

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE FILING BY
NORTHWESTERN CORPORATION
D/B/A NORTHWESTERN ENERGY FOR
APPROVAL OF TARIFF REVISIONS

EL05-006

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Transcript of Proceedings
May 10, 2005

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,
GARY HANSON, CHAIRMAN
BOB SAHR, VICE CHAIRMAN
DUSTY JOHNSON, COMMISSIONER (by telephone)

COMMISSION STAFF
Rolayne Ailts Wiest
John Smith
Karen Cremer
Sara Greff
Greg Rislov
Harlan Best
Keith Senger
Dave Jacobson
Michele Farris
Jim Mehlhaff
Tina Douglas
Heather Forney
Pam Bonrud

Reported By Cheri McComsey Wittler, RPR, CRR

PRECISION REPORTING
L I M I T E D

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1 APPEARANCES BY TELEPHONE
2 Colleen Sevoid
3 Melissa Thompson
4 Bill Heaston
5 Dave Prazak
6 Larry Nelson
7 Kyle White
8 Alan Dietrich
9 Al Lunde
10 =====
11
12 TRANSCRIPT OF PROCEEDINGS, held in the
13 above-entitled matter, at the South Dakota State
14 Capitol, Room 412, 500 East Capitol Avenue, Pierre,
15 South Dakota, on the 10th day of May 2005, commencing
16 at 9:30 a.m.
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1 CHAIRMAN HANSON: EL05-006, In the
2 Matter of the Filing by NorthWestern Corporation
3 doing business as Northwestern Energy for Approval
4 of Tariff Revisions.
5 The question is, shall the Commission approve
6 the tariff revisions?
7 Well, I think I'll open it up for any
8 discussion from the Commissioners at this
9 juncture.
10 COMMISSIONER JOHNSON: Mr. Chairma
11 I had heard speculation that there might be
12 additional information from the Petitioner. Is
13 that true or --
14 MR. DIETRICH: This is Alan Dietrich
15 from Northwestern. I am on the line. I'm sorry I
16 wasn't able to be there in person. I believe
17 Warren Lotsberg and Jeff Decker are there in
18 person, and we also have Kyle White of Black Hills
19 Power & Light to join the meeting, and I believe
20 Kyle is on telephonically.
21 One of the questions that had arisen at the
22 last time this was before the Commission dealt with
23 some of the legislative history behind
24 SDCL 49-34A-8.3, and I guess, well, Bob Miller from
25 the South Dakota Electric Utilities Company had

1 attempted to address that question. I believe it
2 was indicated that Mr. White might be able to
3 provide some additional information, and perhaps
4 Mr. Lotsberg can as well.
5 You know, it, of course, is Northwestern's
6 position that the tariff that we're seeking to
7 have -- the changes that we're seeking to have
8 approved are in the public interest under that
9 statute because they are consistent with the
10 interest not only of the customers for whom we'd be
11 offering this rate but also our customers as a
12 whole.
13 And I guess if Mr. Lotsberg or Mr. White have
14 anything to add as to the enactment of that statute
15 and how it interfaces with the Black Hills tariff
16 that was in place at the time that legislation was
17 passed, I think that might be helpful to the
18 Commission as they consider whether to approve the
19 tariff.
20 CHAIRMAN HANSON: Mr. White, are you
21 on the line?
22 MR. WHITE: Yes, I am.
23 CHAIRMAN HANSON: You're not coming
24 through real strong. Could you speak up a little
25 louder?

1 question for Kyle White. Kyle, do you have
2 knowledge of how often Black Hills Power has used
3 that business development rate and how many times
4 they have filed a Contract With Deviation with the
5 Commission without its express approval?

6 MR. WHITE: Well, the Business
7 Development Service Tariff gives us opportunities
8 to position ourselves with negotiations, and quite
9 frequently what we have done is used it to make
10 proposals along with community economic development
11 packages to try and attract new businesses.

12 In fact, I don't recall any instances where we
13 have actually filed it and asked that the
14 Commission not Docket the document. What we have
15 done is often used the Contract With Deviation to
16 negotiate terms with customers. This option to not
17 file it really works best if you're on a fast time
18 line and it gives us the opportunity. It gives the
19 customer the assurance. But our practice really
20 has been that if the customer doesn't have the
21 requirements or the fast time line and they'll
22 allow us to take that process, we've taken it.

23 Does that answer your question, Commissioner?

24 COMMISSIONER JOHNSON: It does. And
25 I would just have a comment that that is a very

1 responsible approach, and I appreciate Black Hills
2 Power's willingness to maybe go a little bit beyond
3 what it has to from a regulatory standpoint.

4 CHAIRMAN HANSON: Further questions
5 by the Commission?

6 COMMISSIONER JOHNSON: Mr. Chairman,
7 I'd be interested to hear if staff did any
8 additional analysis or comments or if they have any
9 response to what Bob and Kyle and Alan brought
10 forth today.

11 CHAIRMAN HANSON: Thank you,
12 Commissioner. Yes, I would as well.

13 Dave.

14 MR. JACOBSON: Thank you, Chairman.

15 At this point I really was not involved with the
16 creation of the legislation so it's hard for me to
17 give an opinion as to the intent of it. And with
18 my counsel here on staff we've just literally read
19 the statute as it exists, and it contains the words
20 "approval" and "approved" in there. That's why we
21 brought it to the Commission's attention, so that,
22 you know, a determination could be made on that
23 point.

