

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

=====

Transcript of Proceedings  
April 26, 2005

**ORIGINAL**

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
GARY HANSON, CHAIRMAN  
BOB SAHR, VICE CHAIRMAN  
DUSTY JOHNSON, COMMISSIONER

COMMISSION STAFF

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

APPEARANCES

Alan Dietrich, NorthWestern Energy  
Darla Pollman Rogers, South Dakota Rural  
Electric Association

Reported By Cheri McComsey Wittler, RPR, CRR

**PRECISION REPORTING**  
**L I M I T E D**

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2 OF THE STATE OF SOUTH DAKOTA  
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1 APPEARANCES BY TELEPHONE  
2 Colleen Sevold  
3 Melissa Thompson  
4 Cory Kasuski  
5 Mark Rodvold  
6 Melanie Acord  
7 John Witzel  
8 Larry Nelson  
9 Jim Wilcox  
10 Tom Hitchcock  
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 26th day of April 2005, commencing  
16 at 9:30 a.m.  
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19  
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21  
22  
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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 before the Commission today is  
6 shall the Commission approve the tariff revisions.  
7 Is there a Motion by any member of the  
8 Commission?  
9 VICE CHAIRMAN SAHR: I'm just going  
10 to check and see, did we intend to take arguments  
11 or comments from the attorneys for the parties or  
12 not? I don't remember what we discussed.  
13 CHAIRMAN HANSON: I didn't believe  
14 we had. Was there anything scheduled?  
15 MR. SMITH: We really haven't -- as  
16 of this point I don't know whether the Commission  
17 has really heard from the parties, and I guess my  
18 thought is you might want to hear from the parties  
19 and staff prior to making your decision. That's up  
20 to the Commission.  
21 MR. DIETRICH: I certainly would be  
22 interested in making some brief remarks.  
23 CHAIRMAN HANSON: All right. If the  
24 parties are interested in presenting.  
25 MR. DIETRICH: Good morning,

1 Commissioners. I'm Alan Dietrich, attorney for  
2 Northwestern Energy. I just wanted to point out  
3 the purpose of this filing was for us to be granted  
4 a narrow -- in narrow circumstances the right to  
5 flex our energy costs. That narrow situation would  
6 be where there is a new customer, a new location  
7 with a 2 megawatt demand load. That is a  
8 Section 56 customer as you've become well-aware in  
9 recent months.  
10 And we're only requesting the right to flex  
11 the energy charge. All the demand charges that we  
12 would use under this proposed tariff would be as  
13 provided in those tariffs.  
14 And we expect that there are likely to be  
15 several such qualifying customers applying for  
16 service in the near future, and as the Commission  
17 has ruled, and as staff argued in the Dakota Turkey  
18 case, it's clear that the -- it is now clear at  
19 least in this ruling that the Legislature intended  
20 electric providers to compete for such loads. And  
21 we think we need this flexibility in order to  
22 compete.  
23 Our assigned areas are very limited adjacent  
24 to the communities we serve. Outside of those  
25 limited areas are broad expansions of service areas

<p>5</p> <p>1 of unregulated utilities. And as we both are</p> <p>2 seeking to serve those loads, those unregulated</p> <p>3 utilities can offer whatever rate they determine,</p> <p>4 whereas -- without any Commission oversight as to</p> <p>5 what they charge.</p> <p>6 They also have other vehicles. There's a</p> <p>7 vehicle for no-interest loans. They also have the</p> <p>8 ability to see our printed tariffs as kind of a</p> <p>9 stalking-horse. In other words, here is our rate,</p> <p>10 and they know exactly what they need to beat to</p> <p>11 beat that rate for the customer. So we would like</p> <p>12 the flexibility to be able to offer this. And by</p> <p>13 the terms of this tariff that we have provided, our</p> <p>14 other customers that we serve are protected.</p> <p>15 The rate must exceed our cost to serve this</p> <p>16 customer and provide a margin to all of our other</p> <p>17 customers. And we do an analysis. We actually</p> <p>18 shared a model with staff as to how -- the analysis</p> <p>19 we go through. As to how we make that</p> <p>20 determination, we would make that in each case on a</p> <p>21 case-by-case basis. We'd be fine with filing such</p> <p>22 analysis on a confidential basis with the</p> <p>23 Commission.</p> <p>24 In the next rate proceeding that we might</p> <p>25 have, whether it's instituted by the company or the</p>	<p>7</p> <p>1 proceeding pursuant to SDCL 49-34A-26.</p> <p>2 And we'd have no problem incorporating that</p> <p>3 language into Option N as well. In other words, we</p> <p>4 can't change the rates for any other customer</p> <p>5 because of a discount we offer here, and into a</p> <p>6 future rate proceeding we'd have the burden to show</p> <p>7 any justification for that discount as we argue our</p> <p>8 revenue requirements.</p> <p>9 Staff has suggested the addition of the word</p> <p>10 "nonfuel" in describing the costs which may be</p> <p>11 discounted in the proposed tariff, and we're fine</p> <p>12 with that modification to the tariff. We don't</p> <p>13 feel a contract with deviations is a workable</p> <p>14 alternative. In this narrow circumstance where a</p> <p>15 customer is taking competing bids we have to be</p> <p>16 able to give them a firm bid.</p> <p>17 In the case where it's our service area and a</p> <p>18 customer's expanding and we want to vary a tariff</p> <p>19 in another fashion, we could come forward and do</p> <p>20 this. But in the circumstances where we're trying</p> <p>21 to get a bid -- have to submit a firm bid we don't</p> <p>22 have the luxury of saying here's our deal but it's</p> <p>23 contingent and our competitor has a deal which</p> <p>24 isn't contingent upon some third party's approval.</p> <p>25 And so as Commissioner Sahr stated at the DTG</p>
<p>6</p> <p>1 Commission, we would have the burden of showing</p> <p>2 that the system as a whole benefits by the service</p> <p>3 to this customer at this negotiated rate.</p> <p>4 COMMISSIONER JOHNSON: Mr. Dietrich,</p> <p>5 I'm sorry to interrupt you. Could you repeat the</p> <p>6 sentence before that last one. I want to make sure</p> <p>7 I heard you right.</p> <p>8 MR. DIETRICH: The analysis that we</p> <p>9 make as to how we determine what the rate we would</p> <p>10 be that we would discount for this particular</p> <p>11 customer, we would be willing to share that</p> <p>12 analysis with this Commission, filing it on a</p> <p>13 confidential basis at the time we would enter into</p> <p>14 the contract with the customer, and we would be</p> <p>15 willing to file the contract with the Commission on</p> <p>16 a confidential basis.</p> <p>17 The customers would be made whole. We have</p> <p>18 existing language in the Option L rider that we</p> <p>19 have now which reads, Revenues which may be lost by</p> <p>20 Northwestern by reason of its entering into</p> <p>21 agreements under Option L shall not be recovered</p> <p>22 from its customers, irrespective customer class.</p> <p>23 The determination of whether revenues have been</p> <p>24 lost shall be made by the South Dakota Public</p> <p>25 Utilities Commission in a rate proceeding or in a</p>	<p>8</p> <p>1 hearing, if you work in sales, sometimes you just</p> <p>2 don't get the sale, and we don't get the sale if we</p> <p>3 can only offer a conditional offer and somebody</p> <p>4 else can offer a firm offer.</p> <p>5 In fact, we have a circumstance where a</p> <p>6 potential new customer is requiring us to submit a</p> <p>7 firm bid by tonight. And the only way that we can</p> <p>8 do that is if this tariff would be approved or just</p> <p>9 offer them our printed tariffs. And we feel that</p> <p>10 the Option N and L that we've had are business</p> <p>11 incentives that have been enforced for a long time,</p> <p>12 N since 1984, Option L since I think the mid 1990s.</p> <p>13 They've worked well where we've used them.</p> <p>14 They've been a benefit to our system as a whole.</p> <p>15 They're consistent with the business development</p> <p>16 statute of the South Dakota Code that was enacted</p> <p>17 some 12 years later. And the Commission has</p> <p>18 approved flexible rates with MidAmerican with</p> <p>19 regard to gas to large volume sales and also to</p> <p>20 Black Hills Power &amp; Light with regard to new</p> <p>21 business customers.</p> <p>22 And Tom Hitchcock who was formerly employed</p> <p>23 with Northwestern but hasn't worked for us for</p> <p>24 several years and works in ag development is on the</p> <p>25 phone and he represents a number of ag processors</p>

