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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE COMPLAINT
BY OAK TREE ENERGY, LLC, AGAINST
NORTHWESTERN ENERGY FOR REFUSING
TO ENTER INTO A PURCHASE POWER
AGREEMENT

EL11-006

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Transcript of Proceedings
January 22, 2013

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BEFORE THE PUBLIC UTILITIES COMMISSION,
GARY HANSON, CHAIRMAN
KRISTIE FIEGEN, COMMISSIONER
CHRIS NELSON, COMMISSIONER

COMMISSION STAFF
John Smith
Karen Cremer
Greg Rislov
Brian Rounds (by telephone)
Sherry Dickerson

APPEARANCES
Michael Uda, Oak Tree (by telephone)
Al Brogan, NorthWestern Energy (by telephone)

Reported By Cheri McComsey Wittler, RPR, CRR

1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State
3 Capitol Building, Room 423, 500 East Capitol Avenue,
4 Pierre, South Dakota, on the 22nd day of January, 2013,
5 commencing at 2:30 p.m.

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1 CHAIRMAN HANSON: It is approximately 2:30 p.m.,
2 January 23, 2013. This is the Ad Hoc Commission meeting
3 of the South Dakota Public Utilities Commission. We are
4 in Room 423 of the State Capitol Building. My name is
5 Gary Hanson. With me today are Commissioners Chris
6 Nelson and Kristie Fiegen.

7 This is the Ad Hoc Commission meeting of the
8 matter of the Complaint by Oak Tree Energy, LLC against
9 NorthWestern for refusing to enter into a purchase power
10 agreement. We have one -- that is the only item that we
11 have before us today. At least the only docket that we
12 have before us today.

13 On December 26, 2012 the Commission issued a
14 Procedural Order setting forth a schedule for posthearing
15 briefing, oral argument, and decision. I'd like to thank
16 all the parties for complying with the Order and all the
17 deadlines for the filing. We did mention in that Order
18 that there would be the opportunity for oral arguments if
19 parties desired to have that.

20 I would remind the folks at this time that the
21 Order for the Notice of Hearing set forth issues of
22 proper application of the hybrid method with no inclusion
23 of carbon costs, proper natural input to use in the
24 hybrid method based on market conditions and projections
25 as of the LEO of February 25, 2011, and the proper

1 electric market rates, the proper capacity contribution
2 and resulting capacity credits to be included in the
3 avoided cost, and the avoided cost level that --
4 NorthWestern's avoided cost levelized or actual over a
5 20-year period.

6 I will proceed by asking the parties whether or
7 not they wish to participate in oral arguments. If they
8 do, we will entertain five minutes from each party.
9 We'll have Oak Tree, then NorthWestern, then staff, then
10 NorthWestern, and then Oak Tree. The final to --
11 NorthWestern Energy's opportunity to speak we'll limit to
12 2 minutes. If you so desire to proceed.

13 We have had a significant amount of argument and
14 presentations, hearings on this matter, but if there is
15 something that you would like to remind us of in this
16 11th hour, we'd be happy to entertain that.

17 Oak Tree, do you wish to make a presentation at
18 this time?

19 MR. UDA: Yes, Mr. Chairman. I would. I do
20 promise to be brief.

21 Mr. Chairman, I think at this point it's pretty
22 clear that we argued in our opening hearing -- second
23 hearing brief we don't believe that NorthWestern Energy's
24 approach to the avoided cost methodology is lawful. I
25 think the --

1 (Discussion off the record)

2 MR. UDA: Oak Tree's position is that the recent
3 Exelon -- is that --

4 THE COURT REPORTER: That was it. Thank you.

5 MR. UDA: The Exelon Wind Decision, which is
6 140 FERC Paragraph 61,152 indicates that the methodology
7 chosen by NorthWestern at our most recent hearing is
8 unlawful. And there wasn't really any rebuttal to that
9 from NorthWestern. So we will rely on our briefs on that
10 issue.

11 So I think what we're really talking about is
12 really at this point Mr. Rounds' calculations, which were
13 represented in his spreadsheets just prior to the
14 technical hearing.

15 And Mr. Lauckhart made four adjustments to
16 those. He believes those adjustments were valid. And
17 starting with the whole issue of how one were to
18 calculate the load for NorthWestern, we believe inclusion
19 of the wholesale sales that were made by NorthWestern is
20 a significant portion of their obligation set they need
21 to use their coal generation to meet.

22 It's not a cost issue that matters to Oak Tree.
23 It's really more just when these sales are made
24 represents an additional market. And so we think that
25 that should have been included in the load calculations.

