR. SMITH: Black Hills Industrial.

11 MR. MORATZKA: No questions. Thank you.

12 MR. SMITH: Questions, Ms. Collier?

13 MS. COLLIER: No questions.

14 MR. SMITH: Staff.

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

16 MR. SMITH: I think you may step down.

17 Unless -- oh, Commissioners. Commissioner questions.

18 Any Commissioner questions?

19 There are none so I think that's it. You may
20 step down.

21 THE WITNESS: Thank you.

22 (The witness is excused.)

23 MR. SMITH: Black Hills, please call your next
24 witness.

25 MS. KOENIG: Jon Thurber.

1 (The witness is sworn by the court reporter.)

2 DIRECT EXAMINATION

3 BY MS. KOENIG:

4 Q. Please state your name for the record.

5 A. My name is Jon Thurber.

6 Q. Who is your employer?

7 A. I'm employed by Black Hills Utility Holdings, a
8 wholly own subsidiary of Black Hills Corporation.

9 Q. How long have you been employed by Utility Holdings?

10 A. Almost two years now.

11 Q. Please provide a summary of your professional
12 background.

13 A. Prior to my employment at Black Hills Utility
14 Holdings I was employed at the South Dakota Public
15 Utilities Commission as a utility analyst. In that role
16 I analyzed and testified on rate making matters regarding
17 electric and natural gas utility companies.

18 Q. Approximately how many rate cases have you worked on
19 throughout your career?

20 A. Over 10 now.

21 Q. Were you involved in the preparation of the rate
22 case that is presently before the Commission?

23 A. Yes, I was.

24 Q. Please summarize your involvement.

25 A. I supervised the preparation of the revenue

1 requirement in this proceeding.

2 Q. Did you file direct testimony in this Docket?

3 A. Yes, I did.

4 Q. Did you also file rebuttal testimony?

5 A. Yes, I did. And there's one correction I would like
6 to make.

7 Do you have the exhibit number of my rebuttal
8 testimony?

9 Q. Exhibit 70.

10 A. On page 6, line 2 of my rebuttal testimony, the
11 figure should be \$100,000 instead of \$300,000.

12 Q. Are there any other changes that you would like to
13 make to your rebuttal testimony?

14 A. No, there is not.

15 Q. Are you adopting the testimony of any other
16 witnesses who filed testimony in this Docket?

17 A. Yes. I'm adopting the testimony of Chris Kilpatrick
18 except regarding corporate cost allocations.

19 Q. Are you familiar with the Settlement Agreement that
20 is presently pending for approval before the Commission?

21 A. Yes, I am.

22 Q. Were you involved in the efforts that culminated in
23 the Settlement Agreement?

24 A. Yes, I was.

25 Q. Please describe your involvement.

1 A. I reviewed the settlement revenue requirement. I
2 also assisted in the rate design and preparation of the
3 settlement documents.

4 Q. In your opinion, do the terms of the Settlement
5 Agreement result in just and reasonable rates?

6 A. Yes. I believe the Settlement Agreement results in
7 just and reasonable rates.

8 MS. KOENIG: At this time Mr. Thurber is
9 available for questions.

10 MR. SMITH: Okay. Black Hills Industrial
11 Interveners.

12 MR. MORATZKA: Thank you.

13 CROSS-EXAMINATION

14 BY MR. MORATZKA:

15 Q. Good afternoon, Mr. Thurber.

16 A. Good afternoon.

17 Q. Sorry we have to be inside on this beautiful day.

18 I would like to start with a couple of questions on
19 your rebuttal testimony, Exhibit 70. If I could have you
20 turn to page 3.

21 Are you there?

22 A. Yes, I am.

23 Q. Thank you. As I understand your testimony on
24 pages 19 and 20, you are asserting that Mr. Kollen is
25 ignoring the plain language of ARSD 20:10:13:44; is that

1 correct?

2 A. Yes, that is.

3 Q. And so is it fair to read into that statement that
4 you, Mr. Thurber, believe that the plain language of that
5 Administrative Rule should control?

6 A. Could you please repeat the question.

7 MR. MORATZKA: Could the court reporter, please.

8 (Reporter reads back the last question.)

9 A. I believe that the plain language states 24 months
10 in the Administrative Rule and not 12 months.

11 Q. Thank you, Mr. Thurber.

12 But I guess to answer my question, do you believe
13 the plain language of the Administrative Rule should
14 govern the present dispute regarding adjustments to the
15 test year?

16 A. I believe the language in the Administrative Rule
17 should be followed by the Commission in determining what
18 adjustment should be included in this rate case.

19 Q. Thank you, Mr. Thurber.

20 MR. MORATZKA: I have a line of questioning that
21 relies on a few exhibits, if I may approach.

22 MR. SMITH: Pardon me now? I'm sorry.

23 COMMISSIONER HANSON: He wants to approach.

24 MR. SMITH: Okay. Yeah. You may. Unless, is
25 there objection from anybody?

1 Yes.

2 (Exhibit BHII 8 is marked for identification)

3 Q. Mr. Thurber, do you have in front of you what's been
4 marked as exhibit Black Hills Industrial Intervener
5 Exhibit No. 8?

6 A. Yes, I do.

7 Q. And could you identify the document for me, please.

8 A. Yes. This was provided in response to Black Hills
9 Industrial Intervener Request No. 62.

10 Q. Thank you. And just to perhaps walk through the
11 pages here because what we have is somewhat abbreviated
12 version of the lengthy response, if we turn to the page
13 number which has been marked BHP-BHII-001152, which is
14 page 2 of the document, would you agree, Mr. Thurber,
15 that this is the first page of Attachment 62-A referenced
16 in the response to Industrial Request No. 62?

17 A. Subject to check, yes.

18 Q. Thank you. And then starting on the next page,
19 which is marked Bates stamp BHP-BHII-001411, and looking
20 at the page numbers that appear to be sequential for the
21 next four pages, does that appear to be Exhibits 6 and 7
22 to the decommissioning construction agreement referenced
23 in the response?

24 A. Subject to check, yes.

25 Q. Thank you.

1 Moving on to the page which has been labeled service
2 agreement at the top and Bates stamped BHP-BHII-001451,
3 is that the service agreement -- first page of the
4 service agreement referenced as Attachment 62-B to the
5 information request?

6 A. Subject to check, yes.

7 MR. MORATZKA: And I would note that I think
8 we're getting into some confidential information.

9 MR. SMITH: It appears that some of it's labeled
10 that way. The data request response isn't, but the rest
11 of it is.

12 MR. MORATZKA: I'll defer to the company.

13 MR. SMITH: It's marked confidential.

14 MS. KOENIG: Yeah. Contracts are considered by
15 the company to be confidential so if we're going to get
16 into questioning about the substance of the contracts,
17 then the company would consider that information to be
18 confidential.

19 MR. SMITH: Okay. We're going to go into
20 confidential session then.

21 Sorry, folks.

22 (Beginning of confidential portion of transcript.)

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1 (End of confidential portion of transcript.)

2 CHAIRMAN NELSON: Mr. Thurber, you heard my
3 earlier question for Mr. White that he so deftly threw
4 your direction regarding the Atlas storm.

5 And in the back of my mind it seems I remember
6 hearing this 9 to 10 million dollar figure thrown out as
7 being the cost to the company to repair some of those
8 damages. And in this we're seeing only about
9 2.5 million. So help me understand how we went from a
10 very high figure to what some might consider a more
11 reasonable figure.

12 THE WITNESS: I'm not exactly sure where the 9
13 to 10 million dollar amount is coming from, but I'll give
14 you a little bit of background on what's included in
15 Winter Storm Atlas. O&M adjustment, and then there's
16 also capital costs too that aren't included in that O&M
17 adjustment.

18 CHAIRMAN NELSON: And if you would just explain
19 all of that, I think certainly from my perspective and
20 also the public's perspective, I think an explanation
21 would be helpful.

22 THE WITNESS: Sure.

23 So Winter Storm Atlas storm damage costs that
24 are asked to be recovered in this case are the
25 incremental O&M costs. So if you use internal labor, we

1 only included what was deemed to be incremental. So that
2 could be one part of the difference.

3 Another part is the 2 and a half million -- we
4 had almost 2 million dollars worth of capital costs that
5 were included on Statement D as a pro forma adjustment.
6 So based on this case we have about 2.3 million dollars
7 in the Settlement related to Winter Storm Atlas amortized
8 over 10 years. And then we also have approximately 1.7,
9 1.8 million dollars worth of capital costs.

10 So I'm aware of closer to 4 million versus the
11 10 million. And I don't know where the 10 million dollar
12 figure is coming from, whether it was -- included co-op
13 costs or what, but that's what's actually reflected in
14 the Settlement.

15 CHAIRMAN NELSON: Thank you. That helps.

16 Again, going back to a lot of the public
17 comments that we got, a lot of the public were saying,
18 well, don't you have insurance to cover this type of
19 thing?

20 So, I mean, two questions. Was there insurance
21 coverage for any of this, and if not, can you explain to
22 us and the public why not.

23 THE WITNESS: There was no insurance coverage
24 for this storm. Generally speaking, there's not a liquid
25 insurance market for storm damage costs. You would have

1 to go to a specialized -- have it specifically
2 underwritten for property damage related to storms. So
3 it's not a liquid market, which means that there would be
4 high deductibles.

5 Our property insurance is currently set at a
6 million dollar deductible. So if you look at the past
7 20 years' worth of storms, we have not had a storm that
8 would even have triggered that amount over the
9 deductible.

10 So from an insurance standpoint it's really not
11 feasible. It's not cost effective for customers. When
12 you're dealing with a one-in-100-year storm the lower
13 cost, long-term solution is just to pay for those
14 expenses when they're incurred.

15 Because you don't want to include an allowance
16 in your base rates, assuming a one-in-100-year storm. I
17 mean, that wouldn't be reflective of our cost going
18 forward so it's better just to pay for those costs when
19 they incur.

20 CHAIRMAN NELSON: And so you can assure us we
21 won't be facing these kinds of expenses for another
22 100 years?

23 THE WITNESS: I'm going to rely on the
24 weatherman for that. But I certainly hope not.

25 CHAIRMAN NELSON: I think the Commission would

1 agree with you on that point. I appreciate that.

2 In the aftermath of that storm a lot of people
3 incurred a lot of different expense. Obviously,
4 homeowners to clean up some of their mess. We're all
5 familiar with the ranchers that had their catastrophe. A
6 lot of people put a lot of money in a fund to help
7 ranchers and folks recover as best they could from that
8 tremendous storm.

9 And so the question I've got in relation to
10 the Atlas expenses that your company incurred, have the
11 shareholders picked up any of that expense, or is
12 100 percent of that being placed on ratepayers?

13 THE WITNESS: Our employees worked very, very
14 hard to restore service to our customers. We've never
15 had that level of outage before in our service territory.
16 As a result, there were bonuses paid for people working
17 13- to 16-hour days for multiple weeks, sleeping inside
18 our buildings, not going home to see their family over
19 that weekend. Very pleased with our safety results. We
20 didn't have one reported incident.

21 As a result of their efforts, there were bonuses
22 paid to employees. Commission Staff reviewed those
23 costs, determined that they couldn't support it as
24 included in the Settlement, and the company agreed that
25 shareholders should have to pay for bonuses associated

1 with that event.

2 Otherwise, you know, we used a lot of
3 contractors. We didn't just rely on internal resources.
4 We pulled people from multiple states from different
5 utilities to get our system up and running as fast as we
6 could, and for those costs we determined that those
7 incremental costs are reasonable for recovery in rates.

8 CHAIRMAN NELSON: And so if I'm understanding
9 correctly, the only portion of the cost the shareholders
10 might have picked up would be for those bonuses; is that
11 correct?

12 THE WITNESS: Well, we only recovered the
13 incremental costs. So we took a look and saw if folks --
14 our employees, they only got -- we only got recovery for
15 that as that was above normal operations. Our normal
16 operations, we figured that those were recovered through
17 our base rates, and we didn't need to request that.

18 CHAIRMAN NELSON: So, again, the only portion of
19 that entire storm damage cost the shareholders are
20 picking up would be those bonuses; is that correct?

21 THE WITNESS: That's correct.

22 CHAIRMAN NELSON: And is that a number that you
23 can quantify? And, if so, can it be done in open
24 session, or do we have to do that in confidential?

25 THE WITNESS: I believe it was included in -- I

1 believe it was included in Staff's memo. I don't recall
2 if that specific dollar amount -- otherwise, we can go to
3 confidential.

4 CHAIRMAN NELSON: I'm looking at Staff to see if
5 they recall. I don't recall seeing that figure but --

6 THE WITNESS: Perhaps it was in Ms. Mehlhaff's
7 exhibit to the revenue requirement.

8 CHAIRMAN NELSON: Well, in any case, if it was
9 there, it would be --

10 MS. COLLIER: I believe it's page 11. Page 11
11 of the Staff memorandum.

12 MS. CREMER: It would be on Staff's memo that's
13 BAM-3, Schedule 10. It is not labeled as confidential.
14 Line 4.

15 Would everyone agree that that's not
16 confidential?

17 MS. KOENIG: Can I come look at your copy,
18 Karen?

19 MS. CREMER: Sure.

20 MS. KOENIG: I agree the amount is in an exhibit
21 that's not marked as confidential.

22 MS. CREMER: Okay. That amount, did you want me
23 to give that amount, or did you find it?

24 CHAIRMAN NELSON: Can you give me the exhibit
25 number again? BAM?

1 MS. CREMER: -3, Schedule 10. It's 1 of 1. And
2 the caption on it is Storm Atlas Regulatory Asset In
3 System Inspection Cost.