<p>1 and if the Commission would be interested, I think 2 he would like to add a few words as to kind of what 3 a potential customer is looking at. 4 CHAIRMAN HANSON: That would be 5 fine. Please, proceed. 6 MR. HITCHCOCK: Thank you, 7 Mr. Chairman, Commissioner, staff, for allowing me 8 the opportunity to address the Commission this 9 morning on Northwestern's proposed electric tariff 10 changes. As Alan stated, I had previously worked 11 for Northwestern in their regulatory group and 12 primary responsibility for handling some of their 13 regulatory affairs, natural gas procurement in 14 sales to large end users. 15 It's been over four years now since I've had 16 the opportunity to be in front of the South Dakota 17 Public Utilities Commission for any kind of 18 proceedings so I'm glad to have this opportunity. 19 I have been in the energy industry for over 20 26 years with primary emphasis in utility 21 regulation and administration. Today I own my own 22 business, Golden Plains Ventures, which provides 23 business consulting services primarily to your 24 value-added agricultural ventures in the state. I 25 have done this for probably about the last three</p>	<p>1 In today's business environment these large 2 ag-related businesses want reliable service and the 3 opportunity to work out a rate structure that is 4 fair for both them and the energy provider. The 5 first five years of the business cycle through 6 start-up and ramp-up of these businesses is very 7 critical. Cash flow is extremely important in the 8 early life cycles, and any savings that can be 9 generated is extremely important. 10 From my past experience with cost of service 11 allocation and rate design I am aware that certain 12 of the customer or demand-related costs are 13 recouped through the commodity or the energy 14 charge. This is done primarily so the smaller-use 15 customers in a class do not bear too high in 16 overall cost. This is certainly true in 17 residential rate design. 18 The same is true at the commercial rate 19 design. Shifting some of the customer or 20 demand-related cost over to the commodity for 21 energy rate component can cause real large users to 22 pay a higher share of these costs in the energy 23 charge. Circumstances are where the potential load 24 is to be located relative to the company's existing 25 facilities can weigh heavily on the cost of</p>
<p>1 plus years. 2 During the past two and a half years I have 3 worked closely with the South Dakota Value-Added 4 Agriculture Development Center located here in 5 Huron, in fact, in the same office that I work in. 6 The Value-Added Agriculture Development Center is 7 funded by 18 of the largest ag-related groups in 8 the state, including the Corn Growers, Wheat 9 Commission, Soybean Council, and Farmers Union. 10 Working together we assist many of the 11 potential start-up ag businesses and new ventures 12 in this state. Many of these ag businesses or 13 ventures are potential users of large amounts of 14 energy, including electricity and natural gas. I 15 am here today to support Northwestern's proposed 16 electric tariffs which would allow Northwestern to 17 discount the energy charges but only in the limited 18 circumstances where a new customer is seeking 19 service to a new location and has a 2 megawatt 20 demand. 21 Just in and around Huron alone we have two new 22 ag-related ventures that will meet this demand at 23 some point in their production cycle. So it's 24 important to the local economy in Huron and not 25 only just the state.</p>	<p>1 providing service to this new business. Almost 2 every situation is different when it comes to 3 providing service to a larger customer. 4 Northwestern's proposal is seeking Commission 5 approval to allow them to discount the energy 6 charge for the commodity component of the overall 7 rate structure and deal with the potential large 8 customer without going through the process of 9 getting the Commission to approve a contract with 10 deviation. 11 Any discounts given should be supportable by 12 Northwestern in a future rate case. The company 13 has said that they would be willing to share 14 information on any discounts provided and the 15 analysis undertaken by the company with the 16 Commission in regard to determining the benefits 17 from such discounts. Because of this and other 18 factors, I support this filing of Northwestern. 19 In today's business you have to deal with and 20 make deals in a faster time frame. Business owners 21 do not want uncertainty as they move forward once 22 they have struck a deal. It delays cost and money. 23 And I know firsthand in dealing with, you know, 24 another big customer in the Huron area, 25 Richfield Farms, that they're certainly looking</p>