1 And the second issue is the displacement of
2 Big Stone and Neal 4 as of the year 2016. We believe
3 that the evidence is very clear in this hearing that they
4 were avoidable. The upgrades to Big Stone and Neal 4 for
5 control requirements were avoidable as of February 25,
6 2011, and I think the arguments to the contrary are not
7 supported by any record in evidence.

8 The third adjustment that Mr. Lauckhart made was
9 the issue of a capacity cost. And the argument from both
10 Staff and from NorthWestern seems to be, well, you can't
11 possibly say that Oak Tree would replace, for example,
12 the Aberdeen facility.

13 But the point is that the Aberdeen facility is
14 still avoidable at the time that Oak Tree incurred an
15 LEO. And it was not the case that Oak Tree would be an
16 adequate substitute, but if there had been a long-term
17 calculation of what an avoided capacity purchase would be
18 over 20 years, that would not be at the rates either
19 established by Mr. Rounds' spreadsheet or by that which
20 Mr. LaFave prepared.

21 I believe that NorthWestern's move to a
22 long-term decision to build capacity because of a
23 shortage in the region and that nobody makes long-term
24 capacity planning additions based on short-term markets,
25 which appears to be the case for both Mr. Rounds and

1 Mr. LaFave. The fact is that these kinds of purchases
2 would allow NorthWestern's avoided portion of the
3 capacity that it would need over the next 20 years, and
4 we don't think that the cost that's reflected in either
5 Mr. LaFave or in Mr. Round's spreadsheet reflects the
6 long-term avoided costs. And we think the only one, the
7 avoided capacity cost that's actually in the record, is
8 the one developed by Mr. Lauckhart.

9 And the last adjustment Mr. Lauckhart made is
10 both NorthWestern and now Mr. Rounds are saying, well,
11 you need to use 12.9 percent capacity contribution
12 instead of the 20 recommended by Mr. Lauckhart.
13 Mr. Lauckhart believes that there's -- there's evidence
14 in the record that Titan received a 20 percent capacity
15 contribution in 2010 and it was over 30 percent for 2011,
16 that MISO calculations averaged throughout the MISO
17 footprint will range between roughly 0 and 30 percent and
18 that 0 represents, of course, older technology that will
19 be used by Oak Tree. And we don't see any reason why you
20 wouldn't use Midwest Reliability Organization's estimate
21 of 20 percent when NorthWestern's a member of MRO and not
22 MISO.

23 And also we think the whole idea of annually
24 recalculating the capacity payment is one that is likely
25 to produce significant controversy and considerable

1 expense for the parties, and we really believe that it
2 should be forecast in advance.

3 And we also, finally, believe that a levelized
4 rate is probably appropriate in this case. Not saying
5 that you can't set an annual forecast rate that is
6 increased incrementally such as Mr. Rounds has done, but
7 what we are saying is, for example, in the case of Titan
8 there was a partially levelized rate and that partially
9 levelized rate looked at financing that project.

10 And, you know, the goal under PURPA is to
11 encourage these technologies, and it would encourage
12 these technologies to use the levelized and partially
13 levelized rate. And we think that probably the simplest
14 thing to do would be roll the capacity payment in --
15 whatever that capacity payment is, into the annual
16 payment just so there's a certain amount of certainty of
17 revenue streams and that will also facilitate financing.

18 That's really all I have to say.

19 CHAIRMAN HANSON: Thank you, Mr. Uda.

20 NorthWestern.

21 MR. BROGAN: Thank you, Mr. Commissioner. I
22 guess just a couple very brief points. First the Exelon
23 Decision is so much of a red herring that it really
24 doesn't deserve a response.

25 Let me read from paragraph 8 of that Order which

1 indicates what it was about. Exelon complained in
2 No. 3 -- and I am now quoting the Commission Order --
3 "uses a methodology to determine avoided cost rate for
4 as-available energy that is inconsistent with the
5 requirements of PURPA as set forth in the Commission's
6 regulations."

7 We're not dealing with setting the avoided costs
8 for as-available energy. Even more importantly in
9 Paragraph 52 of that Order FERC stated "The problem with
10 the methodology proposed by SDF and adopted by the
11 Texas Commission is it is based on the price the QF would
12 have been paid had it sold energy directly in the EIS
13 market instead of using the methodology of calculating
14 the cost to the utility" -- excuse me. "Instead of
15 calculating what the cost to the utility would have been
16 for self-supplied or purchased energy but for the
17 presence of the QF or QFs in the market as required by
18 the Commission's regulation."