24 Other than that, you know, we did pursue some
25 additional questions against Northwestern about the

1 contact that they discussed at the last meeting,
2 and I believe you do have those responses. We
3 would just say that if the Commission did choose to
4 approve this filing, that we would like to mention
5 the conditions and language changes that Alan spoke
6 of on the phone and some of those probably would --
7 it would be appropriate to put those in the Order,
8 in the Commission's Order.

9 CHAIRMAN HANSON: Thank you, Dave.
10 And you bring up a good point. The legislation, as
11 I understand it, basically gives permission so that
12 if the PUC wanted to allow this, they could, as
13 opposed to saying that the Commission shall do
14 this. And at the same time there's a question of
15 precedence of if some companies are allowed to do
16 this, should not all companies be allowed to do
17 this.

18 Do you have anything to say to that?

19 MR. JACOBSON: I have spoken to
20 other companies since the last meeting about other
21 matters, and they have brought up -- and I believe
22 some of them are listening on the net if they're
23 not on the phone. And there is -- there's already
24 been intent expressed that they will probably
25 pursue this same type of arrangement, same type of

1 filing.

2 CHAIRMAN HANSON: Thank you, Dave.
3 Any further questions?

4 VICE CHAIRMAN SAHR: Mr. Chairman,
5 if staff's finished, I have a few questions for
6 Mr. Dietrich.

7 CHAIRMAN HANSON: Please.

8 VICE CHAIRMAN SAHR: Mr. Dietrich,
9 do you know, is there any case of this being
10 utilized since the statute was being put into place
11 in the 1990s?

12 MR. DIETRICH: This statute having
13 been used since it's enacted by -- in terms of a
14 new tariff, I am not aware of that, no.

15 VICE CHAIRMAN SAHR: And --

16 MR. DIETRICH: I'm not certain if
17 the MidAmerican Gas Tariff, Economic Development
18 Service Tariff, was done in response to that or
19 not, but I'm not aware of anything else.

20 VICE CHAIRMAN SAHR: Okay. So right
21 now it appears to be something that was, so to
22 speak, utilized after the fact to make sure that a
23 previously approved tariff or Commission Order or
24 however it was done -- or maybe it was a practice.
25 I can't remember. Would --

<p>13</p> <p>1 MR. DIETRICH: Yeah. There was a</p> <p>2 Black Hills tariff. Of course, Northwestern has</p> <p>3 had some business development tariffs in effect for</p> <p>4 some period of time, you know, prior to the</p> <p>5 Black Hills tariff even as well.</p> <p>6 VICE CHAIRMAN SAHR: Okay. So it</p> <p>7 does look like it was something that was done after</p> <p>8 the fact and probably as far as we can tell hasn't</p> <p>9 been utilized since.</p> <p>10 MR. DIETRICH: That very well may be</p> <p>11 the case. I'm not as familiar with all the other</p> <p>12 companies' tariffs, but I don't believe we have</p> <p>13 specifically proposed anything under it.</p> <p>14 VICE CHAIRMAN SAHR: And if we were</p> <p>15 kind of weighing the issue of precedence, would it</p> <p>16 be fair to say that most of the other companies --</p> <p>17 and I don't know your practices, but most of the</p> <p>18 companies are using Contracts With Deviations to</p> <p>19 address these type of issues?</p> <p>20 MR. DIETRICH: We have not had a</p> <p>21 Contract With Deviation proposed on the electric</p> <p>22 side of our business. I'm not certain -- I know</p> <p>23 Otter Tail has had Contracts With Deviations.</p> <p>24 Whether they're business development or other new</p> <p>25 customer or existing customer loads, I'm not</p>	<p>15</p> <p>1 those customers that are seeking a competitive</p> <p>2 electric bid and may not be willing to treat a</p> <p>3 conditional offer by us in the same fashion that</p> <p>4 they treat a firm offer from another supplier. But</p> <p>5 in the case if this tariff were approved, I think</p> <p>6 we would be comfortable indicating we would take</p> <p>7 the same approach as Black Hills and that would be</p> <p>8 to -- where it is workable with the customer to</p> <p>9 present this and the time frame is appropriate, we</p> <p>10 would present it to the Commission.</p> <p>11 VICE CHAIRMAN SAHR: Well, and I'm</p> <p>12 going to ask a question that I think I asked at the</p> <p>13 last meeting to Mr. Jacobson, but how quickly do</p> <p>14 you think you can move on an expedited request?</p> <p>15 MR. JACOBSON: From staff's point of</p> <p>16 view, again, it depends on the information supplied</p> <p>17 by the company at the time of the request. We've</p> <p>18 handled these in less than a week's time before.</p> <p>19 But, you know, we are also -- it was obvious from</p> <p>20 the company that they said they needed to offer --</p> <p>21 make firm commitments within a period of a couple</p> <p>22 of hours, which obviously would give us no time to</p> <p>23 review anything.</p> <p>24 VICE CHAIRMAN SAHR: Well, and I'm</p> <p>25 thinking back to the hearing that we had on the</p>
<p>14</p> <p>1 certain.</p> <p>2 I'm not aware of what the other companies are</p> <p>3 doing, I guess.</p> <p>4 VICE CHAIRMAN SAHR: And have you</p> <p>5 had any further discussions with staff about some</p> <p>6 type of expedited -- and I don't know if expedited</p> <p>7 is the right word because it sounds like from</p> <p>8 staff's indication at the last meeting that there</p> <p>9 would be a possibility to move relatively quickly</p> <p>10 on a Contract for Deviation. And someone calls you</p> <p>11 up and says I need a bid by 5 o'clock and it's 9 in</p> <p>12 the morning, that might be too fast, but I think</p> <p>13 most of these deals you have a longer period of</p> <p>14 time.</p> <p>15 Have you had additional conversations with</p> <p>16 staff about that?</p> <p>17 MR. DIETRICH: We have not talked</p> <p>18 with staff about that since the 26th of April. You</p> <p>19 know, I do believe that the process that Mr. White</p> <p>20 discussed for Black Hills sounds like a reasonable</p> <p>21 approach that in those circumstances where it is</p> <p>22 workable and working -- negotiating with the</p> <p>23 customer to present it to the Commission for</p> <p>24 approval, that we'd be willing to do that.</p> <p>25 The difficult situation that we find is in</p>	<p>16</p> <p>1 Turkey Growers and it seemed to me in that case I</p> <p>2 realized there was some last-minute runs out to the</p> <p>3 golf course or whatever it was but it seemed to me</p> <p>4 that that was a rather lengthy negotiation process.</p> <p>5 And we can obviously notice a matter for hearing</p> <p>6 with 48 hours' notice so, I mean, I could</p> <p>7 potentially, like you said, see some process that</p> <p>8 would be less than a week.</p> <p>9 I mean, Mr. Dietrich, in most situations</p> <p>10 wouldn't that give you adequate time to -- you're</p> <p>11 going to have to put together a bid, you're going</p> <p>12 to have to do this, do that. Aren't you having a</p> <p>13 little more lead time than just your typical</p> <p>14 Super Center Xes calling you up at 9 a.m. saying</p> <p>15 they want something at 5 o'clock?</p> <p>16 MR. DIETRICH: In most cases we're</p> <p>17 going to have a certain period of time. In the</p> <p>18 case of Dakota Turkey Growers we were given about a</p> <p>19 two-day period. We had been negotiating with them</p> <p>20 giving them offers and talking with them. And then</p> <p>21 they came back and said, you know, we want an</p> <p>22 answer and we want it -- you know, within kind of a</p> <p>23 quick time period, and that's when we kind of had</p> <p>24 the mad rush to get the information to</p> <p>25 Mr. Rutledge.</p>