<p>13</p> <p>1 for, you know, ways that they can move forward and 2 get through those first five years of production 3 without having an excessive cost burden put on 4 them. 5 So giving Northwestern or I guess any other 6 public utility another tool to effectively compete 7 is important to these large businesses, and so 8 today I ask the Commission to approve 9 Northwestern's proposed electric tariff changes. 10 Thank you. 11 CHAIRMAN HANSON: Thank you. 12 Mr. Dietrich, do you have anything further? 13 MR. DIETRICH: No. That's all I 14 have. Thank you very much. 15 CHAIRMAN HANSON: Are there any 16 questions of Mr. Dietrich at this time? 17 VICE CHAIRMAN SAHR: Do we have any 18 other parties or Interveners? 19 CHAIRMAN HANSON: I don't see any 20 others, but I'm not positive of that. I just 21 thought we'd take questions at this time and we'd 22 have staff. 23 VICE CHAIRMAN SAHR: That was the 24 only thing is if we had somebody else out there, it 25 might affect the questions I'd ask Mr. Dietrich. I</p>	<p>15</p> <p>1 mechanisms in place already in statutes through 2 such things as contract with deviations that would 3 allow the Commission the authority on the front end 4 to look at these things. 5 Specifically, we'd like to draw the 6 Commission's attention to SDCL 49-34A-8.3, the 7 business development rates. We believe that that 8 statute is applicable to this exact type of 9 situation. It allows the Commission to authorize a 10 set of rates or a flexible rate beforehand before a 11 utility goes in to negotiate with a potential new 12 customer. 13 VICE CHAIRMAN SAHR: Ms. Greff, what 14 was that cite? 15 MS. GREFF: 49-34A-8.3. We don't 16 see why that is not a viable option for 17 Northwestern at this time. 18 Another point we'd like to bring up is also 19 the question of letting the public have a voice in 20 these type of matters. Approving this filing and 21 letting the rates get set on the back end is not 22 allowing the public any time or chance to intervene 23 or comment on any of the rates that could 24 potentially be set. If we were doing that before 25 any negotiations would take place, it would allow</p>
<p>14</p> <p>1 would like the opportunity to ask him some 2 questions, but, Mr. Chairman, if it's appropriate, 3 I'd like to do that after I hear from staff. 4 CHAIRMAN HANSON: Is there anyone 5 else in the audience that has any presentation 6 they'd like to make at this time? 7 Does staff have something? 8 MS. GREFF: Staff has a couple of 9 comments, and I think there may be other parties on 10 the phone that wish to make comments as well. I 11 don't know for sure they're ready to make comments, 12 but they may be out there to make other comments. 13 CHAIRMAN HANSON: All right. Are 14 there any questions of Mr. Dietrich at this time? 15 I just want to know if there's any questions of him 16 by the Commissioners. 17 If there are not, then I will move to staff. 18 MS. GREFF: Staff just has a couple 19 of points to bring up to the Commission, the first 20 of which the Commission obviously has the authority 21 to set and make rates for investor-owned utilities. 22 This has been abrogated to them through statutes. 23 In essence, this filing is contracting around 24 that authority allowing you not to set their rates 25 on the front end. We believe that there are</p>	<p>16</p> <p>1 Interveners time to say their peace. 2 With that, I guess I would allow Mr. Jacobson 3 any comments that he would like to make about this 4 and the actual filing itself. 5 CHAIRMAN HANSON: Dave. 6 MR. JACOBSON: Thank you. Actually 7 in reviewing the filing we understand that these 8 Section 56 applications do involve competition. 9 The Commission's core responsibility is to protect 10 the other rate payers from rates that may be set 11 that may be too low for the new customer and then 12 subsequently a utility will try to collect that 13 underrecovery from the other customers. 14 It could be addressed at a future rate case. 15 However, that has not been the case in the past. 16 We have not -- contracts with deviations have 17 worked in the past. Although, we haven't had that 18 many Section 56 filings, as you're aware, they're 19 seemingly becoming more frequent. 20 If the Commission would approve -- we think 21 that it boils down to the legal question of whether 22 8.3 allows the company -- what the company has 23 proposed here. If that hurdle is met by the 24 company, then we would have certain conditions that 25 we would recommend be -- the approval would be</p>

17

1 subject to.

2 But, you know, it's a legal question. We see

3 8.3 as a definite impediment that directly

4 addresses this type of situation, and, not being a

5 lawyer, I'll leave that up to the attorneys to

6 address, but that's where we're at, I guess.

7 CHAIRMAN HANSON: Sometimes it's

8 safer not to be an attorney. Thank you.

9 Is there anyone else who wishes to address the

10 Commission at this time on this issue?

11 If not, Mr. Dietrich, what has the experience

12 been of Northwestern with contract for deviations?

13 MR. DIETRICH: We have used such

14 contract on a natural gas side of our business at

15 times for certain large load customers, primarily

16 in competition with other fuels. We have not filed

17 contracts with deviations for the electric side of

18 our business. But our experience in negotiating

19 recently with potential Section 56 size customers

20 has been that they're not looking for a conditional

21 offer. They're looking for a firm price and a firm

22 contract that we can enter into.

23 And so we don't believe that a contract for

24 deviation is -- we're offering a potential contract

25 conditioned upon a third-party's consent. Someone

18

1 else is giving them a firm bid today. And there's

2 no question which one they're going to go with if

3 they're close.

4 CHAIRMAN HANSON: Notwithstanding

5 that concern, what is your experience with contract

6 for deviation?

7 MR. DIETRICH: We have not filed

8 any.

9 CHAIRMAN HANSON: From the gas

10 side --

11 MR. DIETRICH: On the gas side we

12 have --

13 CHAIRMAN HANSON: Were we dilatory?

14 MR. DIETRICH: No. Absolutely not.

15 But those were different -- where we made these

16 filings they have been different circumstances.

17 They have been filings where we have not had this

18 direct gas-on-gas competition, like we have

19 electric-on-electric competition here where we're

20 given specific deadlines for bids.

21 CHAIRMAN HANSON: Notwithstanding

22 your argument pertaining to the firm versus the

23 conditional bid that you would be giving, what's

24 the duration usually on negotiations for someone

25 that's building a facility?

19

1 MR. DIETRICH: I would say that

2 varies greatly. The most recent one that I

3 mentioned earlier we were told yesterday that we

4 had to have a firm price by this evening. In fact,

5 they wanted the firm price right away, and we said

6 we really think we need to get through this

7 proceeding before we can get back to you.

8 So it varies. In some cases we may be

9 negotiating for weeks, and in other cases a new

10 business may say we want a price today.

11 CHAIRMAN HANSON: Thank you.

12 Further questions?

13 VICE CHAIRMAN SAHR: Thank you,

14 Mr. Chairman. And this could be to either

15 Mr. Jacobson or Ms. Greff.

16 Do you know on an expedited basis how quickly

17 we could handle a request for a contract for

18 deviation?

19 MR. JACOBSON: In the past we've

20 been able to handle them within one week. That is

21 about the fastest I can recall actually doing it.

22 It depends largely upon the information supplied by

23 the company at the time.

24 And Northwestern has provided a model. We

25 really haven't taken a deep analysis of that model.

20

1 It would take some time to do that. But it's an

2 outline of what they propose to file under such

3 circumstances.

4 But where companies have submitted repeated

5 applications we understand exactly what their cost

6 information was. In this case they provided us an

7 outline which we could certainly review and, you

8 know, look at in a relatively quick basis.

9 VICE CHAIRMAN SAHR: And when you're

10 talking about some of those other companies are

11 those some of those Black Hills Power type

12 agreements?

13 Is that what you're talking about, or are you

14 familiar with those?

15 MR. JACOBSON: It's hard to remember

16 right offhand which agreements. It seems to me

17 that maybe MidAmerican and possibly Black Hills

18 Power & Light. Black Hills Power, that was true

19 with the Gold Mine.