19 The methodology proposed by NorthWestern, the
20 hybrid methodology, whether we use it NorthWestern's way
21 or Staff's way, clearly is not implicated by the Exelon
22 Decision.

23 Secondly, we hear a lot about the importance in
24 PURPA of promoting QFs, of providing it easy for them to
25 achieve financing. I would point out that we've heard a

1 lot of that, but we haven't heard anything about what
2 type of equity contributions or anything else that are
3 being made, which also has a very important factor -- or
4 are a very important factor in determining financing.

5 But what we haven't heard anyplace recently from
6 Oak Tree is a focus on what the statute requires the cost
7 to be paid to a QF is.

8 And first in 16 U.S.C. 824-83, Sub D1 the
9 statute says the rates for such purchase, that is
10 purchases from QFs, shall be just and reasonable to the
11 electric consumers of the electric utility and in the
12 public interest.

13 It goes on to say in -- excuse me. In D,
14 Incremental costs of alternative electric energy. "For
15 the purposes of this section, the term incremental cost
16 of an alternative electric energy means with respect to
17 electric energy purchased from a qualifying cogenerator
18 or qualifying small power producer the cost to the
19 electric utility of the electric energy but for the
20 purchase from such cogenerators or small power producer
21 such utility would generate or purchase from another
22 source."

23 It doesn't say anything about what it might get
24 for selling in the wholesale market. It strictly talks
25 about the cost.

1 Mr. Commissioner and Commissioners, with that, I
2 will be quiet. I think we've -- you know, as I looked at
3 this, I believe this is the only docket in 2011 that is
4 still open.

5 I'm glad and pleased that we've reached the
6 point where we're going to have a decision, and I think
7 that the parties have provided you with lots of
8 information upon which you can base your decision.

9 Thank you.

10 CHAIRMAN HANSON: Thank you. Staff.

11 MS. CREMER: Good afternoon. This is
12 Karen Cremer of Staff. I have nothing further to add on
13 Staff's behalf and will rely on our previously filed
14 brief.

15 Mr. Rounds is on the phone, should you have any
16 questions.

17 Thank you.

18 CHAIRMAN HANSON: Thank you very much,
19 Ms. Cremer.

20 CHAIRMAN HANSON: NorthWestern, your last bite?

21 MR. BROGAN: Mr. Chairman, I have nothing to
22 add.

23 CHAIRMAN HANSON: Oak Tree.

24 MR. UDA: Thank you, Mr. Chairman. Just two
25 quick points.

1 One, the whole point of the Exelon Decision was
2 that the Texas Commission was setting avoided cost and
3 based it on a single node that it knew to be congested in
4 a market to which that -- those qualifying facilities did
5 not have access.

6 Similarly, with respect to the market price
7 input that NorthWestern prepared in this proceeding, a
8 single congested node which is why they reduced it by 4
9 and a half dollars a megawatt hour and used the MISO
10 market to which NorthWestern QFs do not have access. So
11 I think it is ongoing.

12 The second thing I would like to say, the
13 passage that Mr. Brogan just read to you from the statute
14 is a direction to FERC to adopt rules consistent with
15 those standards. That was what the Supreme Court
16 considered in the American Petroleum Institute Case,
17 which I believe was decided in 1982, which upheld the
18 full avoided cost rate. This is not a direction to you;
19 that is a direction to FERC.

20 So, in our minds, the full avoided cost rule is
21 what you're attempting to achieve, and the question is,
22 among the parties, who do you think has done the best job
23 and what should that full avoided cost be?

24 And that's all I have to say.

25 CHAIRMAN HANSON: Thank you. Appreciate that

1 from all of the parties.

2 I failed to ask if there was anyone else on the
3 telephones when we started the process here. Is there
4 anyone else on the phone line?

5 MR. PAT MAKENS: Pat Makens, Oak Tree Energy.

6 CHAIRMAN HANSON: Thank you, Pat.

7 Anyone else?

8 Appreciate that.

9 At this juncture, we have the opportunity to
10 make some remarks and discussions as Commissioners and
11 decisions. And so I will close the hearing to that
12 process.

13 Some Commissioners are known to have prepared
14 motions prior to the meetings, and some prefer to vote
15 individually on items as they appear. So I will look to
16 the Commissioners to see whether or not anyone has any
17 prepared motions or anything that they would like to
18 start off with.

19 And Commissioner Nelson.

20 COMMISSIONER NELSON: I do have a motion. And
21 I'll put it on the table at this point, and we can see
22 where it rolls from there.