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1 But the difficulty that I see in this process
 2 is the fact that the customers may not be willing
 3 to enter into a conditional agreement for us to
 4 bring you. It's kind of -- as I said before, kind
 5 of a chicken and egg situation where if you can't
 6 get the customer's name on the dotted line because
 7 he's offered another contract in a firm basis, we
 8 don't have anything to bring you to get your
 9 approval for if we can't reach the deal with the
 10 customer.
 11 And it puts us in the awkward position of
 12 trying to get -- you know, we have another utility
 13 that can give them a firm price. We cannot. And
 14 the difficulty we have is in getting something to
 15 bring to you for the expedited acceptance or
 16 approval. If we can't get there, you know, we're
 17 going to continue to be the one who's intervening
 18 and trying to establish that, you know, we should
 19 be the electric provider.
 20 So I guess I have all the respect for staff
 21 and their willingness to work with us to bring
 22 matters before the Commission in an expedited
 23 fashion. It's just we may not get to the point of
 24 being able to bring them to them.
 25 MR. WHITE: Commissioner Sahr.

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1 VICE CHAIRMAN SAHR: Yes.
 2 MR. WHITE: This is Kyle White
 3 again. Could I add something?
 4 CHAIRMAN HANSON: Please.
 5 MR. WHITE: What I'd like to share
 6 is this isn't always competition by adjoining
 7 utilities. In fact, when we developed our tariff
 8 the thought was we would be competing with
 9 utilities in other states to try and attract
 10 businesses to South Dakota. And it is important
 11 when you're making your proposal that's included in
 12 a community economic development package that as
 13 the utility you have the confidence and the
 14 capability to assure that you can offer what it is
 15 you're including in the proposal. And if we have
 16 to get approvals for our proposals, we're not going
 17 to be able to act very quickly.
 18 And, unfortunately, these proposals often come
 19 together in just a handful of days as well because
 20 there's kind of a mad scramble and a deadline as
 21 the economic development groups get their
 22 opportunity.
 23 So the circumstances that we're talking about
 24 here isn't just adjoining utilities as has been the
 25 case for Northwestern. It's South Dakota competing

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1 with other states, and we need the ability through
 2 tariff mechanisms like what we have to make
 3 proposals that we believe are very firm.
 4 COMMISSIONER JOHNSON: Mr. Chairma
 5 CHAIRMAN HANSON: Yes. Commissioner
 6 Sahr, were you done?
 7 VICE CHAIRMAN SAHR: No. But I'll
 8 let Commissioner Johnson go ahead.
 9 CHAIRMAN HANSON: Go ahead,
 10 Commissioner Johnson.
 11 COMMISSIONER JOHNSON: Thanks, Bob.
 12 Appreciate that. I've got a question first for
 13 Mr. Dietrich and then for staff.
 14 Mr. Dietrich, would some sort of preapproval
 15 by the Commission fit your needs?
 16 And then my question for Mr. Rislov or
 17 Mr. Smith or anybody else, would the Commission
 18 have the power to preapprove a Contract With
 19 Deviation?
 20 MR. RISLOV: This is Greg Rislov,
 21 excuse me, Commissioner. I guess I would maintain
 22 the Commission would have the power to preapprove.
 23 Basically what we're talking about are fuel cost
 24 and then a margin above fuel cost so it's not a
 25 difficult thing to approve a floor at fuel cost and