20 VICE CHAIRMAN SAHR: And then,

21 Mr. Dietrich, one of the questions that I had is

22 with the ability for an expedited process for a

23 contract with deviation and concerning the

24 confidentiality type provisions that could be part

25 of that process, what would be the -- why is it not

<p>21</p> <p>1 desirable for Northwestern simply to file for a 2 contract with deviation, get it approved by the 3 Commission and then be able to go forward with that 4 type of rate in going through that type of process? 5 MR. DIETRICH: I think, as I said 6 earlier, we're just not -- we aren't giving the 7 customer a firm process. We can't get his name on 8 the contract to submit to you. It's kind of a 9 chicken and egg. You can't get the contract signed 10 with the customer to bring to you for approval 11 because he's not going to -- the customer's not 12 going to sign that contract subject to Commission 13 approval. He's going to want the firm price. 14 VICE CHAIRMAN SAHR: I'll ask staff 15 then, and I'll open this up to General Counsel as 16 well. I mean, is there a mechanism in place where 17 basically they can come in and ask for preapproval 18 to make that type of offer and go forward that way? 19 MS. GREFF: Staff believes that yes, 20 there is a mechanism in place for that, and, as I 21 pointed out, we believe that it's 49-34A-8.3. It 22 allows them to come in beforehand and get a 23 business development rate, or I think staff would 24 even be amenable to a set of rates, a high and a 25 low and they can negotiate with that customer so</p>	<p>23</p> <p>1 broad rate with a minimum and a maximum, but the 2 problem of us getting an approval from you for a 3 rate and then going to negotiate with the customer, 4 you know, we're back to we've got maybe a slightly 5 lower but flat -- hard and fast rate, we're going 6 to go offer it then to the customer. 7 And I guess there is no harm to the customers 8 from our proposal. There's no harm immediately. 9 There would be no change in anyone's rates. To the 10 extent that we would ever come back in and submit a 11 revenue requirement in a rate proceeding, you have 12 the right to say you flexed a rate here and we're 13 going to assume that you received the maximum rate 14 from that customer and any discount is a 15 shareholder expense. 16 You have that right. We have the burden to 17 show that there's a legitimate reason for flexing 18 that rate. 19 You know, essentially Section 56 as it's being 20 interpreted is saying climb into the ring and duke 21 it out, and we'd like to do that without our hands 22 tied down at our sides. 23 CHAIRMAN HANSON: Any other 24 questions? 25 MS. GREFF: Can I just make one</p>
<p>22</p> <p>1 they have the ability to go make an offer through 2 that customer, they're just getting preapproval 3 through the business development rates in 8.3. 4 VICE CHAIRMAN SAHR: Mr. Dietrich, 5 have you evaluated whether or not that would be an 6 effective way to go out there and to be able to do 7 what you'd like to do without having to make what I 8 consider to be a fairly dramatic change in how we 9 structure rates? 10 MR. DIETRICH: Well, I don't think 11 it's a change. The Black Hills business 12 development service rate is not such a rate. It 13 provides for the right for them to negotiate. 14 That's what we're asking for. 15 I believe what we're asking for is consistent 16 with 8.3. The rate that we're asking for is a rate 17 to allow us to flex the price downward with costs 18 and margin covered, similar to the language in the 19 Black Hills rate that allows flexibilities. The 20 compensation to be received shall exceed the 21 marginal cost of the company performance under the 22 contract. 23 What we're asking for is very similar to what 24 they have. I don't think what we're asking for is 25 inconsistent with Section 8.3. We could ask for a</p>	<p>24</p> <p>1 point? The Black Hills rate that Mr. Dietrich is 2 mentioning and bringing reference to was approved 3 by the Commission in 1995 and coincidentally enough 4 this statute was passed in 1996 effective July 1 of 5 1996. Staff doesn't know the legislative history 6 behind it, but possibly could be as a result of 7 that broad language. 8 CHAIRMAN HANSON: Thank you. 9 Further questions? 10 COMMISSIONER JOHNSON: You also made 11 reference, Mr. Dietrich, to some flexibility that 12 MidAmerican has but those are -- I mean, that's a 13 band with hard and fast numbers and a ceiling to 14 floor; is that right? 15 MR. DIETRICH: It's a minimum rate 16 and a maximum rate. It's not numbers. They're 17 related to costs. MidAmerican tariff is related to 18 costs, and the same way ours is, we're looking at 19 the maximum is, of course, the full tariffed rate. 20 The minimum is recovery of our costs and a margin 21 beyond those costs. 22 So we're essentially asking for the same 23 thing. We're asking for flexibility within that 24 range. We will charge this new customer no more 25 than the maximum rate and no less than cost plus</p>

25

1 some margin beyond those costs. So, you know, we  
 2 can term it anyway we want, but that's essentially  
 3 the same thing that MidAmerican has.  
 4 COMMISSIONER JOHNSON: You know,  
 5 we've talked a little bit about the Section 8.3,  
 6 the business development rate. I want to get a  
 7 better understanding of why you think that doesn't  
 8 give you the same flexibility in advance of putting  
 9 in a bid.  
 10 What would be the problem with preapproval of  
 11 a rate?  
 12 MR. DIETRICH: Well, that's what I'm  
 13 asking for. I believe what I'm asking for is  
 14 consistent with 8.3. I'm asking for a rate which  
 15 has as a -- the maximum is the previous maximum  
 16 tariffed rate, and the minimum being what the  
 17 individual costs are on a customer-by-customer  
 18 basis. Because the facilities we have to construct  
 19 for each new customer are going to be different.  
 20 So I think it is consistent with that. I'm  
 21 not asking for anything different than what that  
 22 statute provides.  
 23 COMMISSIONER JOHNSON: I guess my --  
 24 I think the difference at least in my mind -- feel  
 25 free to correct me if I'm wrong -- is that the

26

1 business development rate allows PUC examination of  
 2 those costs in advance of approval of a particular  
 3 rate. What you're proposing doesn't.  
 4 I mean isn't that right? What you're  
 5 requesting really requires the PUC to do more work  
 6 on the tail end, more an audit or review function  
 7 at the next rate case.  
 8 MR. DIETRICH: Well, I guess what  
 9 I'm asking is -- by business development of a rate,  
 10 I'm saying you establish a procedure or a minimum  
 11 and a maximum guideline within which we would have  
 12 the flexibility to negotiate.  
 13 If you're saying it would be -- we'd have to  
 14 come in for a business development rate per  
 15 customer, I don't think that's what 8.3 was  
 16 designed to do. It was designed to create a rate  
 17 just like any other rate that we have that's going  
 18 to apply to a lot of customers.  
 19 You know, it's not a business development --  
 20 in Section 8.3 it doesn't say specifically that the  
 21 business development rate was to identify the  
 22 specific costs per that customer and engage in that  
 23 kind of analysis before the rate was determined. I  
 24 think what we're talking about in business  
 25 development rate is to establish a rate,

27

1 grandfathered all the rates that were in effect as  
 2 of July 1, 1996 and ours, Option N, L, I were in  
 3 effect and were grandfathered.  
 4 COMMISSIONER JOHNSON: So let's set  
 5 aside the business development rate then and  
 6 instead talk about if the Commission had set up a  
 7 process for preapproval of contract with deviation  
 8 prior to the other party signing the contract.  
 9 Would that allow you the flexibility that  
 10 you're seeking?  
 11 MR. DIETRICH: You know, with all  
 12 due respect, I'm not certain that the Commission is  
 13 always going to be able to do that within a week  
 14 basis, and, you know, frankly, as I've said, we  
 15 don't always have a week to respond to a request on  
 16 these.  
 17 You know, you may think these deals go on for  
 18 weeks and months of negotiations, but sometimes  
 19 they don't. Sometimes we're just notified, we want  
 20 a price and we want it now, and if we don't give  
 21 this firm a price tonight, you know, we're going  
 22 to -- we'll have to give them our standard tariff  
 23 rate and you're going to have another unregulated  
 24 utility serving in our service area in another  
 25 location.