23 I would move that this Commission adopt for this
24 docket the avoided cost rates as will be provided in the
25 handout that I will send around. And for those of you on

1 the phone, Tina will be e-mailing this to you as we speak
2 so everybody will have the same document that we're going
3 to work off of.

4 CHAIRMAN HANSON: Just for the process here, I'm
5 going to ask if -- Commissioner Fiegen might have a --
6 were you planning to present one as well? You are.

7 COMMISSIONER FIEGEN: Correct.

8 CHAIRMAN HANSON: Please proceed, Commissioner
9 Nelson.

10 COMMISSIONER NELSON: Thank you. The first
11 thing that I'd like to say by way of explanation, and I
12 say this to all three of the parties, in the two years
13 that I've been on the Commission I have enjoyed working
14 through this docket as much as any that we have dealt
15 with. A lot of fascinating issues and very important
16 issues.

17 The second thing that I would say to Mr. Rounds,
18 I thought you did a phenomenal job of putting your model
19 together. And the sheet that I have passed out comes
20 from your model, and I have used your spreadsheet model
21 in developing this. Your model was sound, and I felt
22 very comfortable using that.

23 What I'd like to do is talk about the
24 assumptions that I put into this model and how they
25 differ from what Mr. Rounds had in the model.

1 The first assumption is that I took
2 NorthWestern's actual hourly load shape and converted it
3 into the EIPC hourly blocks. I like the block formula.
4 I liked how that worked into the model.

5 But as I think we had substantial testimony that
6 it -- it wasn't perfect. And, in my mind, the way to
7 make that perfect is to take NorthWestern's actual hourly
8 load shape and load it into those blocks. And so that
9 was the first thing that I did, the first change that I
10 did to Mr. Rounds's model.

11 The second assumption that I made was to adopt
12 Mr. Green's load growth forecast of 2.25 percent per year
13 for the next 20 years. Now that comes from NorthWestern.
14 I have no reason to quibble with that.

15 The next thing that I addressed is proper
16 capacity costs. And I have gone with the \$36 per year
17 figure growing at 5.84 percent per year.

18 And I understand that Oak Tree has some trouble
19 with that \$36 figure. Oak Tree has said that it was a
20 provisional offer and only for a short period of time. I
21 found the offer to be credible, and while the offer may
22 have been for a short time, I don't find anything in the
23 record that would say that the offer could not be
24 continued or that a similar offer might not be available
25 at the end of the three or four years that this offer was

1 for. And I believe that those opportunities would be out
2 there.

3 Especially considering that we are increasing
4 the capacity cost to 5.84 percent per year. And that
5 number came from NorthWestern. And so I am comfortable
6 with that inflation factor in the area of capacity cost.

7 The next assumption that we go to is the
8 appropriate capacity figure from the wind farm. And this
9 scenario I struggled. And, frankly, I've been all over
10 the board. At one point I was at 15.5. And then I went
11 to 12.9. And, frankly, I have settled on 20 percent.

12 Because NorthWestern is part of MRO and not part
13 of MISO, the 20 percent MRO figure most closely matches
14 where this facility is going to be located, and I think
15 probably most closely matches what the actual capacity
16 will be. And so I am comfortable with the 20 percent
17 figure times 18.915.

18 Number 5 assumption is that the RECs stay with
19 Oak Tree. I don't want to mix those into this bag.
20 Oak Tree keeps them, and they can market them as they see
21 best fit.

22 And, lastly, I find that NorthWestern's base
23 generation is 191 megawatts.

24 And all of these assumptions then have been
25 plugged into Mr. Rounds's model and spreadsheet and have

1 produced the document that you see before you.

2 The last thing that I would like to address is
3 the issue of levelized versus what are titled on this
4 sheet "Rounded Actual Yearly Figures."

5 And I appreciate the comments of all of the
6 parties as to whether or not we had to go with a
7 levelized or a modified levelized. And for my motion I
8 am proposing that we go with the rounded actual numbers
9 per year.

10 And the reason I propose that is I believe that
11 best protects the rate payers of South Dakota. I fully
12 understand that Oak Tree has every intention of operating
13 for a full 20 years and being a good operator for 20
14 years. But I also understand that stuff happens. And
15 sometimes businesses go out of business without ever --
16 you know, with no intention to do that.

17 And so to best protect the rate payers of
18 South Dakota, should something awful happen to Oak Tree
19 somewhere along the next 20 years, I propose that we use
20 the rounded actual numbers. And you can see those in the
21 proposal that I have laid out.