4 CHAIRMAN NELSON: Which page?

5 MS. CREMER: Under -- if you looked on the web
6 page under Staff's memo, it's Schedule 10, following
7 Schedule 9.

8 CHAIRMAN NELSON: I'm sorry. I was on
9 Schedule 1. That doesn't work.

10 MS. CREMER: Okay.

11 CHAIRMAN NELSON: I see the figure.

12 Mr. Thurber, I have no further questions.

13 MR. SMITH: Other Commissioner questions?

14 CHAIRMAN NELSON: I'd just like to make a
15 statement. I don't want anyone in this proceeding to
16 construe that I disapprove in any way of how your company
17 handled that storm recovery. That is not a question in
18 my mind whatsoever.

19 I think you all did a fine job in that. Simply
20 looking at some of the dollar figures.

21 COMMISSIONER FIEGEN: Mr. Thurber, in your
22 rebuttal testimony on page 16 you address an error in the
23 allocation to South Dakota for transmission load dispatch
24 cost.

25 CHAIRMAN NELSON: That's correct.

1 COMMISSIONER FIEGEN: So do you believe that the
2 Commission should correct that in the Settlement?

3 THE WITNESS: No, I do not. The reason that I
4 don't believe the Commission should correct that in the
5 Settlement is because we agreed to an overall revenue
6 requirement figure. And we came to that figure, each
7 party, with our own unique analysis.

8 During the process when errors were found the
9 company had an opportunity to negotiate differently or to
10 propose other adjustments as part of the process.

11 I think I've shown through testimony that there
12 were other costs that went up from the test year that
13 weren't adjusted that more than cover the error that has
14 been identified. So I would request that the Commission
15 not adjust the Settlement.

16 COMMISSIONER FIEGEN: So, Mr. Thurber, are you
17 talking about Wyodak?

18 MR. THURBER: Yes, I am.

19 COMMISSIONER FIEGEN: So what is the difference
20 between the Wyodak adjustment that you would possibly
21 propose if we looked at the transmission adjustment?
22 What would be the difference in that?

23 THE WITNESS: I'm just going to look to find the
24 exhibit. One moment.

25 So according to JTR-1, the South Dakota

1 pro forma adjustment would be \$412,000 to adjust the
2 Wyodak O&M costs to the most recent 12 months. Whereas
3 the transmission allocation error was approximately
4 \$280,000.

5 COMMISSIONER FIEGEN: Thank you. Just to review
6 your pension expense on page 21, you gave us five years.
7 And it certainly shows that a defined benefit is a
8 volatile type of expense. I continue to ask this
9 question of why utilities -- and I understand defined
10 benefit is a standard in utilities, but it certainly
11 isn't in the business world, why you would not go to a
12 defined contribution, which is more of a reliable or a
13 more forebudgetable expense, if that's a word -- probably
14 not -- so the ratepayers aren't always stuck if the
15 market goes down?

16 THE WITNESS: As we have -- new employees are no
17 longer eligible for the defined benefit plan, defined
18 pension plan.

19 You know, when I joined the company I'm only
20 eligible for the 401(k) plan so it's a defined
21 contribution rather than a defined benefit plan.

22 So we're taking measures to normalize that
23 expense so that it isn't as volatile in the future. So
24 new employees are no longer eligible for the pension
25 plan.

1 COMMISSIONER FIEGEN: Thank you. I did not
2 realize that or didn't read that properly. So thank you
3 for taking steps to make sure ratepayers are paying a
4 cost but not always taking the risk. I appreciate that.

5 MR. SMITH: Additional Commissioner questions?
6 Chairman Nelson.

7 CHAIRMAN NELSON: I want to follow up on
8 Commissioner Fiegen's question regarding the transmission
9 adjustment error. And I think we all understand that
10 that was an error to the tune of 280,000.

11 In my mind something that's an admitted error is
12 different than a Wyodak situation where you're looking at
13 using a different time period, not necessarily an error
14 but just using a different time period.

15 Can you understand why it would be difficult for
16 Commissioners that has a known error in it?

17 THE WITNESS: I certainly can understand. This
18 information wasn't available to us during the settlement
19 discussions. We first found out on December 30.

20 Generally speaking, when you have a settlement
21 you have a firm revenue requirement that everybody agrees
22 to that any material modifications to the settlement, you
23 know, either party can back away from the settlement.

24 I would just ask the Commission to consider that
25 if you open up the Settlement to consider an error or new

1 information, that you also consider other new information
2 that's presented to the Commission.

3 CHAIRMAN NELSON: Thank you.

4 MR. SMITH: Additional Commissioner questions?
5 I'm not seeing any.

6 So with that, I think I'll turn to Mr. Moratzka
7 so we can wind up with Black Hills on proper redirect
8 here.

9 MR. MORATZKA: Thank you. Just a moment.

10 REXCROSS-EXAMINATION

11 BY MR. MORATZKA:

12 Q. Thank you. Mr. Thurber, just a quick clarification
13 for my own understanding of the Settlement.

14 I heard you just testify in response to one of the
15 Commissioner's questions that you and Commission Staff
16 agreed to an overall revenue requirement figure. Is that
17 correct?

18 A. That's correct.

19 Q. And so am I reading into that statement correctly
20 that this Settlement is more akin to a black box than it
21 is to a line item by line item revenue adjustment?

22 A. No. It's not a black box settlement. Commission
23 Staff has a very detailed Staff memorandum that outlines
24 how they calculated the revenue requirement. The company
25 in its Settlement Stipulation that we signed said that

1 both parties may have had differing views on how we came
2 to the total revenue requirement.

3 You know, Commission Staff justifies it by line item
4 by line item, but the company's not in exact agreement in
5 how we justified getting to that number.

6 Q. And just to put a finer point on it, the line item
7 by line item adjustment that the Commission Staff has
8 contains the error regarding -- yeah. The BH Utility
9 Holdings Company allocation; correct?

10 A. That's correct.

11 MR. MORATZKA: Thank you. No further questions.

12 MR. SMITH: Ms. Collier?

13 MS. COLLIER: No questions.

14 MR. SMITH: Okay. Staff.

15 MS. CREMER: Thank you. I do have a question.

16 CROSS-EXAMINATION

17 BY MS. CREMER:

18 Q. Mr. Thurber, earlier Commissioner Nelson had asked
19 Mr. White about salary studies or possibly what Black
20 Hills had provided Staff.

21 Could you summarize that for us, please.

22 A. Sure. Commission Staff submitted multiple data
23 requests requesting information regarding our salaries.
24 For example, we provided union contracts, which
25 specifically identify wage rates by employee position.

1 We also provided over 50 salary studies provided by
2 outside consulting firms to help justify and form our
3 salary compensation practices. There was also another
4 data request that compared Black Hills Power's salaries
5 to local cooperatives in the area.

6 So Commission Staff did inquire and we produced
7 information to support our current salaries. If the
8 Commission decides necessary, we could submit those
9 responses to those data requests in this proceeding, if
10 it would like.

11 MS. CREMER: Thank you. That's all I have.

12 So I didn't know if you wanted us to put
13 something like that in. That data request and response
14 is not in the record. It is -- the one I'm looking at is
15 2-6. I'm not sure of the second one you're referring to.
16 But we could find all of that if you wanted it, but that
17 is not in the exhibits as they currently exist.

18 CHAIRMAN NELSON: I would like that. I'm
19 assuming that would be confidential or -- it would be
20 confidential, but I would have access to that to
21 consider. I would appreciate that, yes.

22 MS. CREMER: Certainly. So that will just go in
23 as Staff Exhibit 2. I can put it in. And we'll get that
24 filed by the end of the hearing -- or not today maybe but
25 by Thursday.

1 That work?

2 CHAIRMAN NELSON: Thank you.

3 MS. CREMER: Yes.

4 MR. SMITH: Okay. We'll turn to Black Hills for
5 redirect.

6 MS. KOENIG: Just briefly.

7 REDIRECT EXAMINATION

8 BY MS. KOENIG:

9 Q. Mr. Thurber, you were asked whether the Settlement
10 requires customers to prepay decommissioning cost. Do
11 you remember that line of questioning?

12 A. Yes, I do.

13 Q. What is the status of the work on the
14 decommissioning of the Osage plant?

15 A. The Osage plant has been completely dismantled at
16 this point in time. I believe, from my recollection, the
17 engineers have indicated that it's 90 percent complete.

18 Q. Has the company already spent more than the first
19 year amortization to the planned decommissioning for the
20 three power plants?

21 A. I believe if you take a look at the unrecovered
22 plant balance and the obsolete inventory, there's
23 probably 40 years worth of -- subject to check,
24 there's multiple years of amortization.

25 In terms of the actual expenses incurred, I'm not

1 aware of how much is incurred related to that specific
2 decommission contract.

3 Q. And then switching gears to the line of questioning
4 related to modifications to the revenue requirements
5 under the Settlement Agreement, did the company agree to
6 a two-year rate moratorium as part of the revenue
7 requirement?

8 A. Yes, we did.

9 MS. KOENIG: Thank you. I have no further
10 questions.

11 MR. SMITH: Okay. Barring something
12 extraordinary, I think you may step down, Mr. Thurber.

13 (The witness is excused.)

14 MR. SMITH: I note that the next witness appears
15 to be on the telephone; is that correct?

16 MR. MAGNUSON: That is correct, Mr. Smith. And
17 in case anybody's been noticing, I've been on my phone
18 e-mailing Mr. Spanos because we've gone much more quickly
19 than I expected this afternoon as compared to this
20 morning. So I believe he will be available now, and if
21 not now, very shortly.

22 MR. SMITH: Should we take a short break?
23 Because I wasn't sure if we needed to do something to set
24 this up.

25 Why don't we take a 10-minute break, something

1 like that. What time is it?

2 Okay. At 2:30, 2:35 we'll begin.

3 (A short recess is taken)

4 MR. SMITH: We'll call the hearing back to order
5 after a short recess here. The next witness is going to
6 be on the phone.

7 Tina or somebody, do you want to explain to us
8 briefly what special things might need to be done here?

9 MS. DOUGLAS: The only thing you need to
10 remember is to turn off your mics. after you've talked to
11 John on the phone because he'll get feedback, and he
12 won't hear it.

13 And, John, we do have a court reporter here so
14 you need to make sure you speak clearly for her.

15 MR. SMITH: With that, Black Hills please call
16 your next witness.

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

18 We would call John J. Spanos, please.

19 Mr. Spanos, would you please state your name for
20 the record.

21 MR. SMITH: We need to swear him in, and that's
22 got to be done by Chairman Nelson.

23 (The witness is sworn by Chairman Nelson.)

24 MR. SMITH: Please proceed.

25

DIRECT EXAMINATION

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BY MR. MAGNUSON:

Q. Thank you. Would you please state your name for the record.

A. John J. Spanos, S-P, as in Paul, A-N-O-S.

Q. And would you please state your business address.

A. 207 Senate Avenue, Camp Hill, Pennsylvania 17011.

Q. Mr. Spanos, who is your employer?

A. Gannett Fleming, Incorporated.

Q. And what is the business of your employer?

A. The firm is an engineering consulting firm out of Camp Hill, Pennsylvania. That's our headquarters. And my particular division, which is the valuation rate consultants group, does work for utility companies in the area of depreciation.

Q. How long have you been with the employer?

A. I've been with the firm since June of 1986. Almost 29 years.

Q. Would you please provide us with an overview of your qualifications to give this testimony today.

A. Yes. I've been conducting depreciation studies as my primary duties since June of 1986. I've been the project manager on the majority of those projects since the mid-1990s.

The duties include depreciation studies, original

1 cost and valuation studies for many different utilities
2 in the electric, gas, water, waste water, railroads, some
3 telephone, pipelines, all those industries.

4 And the studies include testifying where necessary,
5 which I have testified or submitted testimony in over
6 190 cases.

7 Q. Mr. Spanos, so do I understand that you have over
8 29 years of experience in the specialized area of
9 depreciation?

10 A. Yes. Almost 29 years. This June.

11 Q. Did you prefile testimony in this matter?

12 A. Yes, I have.

13 Q. What was the purpose of your prefiled testimony?

14 A. The purpose of the testimony was to develop the
15 appropriate depreciation rates for Black Hills Power.
16 The study was done as of December 31, 2012, plant in
17 service and accumulated depreciation levels.

18 Q. Did you prepare a Depreciation Study?

19 A. Yes, I did.

20 Q. And has that Depreciation Study been marked as
21 Exhibit 45 in this matter?

22 A. Well, I'm not there, but, yes, it has been included
23 in the exhibits as part of the case.

24 Q. Mr. Spanos, as part of your work with regard to this
25 matter, did you physically observe Black Hills Power's

1 plant and equipment as part of your depreciation study?

2 A. Yes. A major component of doing depreciation
3 studies is to look at the facilities to get an
4 understanding of all of the assets that are in service
5 and also to get an understanding of the type of asset and
6 the layout, particularly of the power plants to get an
7 understanding on not only physically what's there but
8 also to get an opportunity to talk to those in operation
9 of these facilities to understand their light
10 characteristics.

11 Q. Mr. Spanos, did the Settlement Agreement between
12 Staff and Black Hills Power include an agreement on a
13 40-year lifespan for Cheyenne Prairie Generating Station
14 rather than a 35-year lifespan?

15 A. Yes. That was the primary component for the
16 Cheyenne Prairie Generating Station is the lifespan date,
17 and that was agreed to be 40 years.