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1 I suppose an increment above that, although that
 2 doesn't have to be solid. And that's been proven
 3 in the past.
 4 I think it's interesting to note the provision
 5 we're talking about has never been used and yet
 6 everyone has been doing business since that time.
 7 But, truthfully, I guess another way to look at it
 8 is if the utility wants to go ahead and get a
 9 tariff like this, the Commission and staff will
 10 have much more time to consider what the
 11 appropriate margin would be later on during the
 12 rate case. Whatever that may be. Now that may be
 13 above what they're actually getting.
 14 CHAIRMAN HANSON: Commissioner
 15 Johnson, does that answer your question, or do you
 16 want some further?
 17 COMMISSIONER JOHNSON: Well, it
 18 answers my question on the authority side. I guess
 19 from the industry side, Mr. Dietrich, would a
 20 preapproval by the Commission on a contract you
 21 would tender as a bid, would that address your
 22 needs?
 23 MR. DIETRICH: Well, I guess I'm not
 24 certain what you're asking. If you're asking for
 25 us to come forward and say we want the authority to

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offer, you know, the following or the following range, you know, we want the authority to offer a specific dollar amount, you know, then we go and negotiate. We may in an interim process have to come back anyway.

If we're saying that we want the authority to offer customers rates above our costs, essentially I think that's what we're doing in this tariff.

We're saying we would not -- we would look at the costs to serve this customer, and we would not offer him a rate which is above our tariff rate or below what the incremental costs are to serve him. You know, I think that's what we're doing already.

COMMISSIONER JOHNSON: I certainly understand -- and I'll actually hold my comments and other questions because I did butt in on Commissioner Sahr. My apologies.

VICE CHAIRMAN SAHR: You asked my next questions anyway so thank you.

CHAIRMAN HANSON: Are you done then, or did you have some --

VICE CHAIRMAN SAHR: Well, and I'll throw this out to you, Mr. Dietrich. One of the things I'm looking at here is -- and I think it was obviously a completely appropriate option for you

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to file as you did, but one of the things about you filing under your own particular tariff provisions is it may exclude Interveners who have interest in this matter.

You know, we're certainly seeing a high level of interest from the investor-owned companies. We have Black Hills Power coming in with some friendly comments. We have the head of the group of the IOUs appearing and giving input into this.

One of my, I guess, questions or concerns would be are we better off opening this up to a process where perhaps more people could have public input into this and be able to allow people in who wouldn't normally be a party?

Because obviously under the tariff provisions you might be able to exclude anyone or somebody might decide not to file because they're not a rate payer so there may be some questions of standing. Are we better off opening up this process and trying to figure this out?

Especially because clearly I don't know if I completely buy into the Black Hills Power idea of being this great precedence. I think it's something that's maybe instructive and illustrative, but it sounds to me like it is kind

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of an after-the-fact statute that was there to ratify a practice which was already going on and maybe for some I guess kind of hard-nosed negotiations at the time.

This, I think, decision, likely, though, is going to be something where if we grant this to Northwestern, you know, there certainly are going to be challenges to turn around and turning it down for the next IOU that comes in and asks for it. So right now we have Northwestern coming in, but we don't have input really from other IOUs. We don't have input from some of the other people in the industry, no opportunity for consumers unless you have a Northwestern rate payer to get involved.

Do you think, Alan, maybe it might be appropriate for the Commission to kind of take a step back and certainly we could look at opening up some type of broader Docket or ask for some sort of public comments beyond what just might normally be appropriate or legally permissible under the way that it's been filed now?

MR. DIETRICH: Well, we certainly would have no problem with input from other interested parties. Certainly other investor-owns if they have, in fact, been contacting Mr. Jacobson

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and indicating that they think this is an important item and they would like to have or consider similar tariff provisions, you know, I certainly have no problem with other affected utilities.

You know, needless to say, we have competitors, and competitors may or may not be interested in us having this as a tool to compete with them. You know, it would be helpful if we could appear before their boards and argue tariffs that they might be offering as well, but we certainly have no problem with providing a broader method of input into such matters.

But at the same time, you know, we have real life situations where we think we would utilize this tariff so, you know, we certainly are interested in having it approved and moving forward to consider negotiations under it.

But, you know, I think that's up to the Commission to determine what's in the best interest of the people of South Dakota as to whether to broaden the input on this matter.

VICE CHAIRMAN SAHR: Well, just to clarify something, Mr. Dietrich, I wasn't suggesting that they should be able to come into Northwestern's board room or management offices