22 I believe that answers all of the questions that
23 we have been asked to answer and provides a number that
24 while neither side is going to be happy with, I believe
25 this is the number that the inputs demand. And the

1 inputs have driven the numbers that you see on the
2 proposal.

3 Thank you, Mr. Chairman.

4 CHAIRMAN HANSON: Thank you, Commissioner
5 Nelson. I sincerely appreciate the amount of work you
6 went to on developing this. And I can tell you I support
7 at least some of the proposals you have here and struggle
8 with some.

9 And even up through today I have been going over
10 some of these to the extent that I was on one side and
11 the other. The levelized and the actual has created a
12 lot of consternation for me. And this morning as I was
13 working on it I kept convincing myself that actual was
14 the way to go, and before I walked up here the last
15 half-hour or hour I have been measuring it and measuring
16 it and came down with I had decided I was going to
17 support levelized.

18 But I have windows where I am willing to support
19 and where I believe there's justification, and as long as
20 proposals fit within those windows, then I plan to
21 support them.

22 I am very interested in hearing what
23 Commissioner Fiegen's proposal is at this time.

24 MR. SMITH: May I butt in for one second? I
25 wanted to just confirm with the parties, have you

1 received the document that Chairman Nelson has passed
2 around here?

3 MR. UDA: Yes, I have. This is Mike Uda.

4 MR. SMITH: Okay. Al?

5 MR. BROGAN: Yes, I have, Mr. Smith.

6 MR. SMITH: Okay. Thank you.

7 CHAIRMAN HANSON: Thank you, Mr. Smith.

8 Commissioner Fiegen.

9 COMMISSIONER FIEGEN: Mr. Chairman, I don't know
10 if you want me to move a substitute motion and then
11 discuss it or discuss my parameters within the current
12 motion.

13 CHAIRMAN HANSON: If you're able to express your
14 concerns with the present motion, how yours would fit
15 within that, that would be fine. If you have a handout,
16 we would entertain that.

17 However, the challenge is that there's a motion
18 on the table, and I wouldn't want you to -- well, you
19 have every right to make a substitute if you wish.
20 However, it's less juggling at this time if you'd explain
21 yours.

22 COMMISSIONER FIEGEN: Okay. So with the
23 Chairman's direction, I'll talk a little bit about all of
24 us have really looked through lots of documentation and
25 details. And I think, like Commissioner Nelson

1 expressed, first of all, thank you to Oak Tree and
2 NorthWestern and the Public Utilities Commission Staff
3 for their dedication and their hard work. They have
4 worked very hard on details and given us a lot of
5 information and actually quite a bit of time to really
6 study this.

7 My goal is to be fair, reasonable, but practical
8 all at the same time.

9 I do not have a handout, but I will verbally
10 tell you what I have done. Of course, I have my own
11 worksheets. But, first of all, I used the Public
12 Utilities Commission's exhibits and used their
13 spreadsheets as a baseline.

14 So I used, again, Brian Rounds's Xcel
15 spreadsheet and made modifications to that spreadsheet.
16 I actually did agree with the Staff in their energy
17 calculation. So I kept that the same.

18 Also I can't quite tell. I think the Staff
19 changed in their second modification to 18.915 megawatts.
20 That's what I put in my formula instead of the 19.5.
21 Also on accredited capacity percentage, that is one, just
22 like Commissioner Nelson said, I struggled with.

23 I really wanted to use the 15.5, but the more I
24 looked into it, that was not available February 25, 2011.
25 I looked at averaging, 20 percent and 12.9, coming with

1 16.45. But at the end of the day I went with 20 percent
2 because I think that's something that we had from MRO,
3 the Midwest Reliable Organization.

4 I used a capacity value different than
5 Commissioner Nelson. I believe that Oak Tree made a
6 convincing argument that the avoidable cost is -- the
7 formula would look at 141 kilowatts per hour with no
8 inflation. So that's what I used for capacity value.

9 I have the Oak Tree retaining the renewable
10 energy credits. And at the end of the day what I come up
11 with is a levelized avoidable cost of 53.69 with those
12 documentations used.

13 Of course, I would sure like the Staff to
14 review that just to make sure my assumptions are correct
15 in the formula. But it appears that we're pretty close
16 there.

17 Some people ask about the 141. And I certainly
18 asked that myself during the entire hearing. 141 just
19 seemed like a large number. But when you looked at -- it
20 is really taken down because you look at the 12.9 or the
21 20 percent and you're looking at more megawatts of around
22 4 megawatts instead of the 18 or 19. Or 3.7. Whatever.
23 The megawatts are down. So that is absolutely -- the
24 intermittence is an issue that has been addressed at that
25 item.