18 Q. And, in your opinion, is 40 years considered
19 reasonable?

20 A. Yes. I consider 40 years still to be reasonable.

21 Q. You also prepared a document that was attached to
22 your rebuttal testimony; is that correct?

23 A. Yes. That document includes the calculation of the
24 Cheyenne Prairie facility with the 40-year lifespan and
25 the interim light parameter and the net salary

1 parameter.

2 Q. Based on your calculations what is the composite
3 rate for the Settlement Agreement as regards
4 depreciation?

5 A. 2.98 percent.

6 Q. And what is the annual depreciation expense for
7 Black Hills Power South Dakota?

8 A. The annual amount is listed in my rebuttal
9 testimony. And based on those parameters and a 40-year
10 lifespan, the appropriate amount -- just identifying that
11 number. I believe it's 2 million and \$97,000.

12 Q. Thank you. Have you had an opportunity to review
13 the testimony of Mr. Kollen?

14 A. Yes, I have.

15 Q. And you filed rebuttal testimony in response to
16 Mr. Kollen's testimony on depreciation?

17 A. Yes, I have.

18 Q. Mr. Kollen used a 2.88 percent composite rate; is
19 that correct?

20 A. Based on his LT-16, that is the percentage that is
21 reflected in his work papers.

22 Q. And, in your opinion, is that the correct composite
23 rate to use?

24 A. No. I believe the 2.98 percent is what should be
25 used.

1 Q. Mr. Kollen challenged the inclusion of terminal net
2 salvage and depreciation rates. Is that your
3 understanding?

4 A. Yes. Based on his testimony, that is my
5 understanding.

6 Q. Why are the arguments of Mr. Kollen flawed?

7 A. Well, I think the primary concern that I have with
8 his presentation is, one, it doesn't match the uniform
9 system of accounts or authoritative text on the proper
10 full recovery of the service value of the assets. The
11 dismantlement is a component of the cost of removal,
12 which should be included in rates based on the uniform
13 system of accounts and current practices for utility
14 companies.

15 And the other component that is concerning to me was
16 his proposal to wait until the facilities are actually
17 retired causes an intergenerational inequity circumstance
18 where customers are paying for costs that they do not get
19 the benefit of.

20 And those are the two primary concerns that I have
21 if we do not include terminal net salvage in rates.

22 Q. Are there any other key elements that you believe
23 are lacking in Mr. Kollen's analysis?

24 A. Well, the other components in what has been put
25 together is, one, I don't believe he's gone to visit the

1 facilities. But more importantly, it looks as though the
2 information that he bases on does not include up-to-date
3 historical data on the net salvage -- interim net salvage
4 components that are part of the rates. That seems to be
5 lacking.

6 And there also seems to be within his calculations
7 remaining lives that are utilized that don't match the
8 expectation of the parameters that are in place that do
9 not seem to be challenged outside of the net salvage
10 percent.

11 Q. Thank you, Mr. Spanos. Do you stand by your
12 prefiled and rebuttal testimony?

13 A. Yes, I do.

14 MR. MAGNUSON: At this time we will tender
15 Mr. Spanos for questioning by opposing counsel and the
16 Commission.

17 MR. SMITH: Mr. Moratzka.

18 MR. MORATZKA: No questions. Thank you.

19 MR. SMITH: No questions.

20 Ms. Collier.

21 MS. COLLIER: No questions.

22 MR. SMITH: Staff.

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

24 MR. SMITH: Commissioners.

25 I guess none of them have any questions either.

1 So I guess that's it, Mr. Spanos.

2 THE WITNESS: Okay. Well, thank you very much.
3 I appreciate the time.

4 MR. SMITH: You may be excused. Thank you.

5 (The witness is excused.)

6 MR. MAGNUSON: May we proceed?

7 MR. SMITH: We may proceed. Do you need to make
8 any changes?

9 MR. MAGNUSON: Black Hills Power would call to
10 the stand Robert Hollibaugh.

11 (The witness is sworn by the court reporter.)

12 DIRECT EXAMINATION

13 BY MS. KOENIG:

14 Q. Would you please state your name for the record.

15 A. Robert Hollibaugh. H-O-L-L-I-B-A-U-G-H.

16 Q. And what is your business address?

17 A. 625 Ninth Street, Rapid City, South Dakota.

18 Q. And who is your employer?

19 A. I am employed by Black Hills Service Company, which
20 is a wholly owned subsidiary of Black Hills Corporation.

21 Q. You're testifying today on behalf of Black Hills
22 Power?

23 A. Yes.

24 Q. Would you please review for us your employment
25 history and particularly with regard to matters regarding

1 accounting?

2 A. I am -- I've been with Black Hills Service Company
3 just short of 10 years. Prior to that I was with two
4 national public accounting firms, KPMG and Arthur
5 Anderson. And prior to that was about 15 years with
6 Northwestern Public Service Company at that time.

7 Q. In your work with the accounting firms did that work
8 include preparation of tax returns for investor-owned
9 utilities?

10 A. It did. It included not only compliance tax return
11 related work, tax consulting, tax controversy, it
12 included issues before the IRS, State, and those types of
13 matters.

14 Q. Do I assume that that also includes what I would
15 call tax controversy matters?

16 A. That is correct.

17 Q. Was that a substantial part of your work at those
18 accounting firms?

19 A. It was a -- it was a key component.

20 Q. And I understand that you're a CPA; is that correct?

21 A. That is correct.

22 Q. How long have you been a CPA?

23 A. About 26 years.

24 Q. Hollibaugh, would you please describe for the
25 Commission your current duties and responsibilities on

1 behalf of Black Hills Corporation.

2 A. I am responsible for all tax-related matters for the
3 entire Black Hills Corporation group. And that includes
4 supporting regulatory cases, matters such as this, for
5 all our regulated businesses including Black Hills
6 Power.

7 Q. And just to clarify, when you say that you do the --
8 all tax-related matters for Black Hills Corporation, does
9 that include all of the subsidiaries of Black Hills
10 Corporation?

11 A. Yes, it does.

12 Q. Now you filed rebuttal testimony in this matter; is
13 that correct?

14 A. That's correct.

15 Q. But you did not file direct testimony; correct?

16 A. Correct.

17 Q. Is the purpose of your rebuttal testimony to respond
18 to arguments and positions taken by Mr. Kollen?

19 A. It is.

20 Q. So I assume you've read the testimony of Mr. Kollen?

21 A. I have.

22 Q. And you have filed rebuttal testimony regarding
23 Mr. Kollen's testimony on net operating losses and
24 accumulated deferred income taxes?

25 A. I have.

1 Q. Can I refer to those as NOL and ADIT?

2 A. Yes.

3 Q. That's common in the industry, isn't it?

4 A. Correct.

5 Q. Now I understand that Kollen has recommended to the
6 Commission that it not allow an adjustment to rate base
7 for ADIT associated with net operating losses generated
8 for income tax purposes.

9 Do you agree with Mr. Kollen's position?

10 A. No, I do not.

11 Q. Why not?

12 A. For the reasons that I have described or delineated
13 in my rebuttal testimony.

14 Q. Now is the inclusion of an appropriate amount of NOL
15 and ADIT in rate base, which is reflected in the
16 Settlement Agreement, is that in accordance with the
17 normalization rules of the Internal Revenue Code and
18 applicable regulations?

19 A. It is.

20 Q. And have you analyzed the normalization rules of the
21 Internal Revenue Code in your rebuttal testimony?

22 A. I did.

23 Q. And do the normalization rules apply to Black Hills
24 Power?

25 A. Yes, they do.

1 Q. What are the consequences if a utility violates the
2 tax normalization rules?

3 A. If a company is found in violation by IRS, they are
4 relegated then to use book life and method for tax
5 depreciation purposes, which means a much longer life and
6 a much slower method.

7 Q. Would the violation of the normalization rules have
8 a substantial adverse effect on Black Hills Power?

9 A. Yes, they would. The company -- well, the deferred
10 taxes as provided through accelerated depreciation or the
11 use of this accelerated depreciation including bonus
12 depreciation provides a critical element of capital for
13 the company that otherwise would have to be financed by
14 other means if we're found in violation.

15 Q. And just as importantly, would the violation of the
16 normalization rules have a substantial adverse effect on
17 ratepayers of Black Hills Power?

18 A. It would.

19 Q. If the Commission adopted the position Mr. Kollen,
20 in your opinion, would the result be a violation of the
21 normalization rules?

22 A. It would.

23 MS. KOENIG: That is all of the questions that I
24 have for this witness at this time, and I would tender
25 him for examination.

1 MR. SMITH: Please proceed when ready,
2 Black Hills Industrial.

3 CROSS-EXAMINATION

4 BY MR. MORATZKA:

5 Q. Good afternoon, Hollibaugh.

6 A. Good afternoon.

7 Q. I'd like to just ask a couple of very brief
8 questions on your testimony surrounding NOL and ADIT.

9 Could I have you refer to page 19 of your rebuttal
10 testimony.

11 A. Okay.

12 Q. And as I understand it, Mr. Hollibaugh, you're
13 citing four private letter rulings or PLRs to support
14 your position stated in your rebuttal testimony; is that
15 correct?

16 A. Correct.

17 Q. And are you aware of any private letter rulings from
18 the IRS that are contrary or state an alternative
19 position to the PLR cited in your rebuttal testimony?

20 A. There is a -- there is one other -- there is a
21 private letter ruling that is not on -- a little bit
22 different in how the service came to a much -- a
23 conclusion that was conflicting and contradictory not
24 only to this PLR from 1988 but has basically been
25 somewhat -- I think of it as superseded by the subsequent

1 rulings of 2014, the three rulings.

2 Q. PLRs aren't precedential, are they?

3 A. They are not.

4 Q. Thank you. Are you aware of any instance in which
5 the IRS has issued a notice of violation to a utility?

6 A. I am not.

7 Q. You would agree, Mr. -- let me restate the prior
8 question. I didn't quite finish.

9 Are you aware of an instance which the IRS has
10 issued a notice of violation to a utility for violating
11 the normalization rules related to the NOL ADIT issue
12 that you raise in your rebuttal testimony?

13 A. I am not.

14 Q. Thank you. And if such a notice of violation were
15 issued, you would agree, wouldn't you, that there would
16 be an opportunity for a utility to cure that violation?

17 A. That is correct.

18 MR. MORATZKA: Thank you. No further questions.

19 MR. SMITH: Ms. Collier, any questions?

20 MS. COLLIER: No.

21 MR. SMITH: Staff.

22 MS. CREMER: Staff does not have any. Thank
23 you.

24 MR. SMITH: Commissioners.

25 CHAIRMAN NELSON: I do.

1 MR. SMITH: Okay. Please proceed, Mr. Chairman.

2 CHAIRMAN NELSON: Am I correct that the use of
3 accelerated or bonus depreciation was a significant
4 factor in creating the net operating losses?

5 THE WITNESS: That is correct. Without
6 accelerated depreciation including the bonus depreciation
7 Black Hills Power would have not been in a net operating
8 loss position.

9 CHAIRMAN NELSON: So why would the company
10 choose to use the accelerator bonus depreciation to a
11 point that would create the net operating losses? I can
12 understand it using it up to the point of zeroing out
13 income but why use it to go into the NOL situation which
14 ultimately caused you to have to roll that forward.

15 THE WITNESS: The net effect actually to
16 customers as a result we've increased the deferred tax
17 liabilities. But we also have -- there is somewhat of a
18 mitigating offset by the deferred tax asset created by
19 the NOL.

20 But the net result is a net increase to deferred
21 tax liabilities, net reduction to rate base. And which
22 is to the benefit of customers.

23 CHAIRMAN NELSON: This helps me.

24 Thank you.

25 MR. SMITH: Other Commissioner questions?

1 I'm not seeing any. Advisor or --

2 Any follow-on, Mr. Moratzka, following
3 Commissioner Nelson's question?

4 MR. MORATZKA: Nothing.

5 MR. SMITH: Anything, Ms. Collier?

6 Wait a minute. Oh, you have one? Oh, Greg
7 does.

8 MR. RISLOV: This is Greg Rislov for the
9 Commission. I did have a question following on
10 Mr. Moratzka's question.

11 Are you aware of any utility that has attempted
12 to -- any utility or Commission that has attempted to
13 depreciate in opposition to that private letter ruling
14 and if there's been any follow up to that?

15 In other words, has there been a violation that
16 you're aware of?

17 THE WITNESS: None that I'm aware of. I mean,
18 the issue of this potential violation of this
19 normalization rules is a self-reporting issue to the
20 Internal Revenue Service. But the fact that I think in
21 that particular ruling -- private letter ruling
22 Mr. Moratzka referred to where the service reached a
23 conclusion that was contradictory to their longstanding
24 practice but then somewhat was reversed by these three
25 subsequent rulings in 2014, a lot of practitioners and

1 people in the industry including myself think that PLR
2 was an anomaly.

3 MR. RISLOV: But you have not heard of anyone
4 test that conclusion?

5 THE WITNESS: Not test that conclusion. Because
6 this was a decision that was reached by IRS based on
7 those particular set of facts and circumstances.

8 MR. RISLOV: Thank you.

9 MR. SMITH: Any additional Commissioner, advisor
10 questions?

11 Okay. Any follow on, Mr. Moratzka?

12 MR. MORATZKA: Nothing. Thank you.

13 MR. SMITH: Ms. Collier, nothing.

14 MS. COLLIER: No.

15 MR. SMITH: Okay. Ms. Cremer.

16 MS. CREMER: No. Thank you.

17 MR. SMITH: Mr. Magnuson.

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

20 Thank you.

21 MR. SMITH: Okay. You may be excused. You may
22 step down.

23 (The witness is excused.)