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1 COMMISSIONER JOHNSON: I'd be  
 2 interested in hearing from staff, if they can help  
 3 me understand any differences that they think exist  
 4 between the MidAmerican situation we've addressed  
 5 and what Mr. Dietrich is asking for.  
 6 MR. JACOBSON: Yes. I believe that  
 7 the situation with MidAmerican where you're looking  
 8 at flexible rate is for a natural gas service, I  
 9 believe, and in that case one difference between  
 10 natural gas service and electric service is that it  
 11 gets much more complicated and can be much more  
 12 significant when you start dealing with capacity  
 13 cost assignment and allocation.  
 14 I mean, if a new customer comes in generally  
 15 with a gas service, you're talking about extending  
 16 service pipes. With an electric customer you could  
 17 be talking about adding substations, significant  
 18 amounts of line, and just for this particular  
 19 customer the cost of that being be quite  
 20 significant.  
 21 The methods of allocating those costs or  
 22 directly assigning those can make a big difference  
 23 on whether you determine there's  
 24 cross-subsidization between classes going on. For  
 25 instance, the MidAmerican flexible rates were



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1 determined during a rate case where a full-class  
 2 cost of service study was provided so that all the  
 3 classes were -- all the costs were broken down and  
 4 known at that time. And it's a methodology that is  
 5 in place, understood by the company. It's in the  
 6 possession of staff and the company, and so we know  
 7 how they were -- how they will determine whether  
 8 those cross-subsidies are going on in the future.  
 9 Now to a degree Northwestern has provided this  
 10 model to try to accomplish the same thing outside  
 11 of a rate case. And in looking at a contract of  
 12 deviation normally we look at new facilities costs,  
 13 assignment of capacity needed to serve a customer.  
 14 When you get big customers it can make a  
 15 significant amount of difference on the electric  
 16 side to what detail you break down these costs and  
 17 directly assign or allocate them.  
 18 And so that's why if you put it off until the  
 19 next rate case, theoretically that can work. It  
 20 kind of delays the argument. It also requires very  
 21 good recordkeeping by the company so that all costs  
 22 as time goes by are recorded so that they can be  
 23 allocated in the future.  
 24 One thing to remember, when the company offers  
 25 a rate to a new customer like this they have to do

30

1 an analysis to show what cross-subsidy is taking  
 2 place anyway. And so -- I mean, otherwise they'd  
 3 just pick a rate and wherever it falls, if it's a  
 4 cross-subsidy, it is. That analysis should be  
 5 performed before they make an offer. So it is  
 6 available.  
 7 It's just the whole filing really boils down  
 8 to the time element. I mean, is a week too much  
 9 lead time before the company has to make an offer,  
 10 or is it not? That's what it really boils down to.  
 11 COMMISSIONER JOHNSON: Thanks,  
 12 Mr. Jacobson. That's all, Mr. Chairman.  
 13 CHAIRMAN HANSON: Thank you. I'd  
 14 like to ask some questions pertaining to our  
 15 responsibilities under the statutes for making  
 16 rates, but I understand that Mr. Smith has some  
 17 questions that might also parallel those questions.  
 18 John.  
 19 MR. SMITH: Thank you. I have a  
 20 couple of just questions that may be related to  
 21 your filing, Alan, and in comparison with  
 22 MidAmerican and Black Hills.  
 23 First of all -- and maybe this is for you and  
 24 for Dave Jacobson, but, as I understand it, the  
 25 MidAmerican flexible tariff has -- does that have a

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1 minimum numerical value as part of the tariff and  
 2 then a maximum, or did it have a formula type  
 3 thing?  
 4 MR. JACOBSON: Well, the rate I'm  
 5 thinking of has a numerical value above costs, and  
 6 that cost determination is established in a rate  
 7 case when those rates were approved.  
 8 MR. SMITH: So that's a known --  
 9 MR. JACOBSON: So there's an  
 10 underlying cost structure that that margin has to  
 11 be added onto and established in a rate case.  
 12 MR. DIETRICH: I have the tariff  
 13 here. It is the floor is, At no time shall the  
 14 rate be less than the company's average system cost  
 15 of gas -- which is going to change -- under the  
 16 applicable rate schedule, plus .005 per therm. In  
 17 other words, half of one cent margin above the  
 18 average system cost of gas.  
 19 MR. SMITH: And would that -- I  
 20 mean, is it your interpretation of that, Alan, that  
 21 that first number is a number that is determinable  
 22 on a case-by-case basis, or is that a known number  
 23 at the time -- at any particular point in time? Is  
 24 that a number that right now exists based upon a  
 25 previous rate case and you just apply that factor

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1 to it so we know what that number is?  
 2 MR. DIETRICH: Well, I'm certainly  
 3 not part of MidAmerican's rate department, but I  
 4 would understand the average system cost of gas to  
 5 be a moving number. The system average cost of  
 6 gas -- under the applicable rate schedule, as I  
 7 would understand, this might apply to more than one  
 8 rate schedule, this economic service so that it  
 9 would float with the company's cost of gas. They  
 10 always want to recover their cost of gas plus a  
 11 margin in their sales of gas.  
 12 MR. SMITH: Is that your  
 13 understanding, Dave?  
 14 MR. JACOBSON: Yes. It would be --  
 15 MR. SMITH: So that does vary --  
 16 MR. JACOBSON: -- determined upon  
 17 the time of development. Yeah.  
 18 MR. SMITH: With respect to  
 19 Black Hills, does that have a minimum and maximum?  
 20 MR. DIETRICH: In their tariff it  
 21 provides that the compensation shall exceed the  
 22 marginal cost to the company of performance under  
 23 the contract. It doesn't say it's any specific  
 24 number.  
 25 MR. SMITH: So it isn't a known

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1 mathematical value?

2 MR. DIETRICH: No. It's -- again,

3 like Northwestern's proposal, it's a computation as

4 to what it's going to cost to serve this customer,

5 and, as Dave had said, when you're talking about an

6 electrical customer, you're talking about you have

7 to construct substation facilities, you have to

8 construct distribution, transmission, what do you

9 have to construct to serve the customer?

10 All of those things are things that we entered

11 into this model that we provided, and it would be

12 an analysis that we would provide.

13 MR. SMITH: And so what you're

14 proposing is basically the same methodology as

15 Black Hills currently has in its tariff?

16 MR. DIETRICH: The way I understand

17 their tariff, yes. And I talked to Mr. White last

18 week briefly about how their tariff works.

19 MR. SMITH: Okay. But do you have a

20 copy of it?

21 MR. DIETRICH: Yes. Right here.

22 And it says that they have the right to -- The

23 company and applying customer may at the sole

24 discretion commence negotiation of rates and terms

25 and conditions of service and reach an agreement,

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1 and then pursuant to that agreement, they have

2 these contract provisions and terms. It talks

3 about the term of the contract. It talks about

4 this marginal pricing.

5 MR. SMITH: And your objection to

6 having a mathematical minimum is that basically

7 then you've announced to the competition what their

8 bid should be.

9 MR. DIETRICH: Sure.

10 MR. SMITH: Is that a fair

11 statement?

12 MR. DIETRICH: I think that's a fair

13 statement.