<p>25</p> <p>1 when you discuss this. This is a major public 2 policy decision, and to me it's almost legislative 3 in nature, and part of me is kind of saying maybe 4 you guys should take it back to the Legislature if 5 you want to make sure -- I mean, we ratify this 6 after the fact, make sure they want it going 7 forward. Part of me almost thinks take a pass on 8 this, so to speak.</p> <p>9 But I don't even know if any of these people 10 are going to intervene. I mean, it might just be 11 Northwestern again. But at the very least then we 12 can feel like we got adequate public input because 13 I think you have the hard time making the argument 14 that standing goes beyond probably just the rate 15 payers of Northwestern.</p> <p>16 And maybe I'm wrong on that. That's from 17 suggestions from counsel. But I think it's a 18 pretty broad policy decision, and, again, I think 19 once the genie's out of the bottle it's going to be 20 difficult to go back and say, okay, Otter Tail, you 21 can't do this, NorthWestern, you can, Xcel, you 22 don't want to do it, Black Hills, you like doing 23 it, and so on and so forth.</p> <p>24 And certainly nobody wants to do anything 25 that's going to harm Northwestern's ability to</p>	<p>27</p> <p>1 And we would not object to that input, 2 certainly not from other regulated utilities who 3 might have pros and cons to present with regard to 4 this approach. And certainly if they are 5 considering it, it may give the Commission an 6 opportunity to have their input before it decides 7 on the first application.</p> <p>8 MR. RISLOV: Commissioner Hanson, 9 could I take another stab at addressing 10 Commissioner Johnson's question? This is 11 Greg Rislov.</p> <p>12 CHAIRMAN HANSON: Please, Greg.</p> <p>13 MR. RISLOV: I perhaps wasn't as 14 clear as I should have been. The tariff I was 15 discussing would talk about recovery of fuel and 16 variable cost of serving that customer.</p> <p>17 Now we do have tariffs that look a lot like 18 that. And essentially what that means is the 19 utility is going to recover its fuel cost and if 20 you continue reading on, most of those tariffs will 21 say that there's not a firm or a hard and fast 22 floor on the recovery of other costs. And the 23 reason why --</p> <p>24 And if I could go back in the history, and 25 I'll try not to go back 29 years, is that when we</p>
<p>26</p> <p>1 compete, but we're probably talking about a matter 2 of a few weeks or a couple months at tops if we can 3 open up the process to more public input. And if 4 people don't come in and give any public input and 5 be silent, I think that probably speaks on 6 Northwestern's behalf that maybe it's not as 7 controversial as we think it is.</p> <p>8 Or you never know. Maybe someone's going to 9 come in and say we like Northwestern's plan. It's 10 going to give us the ability to attract more 11 businesses, which I think in whole we'd all like to 12 see that as long as it doesn't happen at the 13 expense of the rate payers.</p> <p>14 MR. DIETRICH: I guess Northwestern 15 would be the one who would potentially object to 16 someone else providing public information at a -- 17 you know, a future meeting with regard to this 18 docket if we left this open, we certainly could, 19 you know, recommend that if we could put this 20 perhaps on the Commission's next agenda, which I 21 guess that meeting's two weeks out or if you wanted 22 to provide more time for public input, set it at 23 the meeting after that and then allow the 24 interested parties to come forward, at this time I 25 have no objection to that type of an approach.</p>	<p>28</p> <p>1 talk about Black Hills and Otter Tail and 2 MidAmerican and for that matter Xcel and 3 Northwestern, we've always trusted these utilities 4 to do what was in the best interest of their 5 customers. We understood that they had such few -- 6 so few opportunity to actually pull in a big load, 7 and we knew that big load could help the 8 residential customers.</p> <p>9 On the other hand, we were concerned that if 10 we didn't approve these tariffs -- oh, I'm not 11 going to come in with all the potential problems of 12 not approving tariffs. I mean, there could be some 13 risk for the utility coming in the next rate case 14 or it could be a risk for the Commissioners.</p> <p>15 There's no public hearing when we get into all of 16 those issues.</p> <p>17 But, frankly, once we approve that tariff that 18 says basically fuel cost plus, please, gentlemen, 19 use your best judgment on the margin above that, to 20 me that is a filed tariff. They can go out and 21 negotiate, and they can come in after the 22 negotiation's done and show us that that does meet 23 with that tariff.</p> <p>24 So essentially that to me is not only all the 25 freedom the utility would want -- they're</p>

1 recovering the cost they need to recover that they
2 don't want to actually charge less than, you know,
3 fuel cost -- but it's solid. There's no challenge
4 to it after that point. No one's going to come in
5 and say, well, this rate was too low because it
6 conforms to the Commission's tariff. We gave them
7 our blessing.

8 Now I suppose if we had 10 of these tariffs
9 filed over the years and they were clearly
10 confiscatory, there would be a problem, but,
11 frankly, I think especially in the case of
12 Black Hills Power they seem to have such an
13 inordinate number of very large customers in a
14 small service territory, and I think they've done
15 just an excellent job of following these type of
16 guidelines over the last 20 years or so.

17 But that was my point, that you basically
18 establish a baseline and a public interest test on
19 margin. The utility comes in and shows that
20 they're trying to meet that public interest test,
21 that there is contribution for the other customers.
22 And, honestly, I don't recall ever rejecting one of
23 those when -- and I'll name the utility, when
24 Black Hills comes with that kind of a filing.

25 Now was that pursuant to the tariff that

1 Mr. Dietrich has referred to? Not really. I don't
2 know if -- I won't even get into the history of
3 that tariff. That was kind of an odd duck from my
4 point of view, but it's a Contract with Deviations
5 type of thing, or it's a filed tariff that
6 specifies that floor.

7 I just think there's a lot of freedom with
8 that, and it covers the risk I think for all
9 parties if it's done in that manner.

10 I apologize for being so long. That's just
11 kind of my view on this. I don't know if that
12 helped or not.

13 CHAIRMAN HANSON: Thank you, Greg.
14 Commissioner Johnson, do you have any questions?

15 COMMISSIONER JOHNSON: Yes,
16 Mr. Dietrich, how long has it been since
17 Northwestern's last rate case on the electric side?

18 MR. DIETRICH: I believe
19 Northwestern's last electric rate case was in the
20 mid 1980s.

21 COMMISSIONER JOHNSON: Mr. Dietrich,
22 you sort of -- it seems as though you were kind of
23 asking the question -- when I was asking about
24 preapproval it sort of seemed like you were saying,
25 well, what is the difference between preapproval or

1 essentially having the same kind of formula that
2 the Commission could then review at the next rate
3 case.

4 I guess my concern -- and I haven't been
5 through a rate case so part of my concern may be
6 certainly from inexperience, but it seems I'm
7 somewhat uncomfortable -- not completely, but
8 somewhat uncomfortable with saying that it might be
9 15 years down the road before the Commission would
10 have any authority to be able to, you know, really
11 review and have any impact on contract
12 negotiations.