24 MR. SMITH: Are you ready to call your next
25 witness?

1 every once in awhile. So please think of that, if you
2 would.

3 With that, we'll turn to Mr. Moratzka for your
4 direct case.

5 MR. MORATZKA: Thank you. Before we get to
6 Mr. Kollen, I guess I'd like the opportunity to make the
7 opening statement.

8 MR. SMITH: Please, do.

9 MR. MORATZKA: The Black Hills Industrial
10 Interveners had hopes of being able to reach a settlement
11 in this proceeding with Black Hills Power, Commission
12 Staff, and any other Intervener that elected to get
13 involved. We have been successful in this endeavor since
14 the 1990s, to my knowledge.

15 But after reviewing the record here and
16 participating in the settlement discussions, we could not
17 sign on to the Proposed Settlement because unlike those
18 prior cases, the Proposed Settlement is not supported by
19 the record, and it's not supported by South Dakota Law.

20 And before I proceed to that discussion, I want
21 to emphasize what this case is not about. This case is
22 not about how much each class should contribute to the
23 revenue requirement.

24 The Industrial Interveners support the proposed
25 revenue allocations set forth in the Proposed Settlement.

1 We are, therefore, not seeking to push on costs to other
2 customer classes in order to diminish the amount that the
3 Industrials pay.

4 Instead, the Industrial Interveners have
5 submitted testimony and are here today to question the
6 revenue requirement set forth in the Proposed Settlement.
7 In other words, we are making arguments that we believe
8 benefit all ratepayers. Ratepayers who have been subject
9 to rate increases in 2006, 2009, 2012, and now
10 potentially 2014.

11 We respectfully request the Commission to send a
12 signal now that Black Hills Power needs to curb it's
13 aggressive increases.

14 Now on to the revenue requirement, we believe
15 that the Proposed Settlement is not supported by the
16 record because, by admission of Black Hills Power and
17 Commission Staff, there is an error in the underlying
18 calculation. The Proposed Settlement also allows for
19 recovery of an unjust, unreasonable, and, indeed,
20 unjustified amount of incentive compensation.

21 The Proposed Settlement is not supported by
22 South Dakota Law because it provides for numerous
23 adjustments that were known with reasonable -- were not
24 known with reasonable certainty or measurable with
25 reasonable accuracy at the time Black Hills Power filed

1 this case.

2 Furthermore, and in direct contravention to
3 South Dakota Law, the proposed adjustments were not
4 accompanied by expected changes in revenue. The result
5 of including adjustments is a dynamic test year, one in
6 which costs allegedly incurred by Black Hills Power well
7 after the test year are presumed prudent and incorporated
8 into Black Hills Power's revenue requirement.

9 Such adjustments run contrary to the
10 longstanding regulatory precedent of focusing the
11 analysis on the historic test year. Deviating from this
12 practice can only be allowed in limited circumstances
13 after compliance with South Dakota Law.

14 Based on our review of the record before you,
15 Black Hills Power has not met its burden to include these
16 adjustments.

17 Furthermore, there are aspects of the Proposed
18 Settlement that could be modified for the benefit of
19 ratepayers without harming Black Hills Power. For
20 example, as we discussed with Mr. Thurber today, certain
21 costs could be deferred and reviewed in a subsequent rate
22 case when the actual costs are known.

23 Taking all of Industrial Interveners'
24 adjustments into account, we believe that Black Hills
25 Power should receive a rate decrease. We greatly

1 appreciate the Commission's time and careful
2 consideration of our arguments. We look forward to
3 continuing today's thoughtful dialogue over the next what
4 appears to be maybe only one day and presenting our
5 rebuttal case.

6 Thank you.

7 MR. SMITH: Please call your first witness.

8 MR. MORATZKA: Thank you.

9 The Black Hills Industrial Interveners call
10 Mr. Lane Kollen to the stand.

11 (The witness is sworn by the court reporter.)

12 THE WITNESS: Good afternoon, Commissioners. I
13 have an opening statement. Some of it will overlap.
14 Some won't.

15 MR. MORATZKA: Mr. Kollen.

16 MR. SMITH: Is the button on?

17 THE WITNESS: It's on, but Mr. Moratzka wanted
18 to introduce me. I'm sorry. I was ready to go.

19 Go ahead.

20 MR. MORATZKA: I understand. You're chomping at
21 the bit.

22 DIRECT EXAMINATION

23 BY MR. MORATZKA:

24 Q. Mr. Kollen, could you state and spell your name if
25 you haven't already done so. Caught me off guard a

1 little bit.

2 A. My name is Lane Kollen, K-O-L-L-E-N.

3 Q. Thank you, Mr. Kollen.

4 Did you, Mr. Kollen, file direct testimony in this
5 case?

6 A. Yes.

7 Q. And did you, Mr. Kollen, file both a public version
8 and a trade secret version?

9 A. That's correct.

10 Q. And, Mr. Kollen, are those documents marked as
11 Exhibit 1 for the public and Exhibit 2 for the trade
12 secret?

13 A. Yes.

14 Q. And, Mr. Kollen, if you were asked the questions
15 that are contained in that testimony today, would your
16 answers largely be the same?

17 A. They would, with one exception.

18 Q. And could you provide some more information on that?

19 A. Yes. On page 43 of my testimony this would --

20 CHAIRMAN NELSON: Is your mic. on?

21 THE WITNESS: It is now.

22 CHAIRMAN NELSON: Thank you.

23 A. Page 43 of both versions of my testimony the answer
24 needs to be corrected. Instead of no the answer should
25 be yes. And the rest of the answer can be stricken.

1 Q. Could you please make that change on the record copy
2 before you.

3 A. Yes.

4 Q. And, Mr. Kollen, just so that the other members of
5 the audience are clear where you are, you are on line 1
6 of page 43?

7 A. That's correct.

8 Q. Thank you. And have you made the changes to the
9 record version?

10 A. Yes, I did.

11 Q. Thank you, Mr. Kollen.

12 Do you have any other changes, modifications --

13 A. I do.

14 Q. -- to your testimony you'd like to address at this
15 time?

16 A. I do. The table on page 6 of my testimony, I've
17 prepared a replacement for that table that --

18 Q. Do you mind if I hand out the replacement,
19 Mr. Kollen. Thanks.

20 (Exhibit BHII 9 is marked for identification)

21 Q. Mr. Kollen, do you have before you what's been
22 marked as Black Hills Industrial Interveners Exhibit 9?

23 A. I do.

24 Q. Thank you. And you were about to describe this
25 table. Could you please continue that discussion.

1 A. Yes. I made a number of changes under the Proposed
2 Settlement column to further disaggregate the Proposed
3 Settlement numbers.

4 You'll see that none of the bottom line amounts, for
5 example, the net rate increase or reduction
6 recommendations change. What I've done is reposition
7 some of the Proposed Settlement quantifications so they
8 more closely adhere to the line items describing the
9 issues or the adjustments that you see under Rate Base
10 and then Operating Income and Rate of Return.

11 As we saw the Staff and the company's rebuttal
12 testimony, we were able to disaggregate some of those
13 adjustments a little bit more cleanly. And so that's
14 primarily what the changes are in the Proposed Settlement
15 column.

16 Q. And so, Mr. Kollen, just so we can make sure that
17 everyone is clear, what you're trying to do here is make
18 sure that the Proposed Settlement column most closely
19 matches what we're seeing in the Proposed Settlement?

20 A. Yes. That's correct. I can give one example of
21 that.

22 If you look at the line item under operating income,
23 and if you look at removed Pro Forma Increased Affiliate
24 Allocations From BHUH, you see that under the Proposed
25 Settlement there's an increase in the revenue requirement

1 of \$527,000.

2 We can see on the revised table that that increase
3 is \$241,000. And the reason for that is that we broke
4 out the error in the Proposed Settlement as a separate
5 line item, the second from the bottom under the Operating
6 Income Adjustments.

7 So you'll see that that \$527,000 on the original
8 table now is disaggregated into 241,000 and 286,000.
9 That just clarifies, puts the right numbers with the
10 right labels with more specificity.

11 Q. And, Mr. Kollen, just to be absolutely sure, the
12 bottom line number -- the bottom line number does not
13 change in either table?

14 A. That's correct. None of the numbers in the first
15 column change, which are the recommendations based upon
16 the company's filing. Those are the adjustments that we
17 recommend you make if you want to start with the
18 company's filing.

19 The second column are the adjustments that are
20 reflected in the Proposed Settlement. The third column
21 is if you want to start with the Proposed Settlement,
22 those are the adjustments that will bring you to the
23 recommendations that I make.

24 Q. Thank you, Mr. Kollen. And did you prepare an
25 opening statement --

1 A. I did.

2 Q. -- to offer today?

3 MR. MORATZKA: At this point I'd like to move
4 the admission of Black Hills Industrial Interveners
5 Exhibit No. 9.

6 MR. SMITH: Is there an objection?

7 MR. MAGNUSON: We have no objection, with the
8 understanding we just saw this for the first time.

9 Thank you.

10 MS. COLLIER: No objection.

11 MS. CREMER: No objection.

12 MR. SMITH: Okay. BHII 9 is admitted.

13 Q. Mr. Kollen, I understand you've prepared an opening
14 statement. Could you provide that for us today.

15 A. Yes. Second try at a start here.

16 Good afternoon, Commissioners. There will be some
17 overlap as I introduce the general areas that I would
18 like to talk about, but I'll try to keep that to a
19 minimum.

20 As you know, I'm appearing here today on behalf of
21 the Black Hills Industrial Interveners. This is a group
22 of large commercial and industrial customers that take
23 service from Black Hills Power. The companies that make
24 up Black Hills Industrial Interveners include GCC Dacotah
25 Inc., Pete Lien & Sons, Inc., Rushmore Forest Products,

1 Inc., Spearfish Forest Products, Inc., Rapid City
2 Regional Hospital, Inc., and Wharf Resources, USA, Inc.

3 These customers, as well as other customers, have
4 been subjected to significant increases in the cost that
5 they pay for electricity over the last several years. It
6 is because of these increases that the BHII group has
7 been an active participant in Black Hills Power rate
8 cases.

9 It is unfortunate that BHII could not join in the
10 Commission Staff's Settlement or reach one directly with
11 the company. That is because we believe that the
12 increase proposed in this case is not supported by the
13 record or by South Dakota Law.

14 And my comments here today I will provide a brief
15 overview of the company's recent history of rate
16 increases and a brief overview of the process in this
17 proceeding that started with the company's file, led to
18 the Proposed Settlement between the company and Staff and
19 resulted in BHII's opposition to both the company's
20 initial filing and the Proposed Settlement.

21 And then, finally, I will describe why the company's
22 rates should actually be reduced, not increased, and why
23 the Commission should modify the Proposed Settlement to
24 incorporate the effects of additional adjustments.

25 The pending case is the fourth general rate case

1 since 2006 for, on average --

2 MR. MAGNUSON: Mr. Smith, I'm sorry to
3 interrupt. I'm going to object on the basis of
4 relevancy. I'm not sure what the purpose is of going
5 back to 2006.

6 MR. SMITH: Do you have a response,
7 Mr. Moratzka?

8 MR. MORATZKA: I don't see why this series of
9 rate increases isn't relevant to the current rate case.

10 MR. SMITH: I'm going to overrule. It's close,
11 but I think it deals with the history of the rate --
12 rates of Black Hills, and I think that's relevant.

13 A. In 2006 Black Hills Power sought an increase of
14 9 and a half percent, received an increase of 7.9
15 percent. In 2009 the company sought an increase of
16 26.6 percent, and received an increase of 12.7 percent.
17 In 2012 the company sought an increase of 9.9 percent and
18 received an increase of 6.4 percent. In this case the
19 company seeks yet another significant increase of
20 14.6 million dollars, an overall increase of 9.3 percent
21 and an increase to the general service large industrial
22 contract class of 9.7 percent.

23 Our firm was retained by BHII to review the
24 company's filing and determine two things: Whether the
25 increase was justified and whether the resulting rates

1 would be just and reasonable. After a careful and
2 extensive analysis of the company's initial application,
3 we concluded that the company's positions were extremely
4 aggressive and not in the interest of any of its
5 ratepayers, not just the BHII group.

6 We determined that the requested increase was not
7 supported by sufficient evidence and that certain
8 adjustments were inappropriate or excessive. Once the
9 inappropriate and excessive adjustments are removed and
10 errors are corrected, we believe that a rate reduction of
11 5.3 million dollars compared to present rates is
12 appropriate.

13 After filing its case, the company responded to
14 formal discovery from the Staff and from Black Hills
15 Industrial Interveners, which was shared with all
16 parties. In addition, the company responded to informal
17 discovery in the form of e-mails from the Staff.
18 However, that informal discovery was not shared with all
19 parties.

20 Nevertheless, that informal discovery found its way
21 into the Proposed Settlement as support for the company
22 and the Commission Staff's position. While both BHP and
23 Staff witnesses down play the nature of that discovery in
24 their rebuttal testimony, the fact remains that
25 significant e-mail communications between the company and

1 Staff occurred during the September, October time frame
2 that were not shared with the other Interveners until
3 January of 2015. In other words, after BHII filed its
4 testimony.

5 The parties began discussing potential settlement in
6 October of 2014. BHII provided the parties with its
7 initial revenue requirement analysis and class cost of
8 service analysis. In other words, we provided the
9 company and the other parties including the Staff with
10 our analysis, revenue requirements, and class cost of
11 service.