14 MR. SMITH: Going back to 8.3, I

15 wasn't working in this line of work at that point

16 in time. I was in the business world, and I wasn't

17 here to know what the Legislature was attempting to

18 get at with this. Because when I read it I could

19 read it two ways, assuming that the Black Hills

20 tariff was in existence in '95, as Ms. Greff's

21 stated.

22 I could read it to mean that we don't like the

23 fact that you've tariffed Black Hills with

24 something like this and, therefore, we want

25 particularized Commission approval of everything

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1 and we don't want anymore general tariffed rates

2 like that.

3 Or I could read it to mean, A, that we're a

4 little unsure about whether what we've done here

5 with Black Hills is actually authorized by the law

6 and we're passing this statute as a means of

7 ensuring that what the Commission is doing is

8 within its lawful authority.

9 You were around back then, and if you would,

10 would you please give me your thoughts on which of

11 those two meanings this statute has.

12 MR. DIETRICH: Well, I wasn't

13 actively involved in our legislative affairs at

14 that time, but my understanding was it was more the

15 latter. Not necessarily the Commission was

16 uncomfortable with the authority that it had, but

17 that specific authority to allow business

18 development rates -- and if you'll check the code

19 in other sections, they talk about other types of

20 economic incentive rates were all adopted at or

21 about the same time.

22 These were not intended to be punitive to

23 things that were already happening but to allow

24 more flexibility for things to happen in the future

25 that would promote economic development.

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1 Mr. Lotsberg and Mr. Miller are here and could

2 probably enlighten us more about the legislative

3 history of these items.

4 MR. SMITH: I don't know. Do you

5 want to hear what Warren has to say about the

6 legislative history or not? No?

7 MR. JOHNSON: That's fine.

8 MR. HANSON: Warren, do you want to

9 come up? Bob? Mr. Miller?

10 MR. MILLER: With your permission,

11 Mr. Chairman, Bob Miller with the South Dakota

12 Electric Utilities. I was indeed the lobbyist at

13 the time and the legislation itself was brought by

14 Black Hills through our Association and it was kind

15 of a giant forgiveness for past sins and here's how

16 we're going to do it in the future.

17 The practice was widespread at the time, and

18 the Commission agreed that they perhaps did not

19 have the authority and Black Hills sought the

20 legislation. And so Alan has described it quite

21 accurately as to where it came from.

22 Thank you.

23 MR. SMITH: So your basic position,

24 Bob, then is the purpose of this statute was to

25 authorize the Commission to do just what it did in

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1 the Black Hills case?

2 MR. MILLER: Correct.

3 MR. SMITH: I don't know if -- maybe

4 Greg Rislov has -- if he was around back then and

5 if that jives with his recollection.

6 MR. RISLOV: It's another one of

7 David Morrow's laws. We became interested in

8 furthering our economic development activities in

9 the late '80s and early '90s, and, frankly, what

10 this statute allowed us to do after long

11 conversation with the company was give us some

12 forum to the flexible type of rates that we were so

13 interested in adopting at that time.

14 And I don't want to disagree with Alan, some

15 of his discussion, but the point is you can flex a

16 rate down to fuel cost and you can't go below that.

17 That's it. That's the bottom. And basically what

18 this law tried to do was give us the authority to

19 flex that rate down to fuel cost, bringing it back

20 up to the ceiling price.

21 There was concern within the statutes that

22 when we had done that before with Black Hills

23 perhaps -- I don't want to use the word

24 "discrimination" but perhaps the statutes maybe

25 didn't sanction that type of reasonable approach

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1 for the Commission to take. In this case the

2 Commission approach was sanctioned where we could

3 flex down to fuel cost and then come back up to a

4 ceiling and floor allocated cost basis. That's my

5 recollection.

6 MR. DIETRICH: And I would point out

7 we're not asking for the ability to flex to the

8 fuel cost. We're trying to include in the cost

9 calculation all costs associated with serving this

10 customer.

11 VICE CHAIRMAN SAHR: One other thing

12 I do note on this particular statute is it does

13 talk about in the second sentence, All business

14 development rates shall be approved as being in the

15 public interest, yada yada yada, and that did make

16 me wonder if it was an after the fact sort of thing

17 in response to Black Hills with that type of

18 language contained in the statute.

19 MR. RISLOV: Some of the rates we

20 had worked with Black Hills there was a question in

21 our minds whether or not they were legally

22 sanctioned. There was no question about it. And I

23 think you could -- I think you could safely say

24 that discussions with David Morrow, who was one of

25 the attorneys for Black Hills at the time, and

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1 staff led to development of this statute to ensure

2 that whatever we were doing with that flex rate was

3 indeed in conformance with the law governing the

4 PUC.

5 So I think your question -- I think you could

6 turn that around and make it statement, and it

7 would be absolutely correct.

8 VICE CHAIRMAN SAHR: Is there a

9 reason, Mr. Dietrich -- and correct me if I'm

10 wrong. I may be missing something in your filing

11 or may have gotten lost in the conversation today.

12 Is there a reason why you wouldn't operate under

13 34A-8.3?

14 Why does that statute not apply, or do you

15 think it does apply?

16 MR. DIETRICH: I think it does. I

17 think our Option N and L were -- is business

18 incentive tariffs. In fact, they're titled such

19 that were approved as being in existence under this

20 statute. And we're just attempting to modify one

21 of those preexisting business incentive statutes --

22 or tariffs.

23 VICE CHAIRMAN SAHR: Thank you.

24 MR. SMITH: And it's your position,

25 Alan, isn't it, that -- I mean, I'm just trying to

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1 understand your position. I'm not arguing your

2 case here. But your position is that the rate that

3 you are proposing, in fact, meets the intent of

4 8.5, including the public interest test?

5 MR. DIETRICH: Yes. I do believe

6 so. And, you know, getting back to the discussion

7 about the rate case, if I can take a few more

8 minutes, until we file a rate case any costs that

9 we incur that aren't being recovered are the

10 company's obligation. They're not being passed on

11 to anyone. And if we pass it -- if it's three

12 years before we file a rate filing, we are not

13 going to make those costs up in the rate filing.

14 The test year that we use in that rate filing is

15 going to be, you know, three years hence. It's not

16 to be the cost that we have assumed during the

17 intervening period.

18 So it's not as though you have to go back and

19 audit three years to say, well, what are all the

20 costs you didn't recover. We're not going to ask

21 for them. We feel there's a benefit to serving

22 these customers even under this discounted formula,

23 and if we didn't, going through our model, we

24 wouldn't lower the price to such an extent that it

25 hurts us.