1 You look at levelized avoided costs versus
2 actual, and that's a tough one. But when utility
3 companies come to the Commission for a rate case and they
4 bring a brand new facility to us to put in the rate, of
5 course, their costs are high in the beginning, and when
6 the depreciation goes it becomes lower.

7 So it's reverse if we would use the actual
8 costs, and that's why I went with levelized.

9 So that is my recommendation.

10 CHAIRMAN HANSON: Thank you, Commissioner
11 Fiegen. As Commissioner Nelson and Commissioner Fiegen
12 went through their presentations I should have discussed
13 a little bit more when Commissioner Nelson explained his
14 that I had come down on the side of Staff's energy
15 recommendations.

16 The capacity cost I -- Commissioner Nelson, I'm
17 struggling with it being \$36. I was looking at it being
18 higher than that. I do agree with you on the load growth
19 of 2 and a quarter percent if we are looking at load
20 growth. The wind farm capacity at 20 percent times
21 18.915 is what I had arrived at, and the RECs stay with
22 Oak Tree. And NorthWestern generation is 191 megawatts.
23 I agree with all of those things.

24 The levelized is where I have a challenge.
25 And I'd allow you to entertain those thoughts, if you

1 would.

2 COMMISSIONER NELSON: I think maybe the question
3 that I've got for both of you that I didn't hear
4 addressed is the first point that I made.

5 You know, we had quite a bit of testimony last
6 time about the fact that NorthWestern's hourly load shape
7 didn't match the EIPC load shapes that were used. And I
8 didn't hear that either of you changed or corrected that.

9 COMMISSIONER FIEGEN: I did not.

10 COMMISSIONER NELSON: Can you tell me why you're
11 comfortable not changing that and making that as accurate
12 as possible?

13 CHAIRMAN HANSON: As I went through it, I came
14 up with 191. And I came up with the NorthWestern load
15 shape as well.

16 You wanted to convert it to the EIPC?

17 COMMISSIONER NELSON: Yeah. The 191 is their
18 generation, and when I'm talking about load shape I'm
19 talking about their demand.

20 CHAIRMAN HANSON: Right. I did not have a
21 problem with that, as you had presented it. The basic
22 challenge I had with your presentation is the capacity
23 cost I felt should be higher and the levelized versus
24 actual.

25 COMMISSIONER NELSON: Understand.

1 COMMISSIONER FIEGEN: I kept with the current
2 EIPC. And it's documented. It's available to anybody.
3 And I decided that that was something I wasn't going to
4 fall on the sword on. And I felt comfortable with what
5 the Public Utilities Commission Staff have done with
6 that.

7 COMMISSIONER NELSON: What I'm observing is
8 that -- and I think, Commissioner Fiegen, the two areas
9 that we're not on the same page are on the capacity cost
10 and this issue of what the proper load shape is. But
11 apparently they must almost nearly washout because we're
12 within 40 cents of each other.

13 COMMISSIONER FIEGEN: Uh-huh. More than
14 40 cents. Mine is 53.69 beginning in 2014.

15 COMMISSIONER NELSON: Oh, okay. So then we're
16 about a buck 70 apart or a buck 60 apart.

17 COMMISSIONER FIEGEN: Yeah. In 2013 would be
18 52.38. 52.38.

19 CHAIRMAN HANSON: We're pausing for a moment
20 here. Some discussions with counsel taking place.
21 Almost called you Commissioner.

22 Mr. Rislov, did you have anything that you
23 wanted to -- felt compelled to speak on?

24 MR. RISLOV: I don't really feel compelled,
25 unless you feel compelled to ask me a question.

1 No. I could -- I mean, there is a difference in
2 the load shapes used between the two Commissioners, but
3 there were other elements of the EIPC study that weren't
4 exactly, let's say, in exact sync with NorthWestern but
5 they did reflect this part of the country.

6 So Mr. Rounds did have some explanations on
7 those differences and over time why certain things in his
8 mind were leaving out. So I guess either recommendation
9 is fine from my point of view.

10 CHAIRMAN HANSON: Commissioner [sic] Rislov, if
11 we use the levelized instead of actual, which of those
12 areas would we not need to include in a motion?

13 MR. RISLOV: Excuse me? If you --

14 CHAIRMAN HANSON: If we used a levelized cost as
15 opposed to actual, which of the -- would we need to worry
16 about the hourly load shape?