12 Later the Staff provided the parties with its
13 revenue requirement analysis. Although BHII was included
14 in some of the initial settlement discussions with the
15 company and Staff, BHII was sidelined when the company
16 and Staff held private discussions.

17 BHII was subsequently provided a copy of the
18 Staff revenue requirement model used to quantify the
19 6.9 million dollar rate increase reflected in the
20 Proposed Settlement. However, BHII was left to attempt
21 to decipher the Commission Staff's revenue requirement
22 model and the adjustments reflected in it that were
23 negotiated between the company and Staff without the
24 benefit of testimony from either one of them. In some
25 respects this was a difficult undertaking.

1 BHP has continually modified its revenue
2 requirements since filing its case in March 2014, both in
3 response to discovery and as the company and Staff
4 converged on the Proposed Settlement. In some cases BHP
5 even proposed new adjustments. In other cases BHP
6 adjusted its original proposed cost based on presumably
7 actual costs incurred after the end of the historic test
8 year and based on revisions in its projected costs.

9 In other words, the company continually revised its
10 filing throughout the discovery and settlement process,
11 effectively abandoning many of the adjustments or
12 changing calculations reflected in its actual March 2014
13 filing.

14 Many of the costs that were adjusted in the filing
15 based on projected changes were replaced with what the
16 company now asserts are actual costs, almost in the form
17 of a true-up. This process resulted in a continually
18 changing and evolving test year and culminated in the
19 Proposed Settlement.

20 Moreover, it appears that the alleged actual costs
21 reflected in Proposed Settlement were accepted by the
22 staff without conducting the critical analysis to
23 validate them. It's as if the Staff relied on the fact
24 that the costs were incurred -- just the fact that they
25 were incurred to conclude that they were just and

1 reasonable and that they should have been incurred at
2 that level.

3 In every jurisdiction in which I have appeared the
4 utility's burden of proving its proposed rates are just
5 and reasonable requires more than a showing that it just
6 spent the money. The utility must show that the amounts
7 spent were reasonable and that spending the money was a
8 prudent decision.

9 BHII believes that the company's process of
10 constantly revising the costs in its filing, except for
11 the correction of errors, creates a dynamic test year
12 that is contrary to the law that governs the utility's
13 filing requirements and the basis upon which the
14 Commission is required to make its decisions.

15 South Dakota Law states the utility is to use a
16 historic test year, that the actual costs incurred in
17 that test year is the starting point. You have to have
18 something to measure what the costs are in order to
19 determine the revenue requirement.

20 South Dakota has an Administrative Rule that
21 specifies you start with the historic test year. That
22 law allows adjustments to the historic costs in the
23 utility's filing when it makes its filing but requires
24 that any proposed -- and this is a quote from the law,
25 "Proposed adjustments to book costs shall be shown

1 separately and shall be fully supported, including
2 schedules showing the derivation where appropriate."

3 And this is a very critical issue throughout several
4 of these adjustments. And Mr. Moratzka briefly mentioned
5 that.

6 But in my assessment many of the proposed
7 adjustments that the company included in the per books
8 costs or to the per books costs reflected in the
9 company's filing while shown separately, as required by
10 the law, were not fully supported in its filing and, in
11 fact, were not justified.

12 These include adjustments to increased operating
13 expenses for the so-called FutureTrack Workforce Program,
14 increases in Black Hills Power employee positions in
15 addition to the FutureTrack Workforce Program, and
16 increases in charges from Black Hills Utility Holdings,
17 one of two affiliate service companies. I'll return to
18 these and discuss them further.

19 Returning to South Dakota Law governing utility rate
20 filings, I'd emphasize that it specifically states that
21 no adjustments shall be permitted unless they are based
22 on changes in facilities, operations, or costs which are
23 known with reasonable certainty and measurable with
24 reasonable accuracy at the time of the filing -- that's
25 what the law says -- and which will become effective

1 within 24 months of the last month of the test period
2 used for this section and unless expected changes in
3 revenue are also shown for the same period.

4 Many of the adjustments that Black Hills Industrial
5 Interveners proposes in addition to those that are
6 reflected in the Proposed Settlement are because the
7 company did not comply with these very specific revisions
8 of the law.

9 Based upon my reading of what appears to be a fairly
10 straightforward Commission rule, the initial presumption
11 is that no changes to the test year are allowed. In
12 other words, you start with the historic cost. The
13 presumption is no changes are allowed.

14 But if such adjustments are even to be considered,
15 the utility must first determine that they are known and
16 measurable at the time of the filing, not at some later
17 date when actual costs come in and who knows what they
18 are. The utility must first demonstrate that they're
19 known and measurable at the time of the filing, which
20 would be March 31, 2014. And, second, the utility must
21 include any expected changes in revenue, which it did
22 not.

23 In its filing the company appears to have ignored
24 the presumption and requested numerous adjustments that
25 were not known with reasonable certainty or measurable

1 with reasonable accuracy as of March 31, 2014, but also
2 won't even be incurred until 12 months after the end of
3 the test year. These are some of the costs for the
4 decommissioning, the LIDAR survey, things like that.

5 For these costs I recommend that the Commission
6 simply remove them from the revenue requirement in this
7 proceeding, allow the company to defer these costs if and
8 when they are incurred, and then request the ratemaking
9 recovery in the company's next case.

10 I want to emphasize three points regarding this
11 proposal. First, even if the rule did not exist, there's
12 no compelling policy reason for the Commission to require
13 ratepayers effectively to prepay for the decommissioning
14 and LIDAR survey costs.

15 Second, I'm not recommending that the company be
16 precluded from seeking recovery at some future date. I'm
17 suggesting a mechanism for the utility to have the
18 opportunity to be made whole.

19 And, third, if the Commission determines that such
20 adjustments can be made, then it should abide by its own
21 rule and include changes in revenue and changes in
22 various ADIT amounts -- hopefully everybody knows what
23 that acronym is by now -- the NOL ADIT, and
24 decommissioning ADIT.

25 Furthermore, the company proposed other adjustments

1 that are not just and reasonable or other otherwise
2 justified and that should be rejected or modified or
3 failed to make adjustments that are necessary to ensure
4 that costs are adjusted reasonable.

5 In the first category are adjustments, one, to
6 reflect a five-year average of pension expense rather
7 than using the expense that, in fact, was known and
8 measurable at the time of the filing for the period
9 12 months after the end of the historic test year. And
10 that's what I recommend.

11 Number two, to increase the depreciation rates
12 expense for net negative salvage on production plant that
13 isn't justified at this time.

14 And, three, using unduly short amortization periods
15 for regulatory assets.

16 In my testimony I provide this table that we looked
17 at previously that summarizes our recommendations in that
18 first column. In the second column similar
19 quantifications on those issues in the Proposed
20 Settlement. And the third column would be the
21 adjustments that would be necessary if you start with the
22 Proposed Settlement.

23 And I'd like to briefly review the largest of the
24 issues reflected on this table and to respond to the
25 company and Staff rebuttal testimony on some of the

1 larger dollar issues, where I believe they have either
2 mischaracterized BHII's position or where they have made
3 claims that are not correct.

4 I'd like to start with the NOL ADIT.

5 MR. MAGNUSON: Mr. Smith, would it be possible
6 for us to just get a copy of the opening statement that
7 he's reading?

8 As a witness, anything that he brings to the
9 stand we have the opportunity to review. He's reading
10 his statement. Can I get a copy of it?

11 MR. SMITH: I think you probably should be able
12 to get a copy of it.

13 MR. MORATZKA: No objection.

14 MR. SMITH: Is that okay?

15 MR. MORATZKA: No objection.

16 MR. SMITH: Do you have one with you?

17 MR. MORATZKA: Yeah. Certainly. I would note,
18 though, that Mr. Kollen, although he is reading from this
19 stack of -- his draft opening statement, he's not reading
20 it verbatim.

21 MR. SMITH: Okay.

22 MR. MAGNUSON: May I ask what page you're on
23 now?

24 MR. MARRIOTT: Top of 7 in the copy that you
25 have.

1 MR. MAGNUSON: And my final note was I thought
2 it was going to be brief, a brief opening statement.

3 Thank you.

4 MR. SMITH: I understand.

5 MR. MORATZKA: I apologize if there was any
6 confusion. I talked to the parties beforehand, and I
7 understood that the opening statements were going to be
8 permitted. I talked to Ms. Cremer and understood that
9 parties were generally allowed 10 to 15 minutes to
10 respond, especially in an instance where their
11 credibility was attacked in rebuttal and --

12 MR. SMITH: We usually afford some time. We
13 don't like it to go on too long because we've already
14 seen the prefiled and all of that and just the redundancy
15 part of it. But as long as it isn't too lengthy, we
16 allow introductory testimony, right, so that we start out
17 at the direct point.

18 MR. MORATZKA: Right. And just to be clear,
19 we're done with the direct portion.

20 What Mr. Kollen is going to focus on now is what
21 would, I guess, be deemed surrebuttal, rebuttal to the
22 companies and Commission Staff witnesses.

23 MR. SMITH: Right. That's one of the anomalies
24 of having prefiled testimony. Otherwise, it doesn't work
25 that way. Here you can't ignore what's been filed since.

1 So I understand.

2 MR. MORATZKA: Thank you.

3 A. The rest of my comments really now are on the larger
4 dollar issues where we still have significant
5 disagreements with the Staff and Black Hills Power. And
6 I'll start with the NOL ADIT.

7 Briefly, this issue is where ADIT is normally
8 subtracted from rate base. And what the company has
9 proposed is to include an NOL ADIT as an addition to rate
10 base. In other words, this increases the revenue
11 requirement. I oppose that.

12 The primary reason, it appears, that the company is
13 in disagreement with us on this issue and the Staff is in
14 disagreement with us is that both the company and the
15 Staff believe that this is a normalization violation.

16 And what that means is that the -- that they believe
17 by reading the Internal Revenue Code, the Internal
18 Revenue regs and regulations and private letter rulings
19 that they can discern that this is something that the IRS
20 would consider to be a flow through of tax benefits.
21 Normally, normalization issues are focused on income tax
22 expense. That is not an issue in this case.

23 Instead, this issue has to do with rate base. And
24 normally, again, the IRS's inquiry on rate base when it
25 comes to that is whether or not the amount subtracted

1 from rate base is appropriate.

2 So we don't have any issue on the expense side. The
3 disagreement is over whether or not the NOL ADIT, if it
4 is not added to rate base, does that constitute
5 normalization violation.

6 And I want to make it very clear that regardless of
7 anyone's interpretation, whether it's Hollibaugh,
8 Mr. Peterson's or interpretation, the IRS has never ever
9 found a normalization violation. So to the extent that
10 this involves reading the tea leaves of the code or the
11 regs or regulations or private letter rulings, I think
12 you're safe if you conclude that there is no
13 normalization violation, even if you conclude that there
14 is a possibility of it.

15 And the other reason that you're safe on this is
16 that the utility has the opportunity to cure. You heard
17 Mr. Hollibaugh agree to that earlier. So the question is
18 should you do the right thing and put it into -- not use
19 it to reduce the subtraction from rate base. And I think
20 the answer to that is yes.

21 And I don't believe that it is a normalization
22 violation. I have a lot of experience in this area. I
23 worked for an electric utility in the tax department as a
24 researcher. I'm a CPA, a CMA, Charter Global Management
25 accountant. I've assisted utilities throughout the

1 country on tax issues and planning issues.

2 I've testified before the Treasury Department and
3 the Internal Revenue Service on tax normalization issues
4 and rulemakings. I've actually been -- I've actually
5 talked to Peter Friedman at the IRS who is the examiner
6 who issues these private letter rulings in the exempt
7 organizations section of the IRS. I've actually met with
8 him on a number of occasions. So I'm not without
9 credibility on this issue.

10 There are several reasons why I don't believe that
11 it is a normalization violation. First of all, there is
12 no definitive guidance from the Treasury Department or
13 from the IRS that's applicable to all taxpayers. The
14 private letter rulings cited by Mr. Hollibaugh are fact
15 specific to individual taxpayers.

16 The rulings -- there are other rulings that
17 Mr. Hollibaugh did not cite in his testimony that
18 completely exonerate in the sense of there is no
19 normalization violation if you do not include the NOL
20 ADIT and rate base.

21 And the third reason is that the NOL ADIT is
22 temporary. In other words, it floats, and it's
23 eventually used up. Hopefully, sooner rather than later.
24 And there's no attempt by any party in this case to even
25 argue that there's a flow through of tax benefits that

1 are inappropriate from an income tax expense
2 perspective.

3 And, finally, if there remains any NOL ADIT at
4 September 30, 2014, based upon the information in the
5 company's filing it appears that it will be fully
6 utilized in the first year that rates go into effect.
7 So, in other words, that ties in with the fact that it's
8 temporary.

9 And this one PLR that Mr. Hollibaugh did not mention
10 in his testimony was issued in 2014 and again by the
11 exempt organization section of the IRS, same examiner,
12 Peter Friedman, and he said that it would not be --
13 unequivocally that it would not be a normalization
14 violation if the NOL ADIT was not added into the rate
15 base.

16 So you have a range of opinions on this, even to
17 some limited extent by the IRS. But, again, the IRS has
18 never ever found that a utility was in a normalization
19 violation.

20 I want to talk about decommissioning now. This is a
21 different issue. Mr. Thurber, I believe, confused the
22 issue because there are three sets of costs that the
23 company is seeking to recover. One is the net book value
24 of the retired plan, one is the obsolete inventory
25 associated with the retired plan, the other one is

1 decommissioning expense that it hasn't yet incurred.