<p>1 CHAIRMAN HANSON: Thank you.</p> <p>2 Mr. Smith, did you have anything further on that?</p> <p>3 MR. SMITH: Just one last thing, and</p> <p>4 that's on the -- with a load in excess of</p> <p>5 2 megawatts, you received a request for a proposal</p> <p>6 yesterday and were instructed to provide a bid</p> <p>7 price today?</p> <p>8 MR. DIETRICH: Is that correct,</p> <p>9 Jeff?</p> <p>10 MR. DECKER: Yes.</p> <p>11 MR. DIETRICH: Yes, sir.</p> <p>12 MR. SMITH: Thank you.</p> <p>13 CHAIRMAN HANSON: Thank you. That</p> <p>14 discussion has been useful.</p> <p>15 Ms. Greff.</p> <p>16 MS. GREFF: I just had one closing</p> <p>17 comment. Mr. Dietrich indicates with this filing</p> <p>18 they meet the requirements of 49-34A-8.3, but where</p> <p>19 is the Commission approval? There is no approval</p> <p>20 before those rates are being offered. It's post</p> <p>21 rates being offered and negotiated with the company</p> <p>22 and then audited by the Commission at a later date.</p> <p>23 There is no "approval". The process is negated</p> <p>24 that way.</p> <p>25 CHAIRMAN HANSON: Point well made.</p>	<p>1 public record what your rate range would be, so to</p> <p>2 speak, or where you'd be offering it?</p> <p>3 MR. DIETRICH: The tariff itself, of</p> <p>4 course, is a public information, and the costs are</p> <p>5 going to -- just like the Black Hills tariff, the</p> <p>6 costs are going to vary by the customer. We would</p> <p>7 file with the Commission a copy of the contract, a</p> <p>8 copy of the analysis so the Commission would have</p> <p>9 that information.</p> <p>10 It wouldn't be -- for obvious propriety</p> <p>11 purposes, we wouldn't make this public information.</p> <p>12 There are lots of interested parties, some on the</p> <p>13 phone or in the room, likely, who would like to</p> <p>14 know what those numbers are for us, and as you saw</p> <p>15 in the Dakota Turkey case how closely they guard</p> <p>16 that information on their own system, we would want</p> <p>17 to guard it on our system as well.</p> <p>18 VICE CHAIRMAN SAHR: I think --</p> <p>19 Mr. Jacobson.</p> <p>20 MR. JACOBSON: In the event if the</p> <p>21 Commission were to decide to approve the filing, we</p> <p>22 have worked with the company for a number of</p> <p>23 conditions or agreements that we would specify as a</p> <p>24 condition I guess of approval, and it would address</p> <p>25 some of the things you're talking about.</p>
<p>1 Thank you.</p> <p>2 Further questions?</p> <p>3 COMMISSIONER JOHNSON: Comment wh</p> <p>4 it's appropriate, sir.</p> <p>5 CHAIRMAN HANSON: Please go ahead.</p> <p>6 COMMISSIONER JOHNSON: This is</p> <p>7 quite -- this is difficult because of the competing</p> <p>8 interests. On the one hand, certainly I feel a</p> <p>9 very real responsibility and obligation to know</p> <p>10 what sort of contracts are out there, make sure</p> <p>11 that they're in the public interest.</p> <p>12 On the other hand, I can see how it could be</p> <p>13 complex for a business in a competitive setting to</p> <p>14 not have approval in advance. I'm a little</p> <p>15 surprised of this one-day turnaround time. That</p> <p>16 is -- that was not my assumption that that would be</p> <p>17 the regular state of affairs. Maybe it's not.</p> <p>18 If you gentlemen are interested in voting</p> <p>19 today, that's fine. I wouldn't mind taking it</p> <p>20 under advisement for a little while.</p> <p>21 VICE CHAIRMAN SAHR: I think that</p> <p>22 would be my inclination as well is to take it under</p> <p>23 advisement.</p> <p>24 And I do have one last question. If this sort</p> <p>25 of structure is approved, Alan, is it going to be</p>	<p>1 VICE CHAIRMAN SAHR: Okay. I just</p> <p>2 want to make sure we're not creating a new</p> <p>3 stalking-horse if they can kind of see where your</p> <p>4 range and under your theory, at least, they're just</p> <p>5 going to low ball you.</p> <p>6 MR. DIETRICH: That would not be my</p> <p>7 thought. And one final comment, if I could. If</p> <p>8 this tariff is, in fact, approved and as we make</p> <p>9 filings the Commission and their staff reviews them</p> <p>10 and feel that we are abusing this in some fashion,</p> <p>11 at any time you can end this tariff or bring us in</p> <p>12 on an order to show cause why this tariff shouldn't</p> <p>13 be suspended and we would have to explain to you</p> <p>14 why it has been in our customers' best interests.</p> <p>15 Wouldn't have to wait for a rate case to do</p> <p>16 that. Now we would -- any contracts that we've</p> <p>17 already entered into we would intend to honor. But</p> <p>18 you could stop that on a prospective basis. And we</p> <p>19 don't think that's going to be the case. Because</p> <p>20 of the analysis we undertake, we don't think</p> <p>21 there's going to be any abuse. There's not going</p> <p>22 to be any net detriment to our system.</p> <p>23 MR. JACOBSON: I would just mention</p> <p>24 that on the call-in list Mr. Larry Nelson had</p> <p>25 called in regarding this topic too.</p>

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1 CHAIRMAN HANSON: Thank you.  
 2 Certainly there's a couple of things that are  
 3 curious here, and I don't know that I should  
 4 apologize. I just don't buy this stalking-horse  
 5 argument.  
 6 Don't businesses make business decisions based  
 7 upon cost as opposed to, gee, the other guy is  
 8 bidding here, therefore, we're going to bid a  
 9 little bit lower, and if you're bidding what you  
 10 sincerely believe is the price that you want that  
 11 business at that if they jump in at a lower price,  
 12 that that's going to be detrimental to customers?  
 13 And don't you give them a bigger flag by going  
 14 through the other process?  
 15 MR. DIETRICH: Well, I guess our  
 16 tariffs are published now so when we make an offer  
 17 all we can offer is our published tariffs.  
 18 CHAIRMAN HANSON: Not really. You  
 19 can tell them that you'll work towards the --  
 20 MR. DIETRICH: I'll negotiate a  
 21 contract.  
 22 CHAIRMAN HANSON: You'll work  
 23 towards this number and you're going to present it  
 24 on an expedited basis to the Commission.  
 25 MR. DIETRICH: I would hope that

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1 other utilities follow a cost-based analysis, yes,  
 2 but at the current time looking at our tariff  
 3 services or a conditional offer, it is fairly easy  
 4 for a competitor to offer a firm price that could  
 5 beat either of those.  
 6 CHAIRMAN HANSON: Isn't that what  
 7 you're going to have to do anyway? You are going  
 8 to have to come before the Commission regardless at  
 9 a later date.  
 10 MR. DIETRICH: At some time in the  
 11 future the Commission will determine at whose  
 12 expense this --  
 13 CHAIRMAN HANSON: Exactly.  
 14 MR. DIETRICH: Whether it's  
 15 shareholders or customers.  
 16 CHAIRMAN HANSON: It has to be  
 17 figured into the process somewhere down the line.  
 18 MR. DIETRICH: And our general  
 19 revenue requirement we would have that, yes.  
 20 CHAIRMAN HANSON: If it's not a  
 21 year, two years, three years. What happens if the  
 22 Commission at that point decides that that was just  
 23 too low? Then you'd have to change it at that  
 24 point. It means you would be unfair to all the  
 25 other persons.