17 MR. RISLOV: Well, I think the hourly load shape
18 is going to determine your energy rate, and regardless of
19 which one it's going to affect whether it's levelized or,
20 you know, the exact annual payment, so to speak. The
21 hourly load shape affects either.

22 CHAIRMAN HANSON: Okay. Thank you.

23 Commissioner Nelson, are you working on some
24 things?

25 COMMISSIONER NELSON: Yes. If I could have just

1 a moment to --

2 CHAIRMAN HANSON: Go right ahead. I'll tell you
3 both at this time that your capacity cost of \$36 was
4 lower than the one that I was looking at.

5 Commissioner Fiegen, do you have anything at
6 this time?

7 COMMISSIONER FIEGEN: No. I just like my
8 discussion.

9 CHAIRMAN HANSON: All right. This is much like
10 a genealogy. As you're looking at all of the
11 ramifications and nuances of this item, it just branches
12 off and branches off and branches off.

13 There are many, many sub issues and items that
14 affect other items so it becomes extremely complicated.
15 That's why it takes time to work out even the small
16 change in one area, how it affects the entire arena.

17 COMMISSIONER NELSON: Well, Commissioner Hanson,
18 let me ask what capacity figure -- capacity cost would
19 you --

20 CHAIRMAN HANSON: I was looking at 56.56.

21 COMMISSIONER NELSON: And where is that found in
22 the record?

23 CHAIRMAN HANSON: That's levelized from
24 NorthWestern Energy. Like I say, I have windows that I'm
25 working with, highs and lows and --

1 COMMISSIONER NELSON: And then are you proposing
2 any inflationary factor for the capacity cost?

3 CHAIRMAN HANSON: I considered that on -- when I
4 was looking at actual. I don't know that I spent any
5 time considering that when I was working with the
6 levelized cost.

7 COMMISSIONER NELSON: Well, if I could just
8 throw three numbers on the table so you understand what
9 the ramification of these three are.

10 CHAIRMAN HANSON: Sure.

11 COMMISSIONER NELSON: My capacity proposal --
12 and, fortunately, we're all on the same page with the
13 20 percent times 18.915. So that's easy.

14 My capacity proposal of 36 bucks times the
15 inflation factor of 5.84 comes up with a total capacity
16 payment over the 20 years of \$6,773,894. Commissioner
17 Fiegen's \$141 with no inflation essentially doubles that.
18 \$12,801,672. And Commissioner Hanson, if I understood
19 you right, going with a \$56.56 capacity cost with no
20 inflation, \$5,135,195. So that's just so you know what
21 the impact is.

22 COMMISSIONER FIEGEN: I'm sorry. Could you
23 repeat Commissioner Hanson's?

24 COMMISSIONER NELSON: \$5,135,195.

25 CHAIRMAN HANSON: Further discussion?

1 COMMISSIONER NELSON: I guess maybe a question.
2 So, Commissioner Hanson, where are you at on the issue of
3 levelized versus actual?

4 CHAIRMAN HANSON: I like levelized. Now instead
5 of simplifying it like that, I really struggled between
6 actual and levelized. I mean, I really have struggled on
7 it.

8 I think if I'm buying something, I want to know
9 what the actual is. If I'm selling something, I want to
10 know what the actual is. I just see the complications in
11 the true-ups, the costs of going through the process, the
12 potential of them coming before us every other year to
13 try to resolve some issues. I just -- I think that, you
14 know, complicates it significantly to go to levelized.
15 That's where I fall out.

16 COMMISSIONER NELSON: Okay. If I could ask both
17 of you, there was some discussion or some offer by Oak
18 Tree that if we were to go with levelized, that they'd be
19 willing to put some security forward to try to protect
20 the rate payers should something go terribly wrong.

21 Is that something either of you considered?

22 COMMISSIONER FIEGEN: I did not.

23 CHAIRMAN HANSON: I'm inclined not to go that
24 route. And that's part of the concern I have for trying
25 to use all of these different machinations in order to

1 make something function. Overcomplicating something that
2 does not need to be.

3 At the same time, I can see where you and I are
4 not very far apart on the capacity cost. Of course, one
5 and a half million to some folks is a lot. It's all
6 relative, isn't it?