13 Do you have anything -- are my concerns well
14 placed, or do you have anything that may alleviate
15 those concerns?

16 MR. DIETRICH: Well, I think, you
17 know, we've done -- we've presented to staff in
18 this Docket a proposed analysis that we'd undertake
19 before we would make the determination of what
20 we're willing to offer the customer. And in making
21 that determination, you know, we are coming to a
22 conclusion that our cost to provide the customer
23 our coverage and that there is some margin for the
24 other customers, if we don't file a rate case for
25 let's say 10 years -- I don't think that's likely,

1 but if we don't file a rate case for 10 years, if
2 we have a revenue shortfall from serving that
3 customer, the company absorbs that shortfall.
4 We're not asking the other customers to make it up.

5 In fact, our existing tariff, one of the
6 tariffs we're adding specifically says in no way
7 should other customers suffer a detriment or a cost
8 because of our service to this customer.

9 So, you know, what you would be determining in
10 the rate case is the company's overall revenue
11 requirement and in the test period during that test
12 period did, in fact, the company -- should the
13 company have selected more from this customer? In
14 other words, would the Commission impute the level
15 of revenue above what the company actually received
16 in determining the company's overall revenue
17 requirements?

18 For all periods prior to that test period if
19 the company should have collected more, the
20 company's at risk. During the test period the
21 company has the burden of proof. The company does
22 not meet that burden of proof, the Commission could
23 impute additional revenues. Thereby, providing
24 less additional revenues, the company would need to
25 gain in the rate increase filing -- you know, if

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1 that were, in fact, the conclusion.
 2 So I'm not sure that I've answered your
 3 question adequately, but I believe under the
 4 mechanism that we've established in this proposed
 5 tariff other customers are not at risk to receive
 6 any negative impact from the offering of a contract
 7 pursuant to this new tariff.
 8 COMMISSIONER JOHNSON: With a -- if
 9 some sort of preapproval mechanism was in place,
 10 which might not be quite as fast as known up front
 11 Commission approval but would instead give
 12 Northwestern assurances that shareholders -- you
 13 know, there wouldn't be that difference between
 14 what the Commission would think it appropriate and
 15 what Northwestern negotiated, I mean, would those
 16 trade-offs make a preapproval process attractive to
 17 Northwestern?
 18 MR. DIETRICH: Well, I guess I'd go
 19 back to what I said earlier. By preapproval are
 20 you saying we would come in and say we want to
 21 offer a 3 and a half cent rate to this customer and
 22 then the Commission would say, you know, we will
 23 approve that if you are making that offer, and then
 24 we go to the customer and the customer says, you
 25 know, 3 and a half cents isn't going to be

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1 competitive, I can get 3.3 cents from your
 2 competitor.
 3 Or in the case that Kyle White indicated, you
 4 know, our overall benefit package including
 5 electric rates and the difference in the State of
 6 Minnesota is better. Now you know the alternative
 7 is, the thing that this tariff is specifically
 8 looking to are Section 56 competitive supplier
 9 questions.
 10 COMMISSIONER JOHNSON: Thank you.
 11 MR. DIETRICH: If we're talking
 12 about a broader concept like Mr. Rislov was
 13 describing where the company, if they approved it,
 14 covers its cost is allowed to serve, I think that's
 15 what I'm asking for in the tariff that we have.
 16 COMMISSIONER JOHNSON: Thank you,
 17 Mr. Dietrich.
 18 That's all, Mr. Chairman, for me.
 19 CHAIRMAN HANSON: Thank you,
 20 Commissioner. Dave -- I'm not quite certain who to
 21 start with here.
 22 Are there any other companies that have this
 23 option besides Black Hills that you're aware of in
 24 South Dakota?
 25 MR. JACOBSON: Well, there are

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1 flexible rates available. Most of them specify
 2 floor. I'm not aware of anything like Black Hills
 3 that's that -- that really, you know, goes without
 4 approval, those same parameters that are in there.
 5 I'm not absolutely positive, but I don't think so.
 6 CHAIRMAN HANSON: Okay. Thank you.
 7 Mr. White, did you say how many times you have
 8 exercised this?
 9 MR. WHITE: Well, we have made
 10 numerous proposals as part of economic development
 11 packages. We have negotiated contracts for unique
 12 service requirements with a number of customers.
 13 We have had a practice if the customer is willing
 14 to file these with the Commission as a Contract
 15 With Deviation, but we really see them as
 16 preapproved and that's more of a formal process.
 17 If we had a customer that was unwilling to go
 18 that direction and file it with the Commission as a
 19 confidential filing and asked that it just be
 20 included in your files of our Contract with
 21 Deviations, to date we have not had that
 22 circumstance arrive. But it is important that when
 23 we make proposals we have high confidence that we
 24 can live up to those proposals. That's why we
 25 designed our tariff.