2 We don't have an issue with the net book value of
3 the plan or the obsolete inventory. Our focus is only on
4 the decommission expense. And our proposal is that the
5 recovery right now is premature. It doesn't fit within
6 South Dakota Law, the Administrative Rule that I
7 mentioned previously, and it's something that you can
8 authorize the company to defer.

9 They can come in the next case when it is known and
10 measurable, it's actually been spent, and you can
11 determine the appropriate rate recovery at that time.
12 The company is not harmed by that approach.

13 The next item is the LIDAR survey. And the
14 company's request for costs that had not been incurred
15 when it filed its case and now the settlement seeks to
16 recover the actual costs that were incurred but not
17 subject to deferral when those costs were incurred. We
18 don't believe that it is appropriate under South Dakota
19 Law, the Administrative Rule.

20 The next thing is the FutureTrack workforce and
21 other employee additions. These were absolutely not
22 supported in the company's filing, the requirement under
23 the Administrative Rule. And you can't then just move
24 ahead 12 months after the end of the historic test year
25 and say, well, we now have X number of employees and so

1 we're just going to put those costs in -- into the
2 Settlement. That doesn't comply with the rule.

3 It has to be known and measurable at the time of the
4 filing. It has to be fully supported. Neither one were
5 true.

6 And the third thing with respect to that is there's
7 no reason that the company has given that it requires
8 additional employees to do the same work that it was
9 doing in the historic test year.

10 We have the same point in the next two issues that
11 the Black Hills Utility Holding and Black Hills Service
12 Company affiliate charges. Again, the company just
13 simply put in a schedule in the filing, and these were
14 not known and measurable changes. They came out of the
15 Black Hills Utility Holding Company.

16 The company did propose adjustments. They were not
17 fully supported. They were not known and measurable with
18 reasonable certainty. And we recommend that the
19 Commission not allow those.

20 In fact, the company didn't even propose in its
21 filing a Black Hills Service Company adjustment. It came
22 in later in October of 2014 some seven months after it
23 made its filing and proposed a 1.1 million dollar
24 adjustment. There is no way that that could comply with
25 the Administrative Rule. It wasn't even in the filing,

1 and yet it shows up in the Proposed Settlement.

2 And the same thing then with the Black Hills
3 Utility Holding Company. The company said, well, our
4 actual costs from the two service companies through
5 September 30, 2014, were X and Y, and then that's what
6 appeared in the Proposed Settlement, including the
7 \$286,000 error. And we don't think any of that complies
8 with South Dakota Law.

9 And then also incentive compensation. Basically,
10 the Settlement does have some incentive compensation
11 excluded. We believe that there are additional amounts
12 tied to financial performance of the company that should
13 be excluded. And we'll go through all of that but --

14 And then pension expense, the company proposes a new
15 methodology where it takes a five-year average of the
16 years 2008 through -- I'm sorry. 2010 through 2014, even
17 though it knew what 2014 pension expense was because that
18 comes out of actuarial reports. So that not only was
19 known and measurable, it was actual at the time of the
20 company's filing.

21 Instead it just came up with a new method. I
22 described it as opportunistic simply because it was lower
23 in 2014. And I don't believe the Commission should adopt
24 the five-year average.

25 And then, finally, I'd like to talk about

1 depreciation expense. I'd like to start out by saying
2 with respect to that, that the representations by
3 Mr. Spanos are simply incorrect.

4 I did not recommend that you not provide terminal
5 net salvage in the depreciation rates. That simply is
6 wrong. I recommended that you use a negative 5 percent
7 net salvage for both interim and terminal salvage. And
8 that is the same net negative salvage rate that is
9 presently included in depreciation rates.

10 I don't believe that the company has fully supported
11 an increase to as much as a negative 28 percent. And
12 this is really only on production planned. So I first
13 wanted to clarify that Mr. Spanos's understanding of my
14 testimony or his representation of it, either one, are
15 simply incorrect.

16 And so with that -- oh. And then I have one
17 other -- two other things briefly.

18 Mr. Thurber addressed the cost of debt. And he
19 stated that I did not use the right cost of debt that
20 reflected the actual issuance of debt in 2014. I simply
21 used what was in the Proposed Settlement.

22 In other words, what I have in our quantification is
23 the same thing that the Staff or the -- in the Proposed
24 Settlement.

25 So really if, in fact, it is an error and that the

1 interest rate should be slightly less, then there's
2 another error in the Proposed Settlement of \$52,000. So
3 we have the transmission allocation error, \$286,000. The
4 company's criticism of me on the interest expense is also
5 in the Proposed Settlement so that's another error then,
6 according to the company, of 52,000. So both of those
7 should be reflected.

8 And that completes my opening statement. I'm sorry
9 it was so long, but, you know, there were a lot of
10 witnesses here to address so --

11 Q. Thank you, Mr. Kollen.

12 MR. MORATZKA: At this point I would tender
13 Mr. Kollen for cross.

14 SMITH: Mr. Magnuson.

15 MR. MAGNUSON: Thank you. There are two things
16 would I like to do at this point. The first thing is I
17 don't think I got the same copy that Mr. Kollen was
18 reading from because he was reading from after this one
19 ends. So I would like an updated copy.

20 MR. MORATZKA: Just to be clear, Mr. Kollen,
21 this was a draft. This was his own talking points. He
22 read some things verbatim. Some things he added, some
23 things he subtracted on the cost of debt. We don't have
24 a copy of that either.

25 I think that was something that Mr. Kollen may

1 have just put in on his own initiative. But perhaps
2 Mr. Kollen could clarify.

3 MR. SMITH: Mr. Kollen, is the version you have
4 in front of you the same as what Mr. Magnuson was given?

5 THE WITNESS: I made significant handwritten
6 changes to my copy of this. The one that Mr. Moratzka
7 had -- in addition, I spoke extensively extemporaneously
8 so -- but anyone's welcome to have a copy of this.

9 MR. MAGNUSON: I would like to have a copy of
10 what he read from.

11 MR. SMITH: After the hearing today could you
12 stop by the office or give it to one of the Staff people
13 here and they can make copies for the other attorneys.
14 How is that?

15 MR. MORATZKA: That sounds just fine. Thank
16 you.

17 MR. MAGNUSON: The second, I would request that
18 we take a short break.

19 MR. SMITH: Okay. We will do that.

20 (A short recess is taken)

21 MR. SMITH: Please proceed.

22 MR. MAGNUSON: Okay. The first thing that I
23 would like to do, and I do want to set the record
24 straight, Mr. Moratzka did ask me whether it was okay
25 with me if witnesses made an opening statement, and I did

1 say that that was acceptable.

2 I had no idea it was going to go this long, and
3 I had no idea that it was going to go into the detail
4 with regard to the case. I also had no idea that
5 Mr. Moratzka instead of asking the witness any questions
6 would just use the opening statement.

7 So with that being said, I would move to strike
8 the opening statement from the point of NOL ADIT
9 discussion, from that on. The first part was an opening
10 statement. So I move to strike the second part of the
11 opening statement.

12 And, secondly, I would move that the first part
13 of the opening statement is not evidence. It was a true
14 opening statement, probably more like a closing
15 statement. So that's the Motion that I would make.

16 MR. SMITH: Commissioners?

17 Oh, yeah. Pardon me.

18 Mr. Moratzka.

19 MR. MORATZKA: Thank you.

20 Just to be clear, I -- again, I had thought
21 that I had some leeway to do an opening statement. And
22 I apologize if it took a little longer than anticipated.
23 That, of course, is in part due to the significant and
24 aggressive attack of Mr. Kollen's testimony in rebuttal.

25 It may be that Mr. Magnuson and I have different

1 styles in terms of getting out responses to various
2 witnesses. It's generally been my practice just to allow
3 the witness to speak and not ask leading questions.

4 I certainly didn't object to Mr. Magnuson's
5 questions, many of which were leading for his witnesses.
6 I was giving him all the leeway he needed to get his
7 opening statements in.

8 And to say that our witness shouldn't be allowed
9 to respond to attacks of our witness where the attacks
10 are right at -- they're not claiming that here is an
11 issue, here is where there is a disagreement, Commission,
12 this is for you to resolve. They're attacks on
13 Mr. Kollen's credibility: Mr. Kollen's testimony is
14 false. Mr. Kollen has misrepresented the rule.

15 You know, those things, I think, need -- and I
16 beg the Commission for greater leeway in addressing. So
17 I adamantly oppose every part of Mr. Magnuson's Motion.

18 MR. SMITH: Ms. Collier.

19 MS. COLLIER: Thank you. I guess I've been
20 taking copious notes. I have found that as I have gotten
21 older my ability to remember anything that happened more
22 than five minutes ago is pretty much nonexistent, and
23 it's at times like these that it comes in kind of handy
24 for me.

25 I guess I certainly understood Mr. Moratzka to

1 be asking his witness to go into his rebuttal of what
2 BHP's rebuttal had been and that that kind of open ended
3 question I didn't believe needed to be divided up into
4 the BHP's various witnesses or the various issues.

5 So I guess maybe my style is somewhat similar.
6 I didn't take it as being one where the witness was
7 simply going off on tangents but was responding to a
8 request to respond to rebuttal.

9 MR. SMITH: Staff.

10 MS. CREMER: I don't necessarily take a position
11 one way or the other on this, and the Commission can give
12 it the weight it deserves.

13 MR. SMITH: Commissioners.

14 CHAIRMAN NELSON: I don't recall that we've had
15 to deal with an issue like this before where we've got a
16 Hearing Officer.

17 Would it be appropriate for one of us to make a
18 motion on how to rule on this?

19 Okay. Commissioner Hanson, would you
20 enunciate --

21 COMMISSIONER HANSON: Generally we just state
22 our opinions, and John would -- excuse me. The Hearing
23 Officer would make his ruling. And if we object to that
24 ruling, then one of us would make a motion at that
25 point.

1 CHAIRMAN NELSON: Okay. With that, I would deny
2 the Motion.

3 COMMISSIONER HANSON: I would also -- well, I do
4 have a question of you, sir, Mr. Kollen.

5 Will you be here tomorrow?

6 THE WITNESS: I can be here tomorrow morning.

7 COMMISSIONER HANSON: I think that's certainly
8 fair because of all of the information that you provided
9 here with your opening statement.

10 The parties need to have the opportunity to
11 question you on each one of those items. And, granted,
12 with the -- the amount of statements that you made they
13 may feel that they missed some of them, and I would want
14 to afford them the opportunity to review that information
15 this evening and be prepared to ask any further questions
16 tomorrow, if that's possible to do.

17 MR. MORATZKA: No. We don't have any objection
18 to that. I can't say for certain what Mr. Kollen's
19 flight schedule is, but I'm sure we can make arrangements
20 to make Mr. Kollen available.

21 COMMISSIONER HANSON: With that understanding, I
22 would support the overruling of the Motion.

23 MR. SMITH: And, Mr. Kollen, are you going to be
24 here most of the morning?

25 THE WITNESS: Yes. I could be here perhaps

1 until 11 o'clock or so. I still have to drive back to
2 Sioux Falls to catch a flight to Washington, D.C. for
3 another hearing.

4 MR. SMITH: Well, maybe what we ought to do is
5 convene at 8:00 in the morning. Is that doable?

6 I think that was our original schedule.
7 Sometimes we shift that back once we get into a hearing.
8 Let's do that.

9 With that, Lee, I think I will deny the Motion
10 based on the Commissioners' desires.

11 And what are your thoughts in terms of prep for
12 this now at this point?

13 MR. MAGNUSON: Well, first let me just comment.
14 I think the question and what my Motion raised is whether
15 or not his opening statement is going to be part of the
16 record in the event of an appeal, and I do not believe
17 that it should be.

18 MR. SMITH: The evidentiary record?

19 MR. MAGNUSON: That is correct.

20 MR. SMITH: I tell you what. Let me give that
21 some thought. And at this point on that part of it I'm
22 not going to take action on that part, and I will think
23 that over overnight and rule on that in the morning.

24 How is that?

25 MR. MAGNUSON: Very good.

1 COMMISSIONER HANSON: John.

2 MR. SMITH: Yeah.

3 COMMISSIONER HANSON: I'm wondering if you
4 should consider on your nightly thought on this --

5 Mr. Kollen, you're not an attorney; correct?

6 THE WITNESS: That's correct.

7 COMMISSIONER HANSON: He did give legal advice
8 in his --

9 MR. SMITH: There were a number of legal
10 opinions expressed, yes.

11 COMMISSIONER HANSON: And I certainly think
12 those should not be a part of -- well, I'm not going to
13 give them weight, but I don't know how you would deal
14 with those.

15 MR. SMITH: Well, and maybe the best thing to
16 do -- and let me get your thoughts on this, Mr. Moratzka.
17 It was an opening statement. Again, it wasn't done with
18 the usual attorney questioning and answering and that
19 kind of thing. And there were a number of legal opinions
20 expressed in there.

21 And maybe the better course of action is to
22 treat it as not part of the evidentiary record, and then
23 we can -- you know, if you wanted to proceed with either
24 additional direct case or whatever, we could do down that
25 path.

1 How does that sound?

2 MR. MORATZKA: Well, I guess I would have a
3 couple of questions then. Would I then be afforded the
4 opportunity to do some direct examination of Mr. Kollen
5 to address some of the issues raised?

6 And I guess if I go through and elicit the same
7 testimony, aren't we just spending time getting into the
8 record the same thing?

9 MR. SMITH: Okay. I think Commissioner Hanson,
10 his view is just the portions that we deem to deal with
11 the expression of legal opinions should probably be
12 excised because that isn't really factual evidence.