7 Commissioner Fiegen, did you have something?

8 COMMISSIONER FIEGEN: The differences that
9 Commissioner Nelson and I have are energy. The energy
10 value.

11 COMMISSIONER NELSON: I believe the difference
12 is in the load shape.

13 COMMISSIONER FIEGEN: Right. Which goes down to
14 the energy value.

15 COMMISSIONER NELSON: Correct. I think we are
16 all comfortable using Staff's energy values. But the
17 load shape is --

18 COMMISSIONER FIEGEN: Affects that.

19 COMMISSIONER NELSON: Affects how that spreads
20 out, and that's where our difference is. And, obviously,
21 I'm interested in that being as accurate as possible, and
22 that's why I went through the work of taking the hourly
23 loads from NorthWestern and plugging them in.

24 COMMISSIONER FIEGEN: And I truly believe the --
25 you know, the 141, I struggled with that in the

1 beginning. And the more I looked at it, it looks like to
2 me it's the most accurate item we can use for avoidable
3 cost.

4 CHAIRMAN HANSON: Basically, Commissioner
5 Nelson, the only differences that you have and I'm
6 considering the difference of capacity is levelized
7 versus actual. And the -- certainly the capacity cost is
8 within my window.

9 COMMISSIONER NELSON: And let me say I am
10 certainly willing to move your direction on the levelized
11 if you'll accept my capacity cost.

12 CHAIRMAN HANSON: I was playing monopoly with my
13 8 year old grandson the other day, and he was making very
14 difficult proposals to me. And had you gone the other
15 way and said that you wanted to -- me to move to actual,
16 I would have said no. I'll move to -- I'll compromise on
17 the capacity cost if you will compromise on the
18 levelized. Yes.

19 COMMISSIONER NELSON: I am certainly willing to
20 do that. So if I understand then, the only change in my
21 proposal would be that in my motion would be that it
22 would be levelized as opposed to actual.

23 CHAIRMAN HANSON: Correct. And that it would
24 take Staff's energy proposals. Do you wish to -- well,
25 do you wish to restate your motion then at this time?

1 COMMISSIONER NELSON: If that would be
2 acceptable. I would restate the motion adopting all of
3 the assumptions and figures as proposed on the sheet that
4 I handed out and using the levelized cost, and if
5 operation begins in 2013, it would be \$53.31. If it
6 begins in 2014, \$55.34.

7 CHAIRMAN HANSON: All right. Discussion on that
8 motion.

9 Commissioner Nelson, since it's your motion, do
10 you wish to discuss anything on it?

11 COMMISSIONER NELSON: I think the only thing
12 that I would say -- and probably the biggest difference
13 that I've got with Commissioner Fiegen is that I'm -- I
14 very much want to see the most accurate hourly load shape
15 used. And this incorporates that.

16 I understand we have a difference on the
17 capacity value, but the fact that I'm utilizing the
18 inflation factor that NorthWestern put forward, that
19 moves it up, and I think these numbers are defensible and
20 arrive at a reasonable figure.

21 CHAIRMAN HANSON: Commissioner Fiegen, do you
22 wish to discuss anything on the motion? No?

23 In that case we will -- there being no further
24 discussion, this is on the motion. Those in favor will
25 vote aye. Those opposed will vote no.

1 Commissioner Fiegen.

2 COMMISSIONER FIEGEN: Fiegen votes no.

3 CHAIRMAN HANSON: Commissioner Nelson.

4 COMMISSIONER NELSON: Aye.

5 CHAIRMAN HANSON: Commissioner Hanson votes aye.

6 Motion carries.

7 I don't believe there's any further business to
8 come before us on this item. If not, is there a motion
9 to adjourn?

10 COMMISSIONER FIEGEN: So moved.

11 CHAIRMAN HANSON: Moved by Fiegen. All those in
12 favor, signify by saying aye.

13 Commissioner Fiegen.

14 COMMISSIONER FIEGEN: Do I have to go first
15 again? Commissioner Fiegen votes aye.

16 CHAIRMAN HANSON: Thank you. Commissioner
17 Nelson.

18 COMMISSIONER NELSON: Aye.

19 CHAIRMAN HANSON: Hanson votes aye. Motion
20 carries. We stand adjourned.

21 Thank you all very, very much for your patience.
22 And the process has been a long one but it sets some
23 precedence and it was an incredibly complicated docket
24 transcending a number of Commissioners here and
25 appreciate your working with us over that period of time.

1 MR. UDA: Thank you, Mr. Chairman and members of
2 the Commission.

3 MR. BROGAN: Thank you.

4 (The proceeding is concluded at 3:22 p.m.)

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1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY)

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

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 22nd day of
11 January, 2013, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 6th day of
14 February, 2013.

15

16

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18

Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

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