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1 CHAIRMAN HANSON: Thank you, Kyle.
 2 And yet you've stated that it's your practice or
 3 would be your practice to bring these before the
 4 PUC for approval after the presentation to the
 5 company?
 6 MR. WHITE: Yes. That has been our
 7 practice. And it will be our practice so long as
 8 it works for the customer. There are instances
 9 where I could foresee that we would have the
 10 contract negotiated and it would not be willing to
 11 have it be docketed because that's the customer.
 12 CHAIRMAN HANSON: Thank you.
 13 Mr. Miller, could we chat for just a second?
 14 When you presented the information pertaining
 15 to the legislation since you were there -- not that
 16 we are to be constrained by what the Legislature
 17 did or what their thoughts were other than
 18 certainly we're constrained to work within the
 19 parameters of the law, does that say shall or may
 20 in your opinion? Does that give --
 21 MR. MILLER: Mr. Chairman, 8.3
 22 clearly says the Commission may approve the
 23 parameters of these rates, the highs and the lows.
 24 CHAIRMAN HANSON: Forgive me to all
 25 of the attorneys and staff who I've asked Bob to

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1 give me legal advice here this morning. Since you
 2 had the --

3 MR. MILLER: My Notary Public
 4 certificate does not qualify me for that.

5 CHAIRMAN HANSON: Since you have the
 6 law in front of you there, I wanted you to. Thank
 7 you very much.

8 MR. MILLER: Thank you.

9 CHAIRMAN HANSON: I'm struggling
 10 with this, not as much now as I was before because
 11 I know that there are other states that have
 12 allowed this, and New York PSC just recently gave
 13 permission for it.

14 I've struggled because of -- I certainly want
 15 to encourage businesses to do business in
 16 South Dakota and give opportunities for that
 17 competition. At the same time I'm concerned with
 18 consumer protection.

19 And could someone on staff shed some light for
 20 me in regards to what challenges there might be for
 21 consumer protection if we were to pass this?

22 MR. JACOBSON: Well, the alternative
 23 is, in these cases and in this case, that the
 24 company is not willing to change a rate upon the
 25 filing of a rate case. Once the rate is offered in

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1 a contract it's going to endure throughout the term
 2 of the contract.

3 If the rate case is filed before the end of
 4 the term of the contract, there is -- I mean, one
 5 option and I fail to see really any other option is
 6 that if the rate is underrecovering costs the
 7 utility is incurring, that really it's left to the
 8 shareholders to cover that cost.

9 Is there any damage to the other customers?
 10 Well, I mean, theoretically you could say that if
 11 the customer came on with a perfect load factor and
 12 everything else that if a rate case was initiated
 13 by staff, that there's a possibility that rates
 14 could be lowered, it's very hard to see that
 15 circumstance actually panning out like that
 16 considering the length of time it's been since a
 17 lot of these companies have come in. You'd almost
 18 expect that the rates would probably go up in these
 19 circumstances for everybody.

20 I think that the really -- the company is
 21 correct that for -- it's hard to tell unless you
 22 have absolute numbers and absolute evidence is
 23 presented in a rate case, but there really -- the
 24 circumstance would be normally that the customer is
 25 protected until the next rate case and at that

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1 point the shareholder is at risk, not the other
 2 customers.

3 The alternative would be to have a contract
 4 where the rate could change during the term upon a
 5 rate case being filed. But, again, the companies
 6 all allude to the fact that they need to have a
 7 firm offer throughout the term of the contract so
 8 they don't -- to them that's not an opposite. The
 9 rate has to be firm throughout the contract.

10 CHAIRMAN HANSON: Thank you, Dave.
 11 Next question has been answered, but I still
 12 struggle with it is -- and if Mr. White or
 13 Mr. Dietrich, Mr. Lotsberg, can shed some light on
 14 this, I struggle with the fact that Black Hills has
 15 testified that if they go through this particular
 16 process, they would still come before the PUC
 17 for -- I'm going to assume for approval. And
 18 Mr. Dietrich has testified that they would follow
 19 the same standard operating procedure.

20 I recognize that there's some benefit to being
 21 able to say up front, here's our offer, but
 22 wouldn't you still be required if, in fact, you're
 23 bringing it to the PUC for approval to state that
 24 you're bringing it to the PUC for that approval?
 25 And isn't that exactly what we have at the present

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1 time? Notwithstanding your previous arguments,
 2 it's lost on me why that doesn't stand.

3 MR. DIETRICH: This is Alan. If I
 4 can speak for what Mr. White has said was where the
 5 customer which is willing to allow a -- an offer
 6 conditioned upon Commission approval to go to the
 7 Commission for such approval, they do so. Where
 8 the company or the potential customer wants a firm
 9 price, not a conditional price, Black Hills, even
 10 though it has not had that situation, would enter
 11 into that contract with the customer and merely
 12 file it with the Commission saying here's the
 13 contract pursuant to our tariff that would be filed
 14 where you have filed our Contracts with Deviations
 15 in the past. And it is a contract that deviates
 16 from our tariff.

17 And I'm paraphrasing what I understand Kyle to
 18 say and I think Northwestern would also be. Is
 19 that correct, Mr. White?

20 MR. WHITE: Yes, Alan, that is
 21 correct and realistically what our tariff does is
 22 it provides us flexibility to compete for new
 23 loads, be creative on behalf of our customers who
 24 need creative solutions, and it isn't a methodology
 25 for us necessarily to avoid the Commission at all

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1 costs. And we know the Commission prefers to have
2 these come as Contract with Deviations, and so we
3 acknowledge that in our negotiations. But this
4 tariff signed will allow us to do the best on
5 behalf of our electric utilities company and
6 hopefully on behalf of the State of South Dakota in
7 attracting loads.

8 So it's about flexibility and negotiating
9 tables, and we believe that's important. We have
10 not had circumstances where we've been required to
11 use that, but we do know that other states have the
12 ability to take us right out of the negotiations
13 because they come up with a firm proposal and if we
14 didn't have this tariff, we couldn't.

15 That's our philosophy. The practice has
16 worked well we believe for our companies, our
17 customers, and for the Commission and staff.