13 MR. MORATZKA: Okay.

14 MR. SMITH: I mean, to me in listening to the
15 opening statement, yes, it was a little longer than we
16 usually have. What we usually ask him, and I don't think
17 he was here at the time I gave my intro this morning, is
18 that we have a brief summary of your testimony. And
19 yours was a little more than that.

20 However, I honestly didn't hear anything in
21 there -- I don't really recall hearing anything in your
22 testimony other than referencing Black Hills' rebuttal,
23 which admittedly -- prefiled puts you in a weird position
24 because, you know, you're theoretically reacting just to
25 their direct and all of that.

1 But the fact is in this case you had already
2 submitted testimony, and then you're subjected to
3 rebuttal, which was, you know -- you know, it was
4 contrary to, you know, your testimony. And it does put a
5 witness in an odd position in this situation.

6 So I'll take Commissioner Hanson's -- I'll take
7 his thoughts as maybe the right way to go, and we will
8 excise those portions of the opening statement that deal
9 with nonfactual assertions but, rather, express legal
10 opinions, et cetera, and we'll proceed from there.

11 How is that? Is that okay with you,
12 Mr. Moratzka?

13 MR. MORATZKA: I guess just two points. We'll
14 need to understand exactly what portions were stricken.

15 But, second, and I know we won't deal with this
16 until the conclusion of the hearing, but I believe this
17 does underscore the need for briefing. Recognizing there
18 is a serious legal issue here, I think it underscores the
19 need for briefing.

20 MR. SMITH: I didn't hear too much -- I didn't
21 hear a lot in terms of your factual statements in there
22 that departed from your testimony. It just -- other than
23 to address, you know, responsive testimony to your
24 testimony and take some issues with some of the
25 statements made by other witnesses. So we'll go down

1 that path.

2 What I thought is we've got a copy of it over
3 there. What I thought is once we get a copy, then I can
4 go through it, and I can produce my opinion of what I
5 think should be stricken at least as evidence. And then
6 you guys can look at it and see if you -- if you think
7 what I've done is okay or give us your thoughts on it.

8 How is that?

9 MR. MORATZKA: I guess two questions again.

10 I know that Mr. Kollen freelanced a little bit
11 from the copy that he had, and he's got some handwritten
12 notes. So I'm a little concerned about saying that
13 that's a -- while I'm fine striking testimony related to
14 the legal opinion, you know, are we going to then with
15 the copy, with the stricken language, are we going to
16 introduce that as an exhibit to say this is what
17 Mr. Kollen -- his opening statement so that every party
18 has a written copy of it?

19 Or are we going to rely on the transcript
20 itself?

21 MR. SMITH: Well, we will have the transcript.
22 Again, some of those statements I think -- some of his
23 statements about interpretation of -- he referred to them
24 as law, as I think we're really talking about a rule;
25 right?

1 We're talking about 20:10:13:44; am I correct?

2 MR. MORATZKA: That's correct.

3 MR. SMITH: I think that's what we're talking
4 about. And what parameters does that particular rule
5 impose on parties to one of these cases.

6 And, again, there was definitely some probable
7 legal opinion in there. Although, in a way it's sort of
8 mixed, in that part of this is -- those rules are meant
9 to govern rate case filings, which are what, normally
10 what, 95 percent accounting related? They really are.
11 There's not a lot of law in there.

12 But I do agree there is an interpretive issue
13 with respect to that rule and to what extent it blocks
14 certain things in the future.

15 Mr. Magnuson, any thoughts?

16 MR. MAGNUSON: I'm comfortable with the way that
17 you are proceeding.

18 Obviously, if we're going to get into parts of
19 what should be excised from his opening statement, we've
20 got to rely on the transcript. We can't rely on the --

21 MR. SMITH: We will have to do that, yes. We
22 will have to look at the transcript and ultimately make
23 an ultimate ruling on what is or isn't going to be
24 treated as "evidence" as opposed to "opinion." And not
25 professional opinion.

1 him a copy, or is there a copy up on the counsel table
2 for Schedule M-2?

3 MR. MAGNUSON: Well, it's right there in the
4 binder if he wants to take a look at it.

5 A. I cite on page 10 of my testimony that the company
6 included 12.373 million jurisdictional and 13.497 million
7 total company and asset NOL ADIT. And I reference
8 Schedule M-1 and Schedule M-2.

9 Q. Okay. Is it correct or incorrect that you said in
10 your testimony that there was no NOL at October 1, 2014?

11 A. Based on my analysis, there would be none.

12 Q. Thank you. You stated in your testimony that there
13 should be no remaining asset NOL ADIT at October 1, 2014.

14 That's correct?

15 A. Yes.

16 Q. Isn't it correct that you failed to recognize the
17 additional deductions, including accelerated and bonus
18 depreciation and 43 million of additional tax
19 deductions?

20 MR. MORATZKA: Objection. Foundation.

21 MR. SMITH: Overruled.

22 A. Not that I'm aware of.

23 Q. Well, you're not aware that the NOL ADIT at
24 October 1, 2014, should be approximately 14.2 million for
25 total company?

1 A. I believe one of your witnesses said that, but based
2 upon my analysis, there was about 44 million dollars
3 worth of taxable income in the test year -- or the
4 posttest year period that would have absorbed that
5 carryforward.

6 Q. Did you review all the responses to DRs?

7 A. I don't believe I reviewed all of them, but I
8 believe I reviewed the relevant ones.

9 Q. So if there was something in a response that
10 addressed that topic, you would have seen it?

11 A. I believe so.

12 Q. Okay. Now I think when you did your testimony --
13 let me correct that. Your opening statement with regard
14 to NOL ADIT you summed up your testimony by saying I
15 think you are safe.

16 That was your testimony, wasn't it?

17 A. Yes.

18 Q. That's not exactly a definitive statement, is it?

19 A. Well, I think that you --

20 Q. Yes or no? Is that a definitive statement?

21 A. It's a definitive statement, yes.

22 Q. Okay. Now isn't it true that with regard to
23 violations of normalizations, that's a self-reporting
24 mechanism; correct?

25 A. If the company actually believes that.

1 But the cases that I've been in where the utilities
2 will advance arguments of that nature they -- I
3 personally have never seen a utility self-report a
4 normalization violation, even if they have advanced an
5 argument to that effect before the state regulatory
6 Commission.

7 Q. Okay. Now listen to my question. Because you
8 wouldn't know whether ABC utility in Utah would have
9 self-reported with regard to a normalization rule or
10 not.

11 You would not have known that; correct?

12 A. Well, I haven't done -- there's no way that anybody
13 outside of the taxpayer itself can go in and look at
14 anybody else's tax returns.

15 Q. That's correct. So that has to be taken into
16 account when you say there's never been a normalization
17 violation that's been reported to the IRS; right?

18 A. No. That was not my testimony.

19 My testimony is that the IRS has never found a
20 normalization violation or imposed a sanction. That's my
21 testimony. Your witness agreed with that.

22 Q. So you wouldn't know, though, if a utility
23 self-reported a normalization violation; correct?

24 MR. MORATZKA: Objection. Asked and answered.

25 MR. MAGNUSON: I don't think he answered it.

1 Q. Yes or no?

2 A. The only thing I could say is if a utility
3 self-reported a normalization violation, then without
4 attempting to cure it I would be extremely surprised.

5 And, in any event, to my knowledge and to your
6 witness's knowledge, the IRS has never found a
7 normalization violation, self-reported or not.

8 Q. Okay. So I'll repeat the question, and you can
9 answer yes or no.

10 You wouldn't know if a utility self-reported a
11 normalization violation; correct?

12 A. I've already answered that.

13 MR. MORATZKA: Same objection.

14 MR. SMITH: I'm going to overrule it because I
15 don't think he has actually answered it --

16 A. Well, there's no way to know.

17 COMMISSIONER HANSON: The witness needs to wait
18 until there's a ruling and then abide by the ruling.
19 Allow your attorney to do his job and our Hearing Officer
20 to do his job.

21 MR. SMITH: And I am overruling the objection
22 because I don't think there's been just a straightforward
23 answer to his actual question. It's gone down a
24 different path.

25 A. There's no way to know.

1 Q. Thank you.

2 A. The same answer that I indicated before.

3 Q. Now you understand, don't you, that Mr. Dave
4 Peterson is the consultant retained by Staff?

5 A. I do.

6 Q. And you understand that Mr. Peterson has been
7 retained by Staff on a number of cases, rate cases here
8 in South Dakota; correct?

9 A. I do have that understanding.

10 Q. And for a number of years also; correct?

11 A. Number of cases, number of years, yes.

12 Q. And you read Mr. Peterson's testimony in this
13 matter; correct?

14 A. I did.

15 Q. And did you read pages 8 through 9 of Mr. Peterson's
16 testimony where he reviews your general ratemaking
17 principles?

18 A. I've read the entirety of Mr. Peterson's testimony.

19 Q. So you would have read pages 8 and 9; correct?

20 A. Yes.

21 Q. And he references the Commission's longstanding
22 policy regarding South Dakota Administrative Rule
23 20:10:13:44; correct?

24 MR. MORATZKA: Counsel, could we take a moment
25 to provide the witness with Mr. Peterson's testimony?

1 Q. Do you want to look at his testimony?

2 A. It depends on what questions you're planning to ask.

3 MR. MORATZKA: May I approach the witness?

4 MR. SMITH: You may.

5 MR. MAGNUSON: I just asked the question I was
6 going to ask.

7 MR. SMITH: Let him give it to him so he can see
8 it.

9 A. Page 8 of Mr. Peterson's testimony?

10 Q. Pages 8 and 9.

11 A. Okay. I have that, and I have read it.

12 Q. Okay. And is it true that Mr. Peterson references
13 the Commission's longstanding policy regarding
14 South Dakota Administrative Rule 20:10:13:44?

15 A. Are you talking about on line 27?

16 Q. It would be on those two pages.

17 A. Are you talking about line 27?

18 Q. It would be contained in lines 22 through line 14 on
19 page 9.

20 A. I'm sorry. I just don't see it there.

21 Q. Okay. Well, let me ask you this: Would you defer
22 to Mr. Peterson on what the Commission's longstanding
23 rule has been with regard to South Dakota Administrative
24 Rule 20:10:13:44?

25 MR. MORATZKA: I'm going to object. I'm not

1 sure that there's any record anywhere of a case
2 interpreting 20:10:13:44. So I will object on
3 foundational grounds.

4 And note that to the extent that any
5 interpretation has been part of the Settlement, if no one
6 objects, the issue's never been brought before the
7 Commission.

8 MR. SMITH: Mr. Magnuson, response?

9 MR. MAGNUSON: Well, number one, there have been
10 litigated cases that have been brought before this
11 Commission where the South Dakota Administrative Rule has
12 been used by this Commission. We believe it's a
13 longstanding rule. I believe that Mr. Peterson knows
14 what the longstanding policy is.

15 And so all I'm asking this witness is whether he
16 would defer to Mr. Peterson on what the longstanding
17 policy of this Commission has been.

18 MR. MORATZKA: Objection. It calls for the
19 witness to speculate.

20 MR. SMITH: Any response, Lee?

21 MR. MAGNUSON: No. I think that this is his
22 first time that he's testified in a matter like this in
23 South Dakota. I think I'm just asking him will he defer
24 to Mr. Peterson's interpretation of the Commission's
25 longstanding policy.

1 MR. MORATZKA: Objection again.

2 How would -- at this point in time Mr. Kollen
3 wasn't able to find that interpretation that he could
4 defer to. So, again, I'll continue the objection.

5 MR. SMITH: Okay. I'm going to overrule the
6 objection.

7 MR. MORATZKA: One final note. It appears to me
8 that we've just struck one nonattorney's reading of
9 20:10:13:44 from the record. It seems odd procedurally
10 to get another witness to defer to that interpretation.
11 So I will continue my objection.

12 MR. SMITH: Okay.

13 A. The answer to the question is, no, I won't defer to
14 it because I have been instructed by counsel as to the
15 interpretation of the law, and my testimony follows that
16 interpretation.

17 MR. MAGNUSON: I'm going to move to strike all
18 of his answer except for the word "no."

19 MR. SMITH: I'm going to overrule it.

20 Q. Mr. Kollen, I'm going to read from line 1 on page 9.
21 And this is from Mr. Peterson's testimony. "Rather it is
22 my understanding that both the Commission Staff and the
23 Commission have previously interpreted this rule to mean
24 that for any posttest year change in expense or
25 investment that has an incremental revenue component,

1 i.e., expenses or investments made to increase sales
2 and/or to serve new customers, a corresponding revenue
3 adjustment must also be recognized."

4 Did I read that correctly?

5 A. I believe you read it verbatim.

6 Q. Thank you.

7 Mr. Kollen, would you agree that Mr. Spanos
8 specializes in depreciation?

9 A. Yes, he does.

10 Q. You don't specialize in depreciation, do you?

11 A. I do.

12 Q. You do?

13 A. Yes.

14 Q. Along with all the other areas?

15 A. Yes. I'm a member of the Society of Depreciation
16 Professionals. I know John quite well.

17 Q. So in your testimony where you went through all of
18 these things -- in fact, I have this Exhibit 9 that you
19 presented -- you're a specialist in all of those areas.

20 Is that fair?

21 A. Exhibit 9. Are you talking about the revised table?

22 Q. Yeah. Because, I mean, you went through, and
23 there's got to be, what, 15 different things in here.

24 You're a specialist in all 10 or 15 of those items?

25 A. I believe so.

1 Q. Did you complete any physical observation of
2 Black Hills Power's plant or equipment?

3 A. No. Nor do I think one was necessary for the
4 discussion that I addressed.

5 Q. Okay.

6 MR. MAGNUSON: I'm going to move to strike his
7 answer after the word "no." It was a simple yes or no
8 question, and he's trying to get more into evidence.