18 CHAIRMAN HANSON: Thank you.
19 Appreciate it, Mr. White, your articulation of
20 that. However, as I see it then, there is little
21 or no legitimacy in the argument that it's going to
22 be brought before the Commission after the fact
23 then because that's entirely up to the company to
24 decide when they're going to do it. I'll just add
25 that as an editorial.

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1 Are there any further questions from the
2 Commissioners?

3 COMMISSIONER JOHNSON: Not for me,
4 Mr. Chairman.

5 CHAIRMAN HANSON: Thank you. Is
6 there anything from staff that needs to be
7 presented at this time? If not, I will make a
8 Motion that the Commission deny the tariff
9 revisions. Is there a second?

10 (No audible response)

11 CHAIRMAN HANSON: Seeing no second,
12 is there a further Motion?

13 It dies for a lack of a second. Are there
14 further motions?

15 COMMISSIONER JOHNSON: Mr. Chairma
16 judging from the silence, perhaps delaying action
17 on this item would be appropriate unless
18 Commissioner Sahr has a Motion.

19 CHAIRMAN HANSON: I haven't heard
20 any further motions so if yours is a Motion to --
21 is there a date certain that you would like to
22 postpone this to?

23 COMMISSIONER JOHNSON: I don't have
24 a date in mind. I suppose to keep this issue -- I
25 guess I would not make a Motion because I am

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1 interested if Commissioner Sahr -- he had mentioned
2 the possibility of soliciting some additional
3 comments. And Mr. Dietrich is amenable to that. I
4 don't want to make a Motion that might preempt that
5 if somebody has something in mind.

6 CHAIRMAN HANSON: All right.

7 VICE CHAIRMAN SAHR: What I would
8 like is I'd ask John Smith if he sees a way to give
9 the opportunity for additional public input from
10 people who might not have otherwise qualified as an
11 intervener in the case, open this up for a few
12 weeks.

13 And, listen, in my mind I certainly don't want
14 to hamper any ability to go out there and do any
15 appropriate economic development. At the same time
16 I think this is a major policy decision, and I
17 think it's going to affect not just Northwestern
18 but other utilities. And I think it's important to
19 have that input.

20 Mr. Smith, could we do that through this
21 Docket with an agreement to Mr. Dietrich not to
22 object to standing granted, or do we just open up a
23 second proceeding and allow everyone that wants to
24 come in and give input, you know, with the proviso,
25 you know, subject to the Commission's approval?

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1 MR. SMITH: Well, I think -- yes. I
2 think that could work. You know, one of the
3 issues -- of course it may be -- and maybe the
4 Commission wants to think about this, although you
5 may want to think about -- I don't know.

6 You at least might want to think about you
7 might want to make some interim accommodation to
8 Northwestern. I'm not suggesting you should.
9 Think about it. That is if you're thinking about
10 this -- like, for example, as Chairman Hanson
11 brought up the recent New York decision, that
12 particular proceeding was in the nature of a
13 rule-making proceeding. They call it when they do
14 an order -- they call it an order, but it was the
15 establishment of some general principles that would
16 be applicable to all utilities.

17 They had previously had guidelines related to
18 flex rates, and within the last month they
19 significantly revised those. And those guidelines
20 do adopt several of the things that the utilities
21 here are asking for. Among those guidelines are
22 they establish a qualitative standard for measuring
23 contribution to common costs.

24 The other thing they do allow for then is
25 simply the filing of agreements, and they do allow

1 for absolute trade secret protection of all
2 agreements filed. And I think those are some of
3 the important things that have been expressed that
4 I have heard. So that's one option.

5 You know, in this particular case, you know,
6 would -- you know, no one has actually sought to
7 intervene. Now is that because parties believe
8 they would have no standing, or is it because
9 they -- I mean, this is sort of a case in my view
10 that may have been sort of a sleeper type of thing
11 where it's coming in and it's taking on a bigger
12 life than I think maybe the parties reading the
13 facts filing might have perceived it to have,
14 realistically.

15 And if this is being transformed in a broad
16 policy statement by the Commission, you know, I
17 think one thing is certainly we could get the word
18 out to the regulated community and their
19 competitors represented by Ms. Rogers in the back
20 room and Mr. Anderson that we're taking this up and
21 we're looking at it that way. And we'll deal with
22 this particular case in that context.

23 Again, though, if the Commission is looking at
24 this -- if what you're really looking at here is
25 introducing policies of general applicability to

1 STATE OF SOUTH DAKOTA)

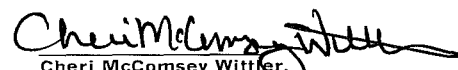
2 :SS CERTIFICATE

3 COUNTY OF HUGHES)

4
5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter and Notary Public in and for the
7 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 10th day of
11 May 2005, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 26th day
14 of May 2005.

15
16
17 
18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21
22
23
24
25

1 the industry, South Dakota Law does require that
2 those kind of things be done via a rule-making.
3 And so I don't know if that sheds any light on it
4 or not. The problem with the rule-making, of
5 course, is it's very difficult to turn something
6 like that around in a couple of weeks. In fact,
7 it's impossible.

8 CHAIRMAN HANSON: Thank you, John.
9 Anything further?

10 COMMISSIONER JOHNSON: Mr. Chairma
11 I would move that we postpone action on this until
12 the next Commission meeting so that the
13 Commissioners can receive legal advice from General
14 Counsel about how to proceed.

15 CHAIRMAN HANSON: Thank you. And I
16 will second that.

17 VICE CHAIRMAN SAHR: And I concur.
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