9 MR. SMITH: I'll sustain that.

10 Q. You did not do a full depreciation study to justify
11 your rates; correct?

12 A. I did not. I addressed only specific issues. I
13 addressed the lifespan issue for the Cheyenne Prairie
14 Generating Station, and I addressed net negative salvage
15 on production plant. That did not require a full
16 depreciation study.

17 MR. MAGNUSON: Move to strike everything after
18 when he said he did not do a full depreciation study. If
19 he would listen to my question and answer the question, I
20 would appreciate it.

21 MR. SMITH: Okay. I'm going to overrule that.

22 Q. And, in fact, you agreed with everything in the
23 depreciation study completed by Mr. Spanos except for one
24 component; correct?

25 A. No.

1 Q. The one component you disagreed with was terminal
2 net salvage; correct?

3 A. That's correct.

4 Q. And you did not complete or submit a net salvage
5 study to support your position on terminal net salvage;
6 correct?

7 A. That's correct. I don't know how to answer it yes
8 or no. There were a couple of double negatives in there.

9 What I did was I recommended that the Commission
10 stick with the net negative 5 percent that is reflected
11 in present rates.

12 MR. MAGNUSON: And, again, I'll move to strike
13 the last part of his answer.

14 MR. SMITH: And I'm going to overrule.

15 MR. MAGNUSON: No further questions for this
16 witness.

17 MR. SMITH: Ms. Collier.

18 MS. COLLIER: I do have a couple of questions,
19 if you'll bear with me, though, with my notes.

20 CROSS-EXAMINATION

21 BY MS. COLLIER:

22 Q. Mr. Kollen, I believe that you testified and were
23 allowed to testify as to a brief history of Black Hills
24 Power rate increases. Did you -- and you laid out ones
25 for 2006, 2009, and 2012.

1 Excepting the current rate increase, do you know
2 what those other three totalled?

3 A. Quite frankly, not sitting here. Somebody else has
4 my opening statement where I had that information.

5 THE WITNESS: Oh, thanks.

6 A. It's about 30 percent, just for the three.

7 Q. And so the rate increase that's at issue would be on
8 top of that?

9 A. That's right. Bring it up to about 40 percent.

10 Q. I believe that -- I wanted to ask you a
11 clarification question from your testimony regarding the
12 incentive compensation. And you, if I understood it
13 correctly, referred to BHP -- I believe it was
14 Black Hills Power coming up with a new methodology for
15 expenses in that area; is that correct?

16 A. That would be pension expense. And the company
17 proposed a five-year average rather than the 2014 actual
18 known and measurable at the time of its filing. It's a
19 new methodology.

20 Q. So when you say it's a "new methodology" is it one
21 that's simply new to you or new to, I guess, the field in
22 which we're talking about?

23 A. New to Black Hills Power. And in prior cases my
24 understanding is that the company has used the test year
25 amount rather than a five-year average. There may have

1 been pro forma adjustments to the test year amount, but
2 the methodology using a five-year average is new. That's
3 a new proposal.

4 MS. COLLIER: Thank you.

5 MR. SMITH: Staff.

6 MS. CREMER: Thank you.

7 CROSS-EXAMINATION

8 BY MS. CREMER:

9 Q. Good afternoon. And I was -- maybe I didn't catch
10 it.

11 What did you say the total increase was over the
12 rate increases? What was the number you used?

13 A. I think it was 30 percent. Just looking at these
14 9 and a half -- oh, I'm sorry. I double counted one.

15 8 percent on the 2006 case, 12.7. So that would
16 make it 21. And then another 6. So it was about 27 or
17 28 percent.

18 Q. Okay. Thank you.

19 And I want to talk about those for a moment. In
20 2006 what was Black Hills Industrial Interveners -- what
21 was their increase that year?

22 A. I don't know.

23 Q. Would you agree with me that it was considerably
24 less than everybody else's?

25 A. I don't know.

1 Q. And what about 2009? What was Black Hills
2 Industrial Interveners' increase that year?

3 A. I don't know.

4 Q. Then I might as well ask you. What about 2012?

5 A. I don't know that either.

6 Q. And so subject to check would you agree with me that
7 in each of those rate increases the Black Hills
8 Industrial Interveners' rate increase was considerably
9 less because they reached settlement with Black Hills
10 Power than everybody else?

11 MR. MORATZKA: Objection. That actually
12 mischaracterizes the Settlement Agreements. And if we're
13 going to bring those up, then we should, you know -- we
14 have confidential versions.

15 I don't think they go in through this witness
16 because there's no foundation.

17 MS. CREMER: Well, he brought them up.

18 MR. MORATZKA: No. These are the public
19 settlements. The private settlements with Black Hills
20 Power are not part of the record and not something that
21 Mr. Kollen has.

22 MS. CREMER: Okay. You know, I guess I
23 misinterpreted what he was trying to tell us.

24 I'll move on.

25 Q. Did you add up all of the data requests that just

1 Staff had asked in this case?

2 A. I'm sorry. I didn't -- it kind of cut in and out,
3 the microphone.

4 Q. Staff asked a number of data requests in this case.
5 Would you acknowledge that?

6 A. Yes. A lot.

7 Q. Yes. Did you happen to add up how many questions
8 were asked?

9 A. I did not.

10 Q. Subject to check, would you agree with me it was
11 over 500 questions, and that doesn't include all the
12 subparts?

13 A. I don't know. I know it was at least 100. Because
14 I know that in the third set there were 99 questions.
15 But I don't know beyond that. I did not add them up.

16 Q. Did Black Hills Industrial Interveners and
17 Black Hills Power hold settlement discussions without
18 Staff or DRA present?

19 A. I believe that we had one -- I was a participant on
20 one conference call. That's the only one that I'm aware
21 of.

22 MS. CREMER: That's all my questions.

23 Thank you.

24 MR. SMITH: Commissioner questions.

25 CHAIRMAN NELSON: My question relates to the

1 last issue that Ms. Collier was visiting with you about.

2 It's my understanding in your written testimony
3 that you referred to a normalization adjustment as
4 "opportunistic."

5 Is that correct?

6 THE WITNESS: That had to do with the pension
7 expense. And the fact is that in the 2014 actuarial
8 report, which is the basis for the pension expense, it
9 was significantly less than in prior years. And that's
10 not surprising, given the returns in the market. And you
11 would expect to see that reflected in pension expense.

12 And that was clearly known and measurable at the
13 time of the company's filing because it used that in the
14 five-year average. And it was one of those situations
15 where the expenses went down.

16 And normally the customers would get the value
17 of that. Instead, the company came up with a new
18 methodology by using a five-year average.

19 CHAIRMAN NELSON: Were you present this morning
20 for my discussion, I think with Mr. White, where instead
21 of using the word "opportunistic" I used the word "cherry
22 picked"?

23 THE WITNESS: No, I wasn't here.

24 CHAIRMAN NELSON: You weren't here. We had a
25 good discussion about that. And I was trying to figure

1 out, you know, in what circumstances do they attempt to
2 use the normalization adjustment as opposed to strictly
3 use a number from the test year. And he talked about the
4 fact if there were material swings in the dollar figures
5 from year to year.

6 And so my question for you is in what
7 circumstances would you find a normalization adjustment
8 appropriate? Because, obviously, you don't in this case.
9 But where would it be appropriate?

10 THE WITNESS: Well, the reason I don't in this
11 case is because, you know, the market continues to go up
12 and because that's a component of the pension expense,
13 the return on those fund assets, then I would anticipate
14 going forward that it would continue at lower levels,
15 perhaps, than what we saw in 2009 and 2010 when the
16 market was crashing.

17 But in some other cases, for example,
18 normalization adjustments might be appropriate if there
19 are pay raises at the end of a historic test year that
20 weren't fully reflected in that test year. That
21 certainly would be a known and measurable change. You
22 would want to normalize that.

23 If there was some anomaly, for example, storm
24 costs -- maybe a utility incurred 20 million dollars
25 worth of storm costs -- you would take that out and

1 probably treat that separately.

2 There may be some other examples too, but
3 normally what you look for are abnormal and nonrecurring
4 types of expenses, and then you either take them out
5 entirely or you normalize them.

6 But pension expense is a recurring expense. And
7 the question is what is the appropriate level. And they
8 knew what it was for 2014 based upon the actuarial report
9 so it was certainly known and measurable.

10 CHAIRMAN NELSON: Thank you.

11 MR. SMITH: Commissioner questions.

12 COMMISSIONER HANSON: I just have one.

13 In Interveners' Exhibit No. 9 that was handed
14 out during your presentation did you address each one of
15 those items either in your prefiled or in your discussion
16 here today?

17 THE WITNESS: I did.

18 COMMISSIONER HANSON: Each one of them?

19 THE WITNESS: Yes. The only thing that I --
20 yes. I did. Including the quantification.

21 I did not address the capital structure as such
22 or the rate of return, but I quantified the effects of
23 it.

24 In other words, I did not -- I was agnostic on
25 it. In other words, I didn't say yes I support it or

1 disagree with it. Same thing with return on equity. But
2 I did quantify the effects.

3 COMMISSIONER HANSON: All right. Thank you.
4 That's all I have.

5 MR. SMITH: Additional Commissioner questions?
6 I'm not seeing any.

7 Mr. Magnuson, it's 4:53. Should we plow ahead
8 at least to get the cross-examination done?

9 MR. MAGNUSON: I have no additional cross for
10 this witness.

11 MR. SMITH: Ms. Collier?

12 MS. COLLIER: No. None.

13 MR. SMITH: Staff.

14 MS. CREMER: No, I don't.

15 MR. SMITH: Okay. It's 4:53. I guess the
16 decision now is should we wait until tomorrow then for
17 your redirect?

18 MR. MORATZKA: I don't have any redirect.

19 MR. SMITH: Oh, you don't. Okay. That's it,
20 huh?

21 MR. MORATZKA: That's it.

22 MR. SMITH: I guess we're done.

23 MR. MAGNUSON: Could I have a moment to visit
24 with co-counsel?

25 MR. SMITH: You certainly may, yes.

1 (Pause)

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

3 I'm just looking forward to what tomorrow
4 brings. And I guess the first thing I'd like to clarify
5 is I believe that -- Mr. Baron's going to be here
6 approximately noon tomorrow?

7 MR. MORATZKA: No. Mr. Baron's here first thing
8 in the morning.

9 MR. MAGNUSON: First thing in the morning?
10 Okay.

11 MR. SMITH: Does that end it?

12 MR. MAGNUSON: Yeah. I didn't understand. I
13 thought he was going to be here at noon so we can just
14 proceed with the regular procedure --

15 MR. SMITH: Regular order of things?

16 Let's do that. And you'll follow them. You'll
17 follow him, I guess.

18 COMMISSIONER FIEGEN: But when does Mr. Kollen
19 need to leave? Because you need to leave at --

20 THE WITNESS: I need to leave, I believe, by
21 noon in order to catch the flight out of Sioux Falls.

22 COMMISSIONER FIEGEN: Okay. So we do have some
23 movement.

24 MR. SMITH: Well, he already testified. He's
25 done.

1 MR. MAGNUSON: Mr. Kollen will be done. But
2 then we still have Staff putting on their witness --

3 MR. SMITH: Right. Mr. Peterson.

4 MR. MAGNUSON: -- following the case of Black
5 Hills Industrial's. And then would be our rebuttal.

6 I'm just trying to get a feel for tomorrow.

7 MR. SMITH: Yep. I forgot about Mr. Peterson.

8 Okay. I think, with that, we'll recess for the
9 evening.

10 Oh, pardon me.

11 MR. MORATZKA: One last procedural question.

12 Maybe I misinterpreted your ruling before.

13 Are we going to have the court reporter do the
14 transcript tonight for striking?

15 COMMISSIONER FIEGEN: Be up all night.

16 MR. SMITH: You know, I guess my thought on it
17 is that we can look at it and -- but is that something
18 necessarily that we have to do right here at hearing, or
19 is that something we can do following hearing in terms of
20 a Commission ruling in the future?

21 MR. MORATZKA: It bears on examination so it
22 needs to be done during the hearing, I think. I don't
23 think we have a choice.

24 MR. SMITH: What examination would come out of
25 that?

1 MR. MORATZKA: Well, we've had a portion of our
2 testimony stricken.

3 MR. SMITH: Yeah. Okay. All right. Okay.
4 Okay. You may have.

5 MR. MORATZKA: So sorry to ask one more
6 procedural question.

7 Is there to be more discussion and back and
8 forth on this issue first thing in the morning?

9 MR. SMITH: I suppose we could. But I don't
10 know, Cheri, would it be -- you could do a quick draft;
11 right? It's not going to be --

12 Let's go off.

13 (Discussion off the record)

14 MR. SMITH: Commissioners, I'd appreciate your
15 thoughts too maybe but --

16 Maybe we should take this up first thing in the
17 morning? Do you want to do that?

18 CHAIRMAN NELSON: I would like to make sure that
19 this issue is resolved in a rock solid manner first thing
20 in the morning so that it's clear on everyone's part how
21 we need to proceed.

22 MR. SMITH: Okay. All right. I think, with
23 that, we will go into recess overnight, and we will
24 reopen the hearing at 8:00 a.m. And the first item up
25 we'll deal with is that issue with the opening

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statement.

(The hearing is in recess at 4:57 p.m.)

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 27th day of
11 January, 2015, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 4th day of
14 February, 2015.

15

16

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18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter

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