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1 MR. DIETRICH: Well, we're not  
 2 affecting other persons' rates until there's a rate  
 3 case. No one else's rates are increased because we  
 4 might offer a discount to this customer.  
 5 CHAIRMAN HANSON: So it's just a  
 6 shareholder --  
 7 MR. DIETRICH: It's a shareholder  
 8 company risk.  
 9 CHAIRMAN HANSON: Okay. Sara, did  
 10 you have something else?  
 11 MS. GREFF: No.  
 12 CHAIRMAN HANSON: Dave, you both  
 13 looked like you were compelled to say something.  
 14 MR. JACOBSON: I mean, it's been  
 15 mentioned that the Black Hills tariff -- I'm not  
 16 aware that -- the way that tariff reads is that  
 17 they will enter into a contract -- I would think  
 18 it's exactly what Northwestern is asking for in  
 19 this case, that they'll enter into a contract and  
 20 file it with the Commission after the fact after  
 21 it's a done deal.  
 22 To my knowledge Black Hills has never done  
 23 that. They've always come in before us for  
 24 approval of a contract for deviation. They've  
 25 never just done one and filed it after the fact.

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1 CHAIRMAN HANSON: Mr. Dietrich, if  
 2 we postpone this, you've stated that you have a  
 3 deal in the -- on the frying pan right now.  
 4 MR. DIETRICH: We have a bid that we  
 5 must submit by this evening, yes.  
 6 CHAIRMAN HANSON: So if we do  
 7 postpone it, regardless, that's the way it goes for  
 8 that one.  
 9 MR. DIETRICH: Likely. If you  
 10 denied it today, we would offer them only -- we  
 11 would have only to offer them a contract with  
 12 deviation or a stated tariff proposal. If you take  
 13 it under advisement, we have one other option, but  
 14 it's conditional.  
 15 CHAIRMAN HANSON: How often do you  
 16 have a one-day deal?  
 17 MR. DIETRICH: First one I'm aware  
 18 of.  
 19 CHAIRMAN HANSON: How often -- are  
 20 they more likely to be two weeks or a month or --  
 21 MR. DIETRICH: I don't believe the  
 22 Dakota Turkey Growers -- when they came back to us  
 23 and asked for a firm price, I don't believe we had  
 24 any more than a few days at that time.  
 25 CHAIRMAN HANSON: Well, this might

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1 be a real good opportunity to see how the contract  
2 for deviation works.  
3 MR. DIETRICH: My bet is that they  
4 will accept a bid this evening, and it won't be  
5 ours.  
6 CHAIRMAN HANSON: Did you have  
7 something further?  
8 COMMISSIONER JOHNSON: If the  
9 microphone holds up. I'm getting a little nervous.  
10 So why if Black Hills Power -- I mean, even if they  
11 haven't used it, if they have this sort of  
12 flexibility, I mean, is that disconcerting that one  
13 utility has that kind of flexibility and yet staff  
14 is recommending not the same approach toward  
15 another?  
16 MR. JACOBSON: Except that the  
17 statute 8.3 was enacted after Black Hills Power &  
18 Light's tariff was approved.  
19 COMMISSIONER JOHNSON: Oh, but the  
20 tariff is still in effect?  
21 MR. JACOBSON: Yes. There is a  
22 grandfather provision in 8.3 that allows existing  
23 tariffs to remain in effect.  
24 COMMISSIONER JOHNSON: Okay.  
25 VICE CHAIRMAN SAHR: Mr. Chairman,

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1 if I may ask one more.  
2 CHAIRMAN HANSON: Yes. Go ahead.  
3 VICE CHAIRMAN SAHR: Mr. Dietrich, I  
4 think maybe it's because you said shareholder one  
5 too many times. And I don't want to sound flip  
6 when I ask this question, but if you're in a  
7 situation where -- and help me through this because  
8 I am grappling with this part of it.  
9 You keep saying, well, the shareholder's going  
10 to eat this, the shareholder's going to eat this,  
11 the shareholder's going to eat this. And I'm not  
12 asking this because of your recent history, but  
13 what happens if the company goes bankrupt? Who  
14 eats it then? Shareholders lose -- I mean, it  
15 could be --  
16 MR. DIETRICH: You would follow the  
17 trail beyond the shareholders to the preferred  
18 shareholders, if there are any, to the debt  
19 holders. But at no point did it touch the  
20 customers when we had a bankruptcy, and at no point  
21 would this touch our customers who are our  
22 principal constituents.  
23 Our rates did not increase in the past because  
24 of shareholder losses, and I would not expect the  
25 rates to be changed in any fashion because of one

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1 contract that we would enter.  
2 VICE CHAIRMAN SAHR: But you're  
3 asking for not just one contract, you're asking for  
4 carte blanche to go out there and -- I know --  
5 MR. DIETRICH: It's a narrow  
6 circumstance --  
7 VICE CHAIRMAN SAHR: You could  
8 negotiate as many contracts until we said no more;  
9 correct, under your filing?  
10 MR. DIETRICH: Yes. We would be  
11 able to do that for qualifying customers.  
12 CHAIRMAN HANSON: Is there anyone  
13 else in the audience who wishes to address this  
14 issue?  
15 MS. POLLMAN ROGERS: Thank you,  
16 Chairman Hanson. It was not necessarily my  
17 intention to address this particular case, but I  
18 feel compelled to maybe clarify some misconceptions  
19 that I feel may have been created for you in this  
20 discussion.  
21 First of all, I think it's important to  
22 understand that we as cooperatives and  
23 nonrate-regulated entities cannot just pull figures  
24 out of the air to submit to a large load customer.  
25 We have to go through the same rate analysis, not

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1 only on a local side, but also with the  
2 distribution part of it. We have to go through the  
3 same rate analysis and put together the rate that  
4 we offer to that customer.  
5 If a customer called us -- a large load  
6 customer called one of us and said give us a bid by  
7 tonight, I'm here to tell you we couldn't do that  
8 either. So it's not like we have this huge  
9 competitive advantage in that event. I don't  
10 know -- in fact, that's never happened to us.  
11 I don't know what customer that Mr. Dietrich  
12 is referring to right now. I know that one of the  
13 large load customers in that area has contacted us  
14 for a bid, and they want it by June 1. So I don't  
15 know of anyone that's due tonight.  
16 But I wanted you to understand that we can't  
17 just pull figures out of the air and submit it in  
18 a -- you know, two hours down the road. We have to  
19 go through that same process. And I just wanted to  
20 clarify that we go through that rate analysis, and  
21 we have to come up with a reasonable proposal. And  
22 that takes time. It doesn't matter who the company  
23 is.  
24 CHAIRMAN HANSON: Thank you,  
25 Ms. Rogers. Since we're on the record here, you

1 need to state who "we" are.

2 MS. ROGERS: My name is Darla  
3 Pollman Rogers, and I represent South Dakota Rural  
4 Electric Association.

5 CHAIRMAN HANSON: Thank you. Any  
6 questions? Any further questions by the  
7 Commissioners?

8 It is apparently the desire of the Commission  
9 to postpone a discussion -- excuse me, a vote on  
10 this particular item.

11 Do you wish to postpone it to a date certain,  
12 or the next meeting is May 10?

13 COMMISSIONER JOHNSON: Whatever is  
14 appropriate, Mr. Chairman. The next meeting would  
15 be fine by me.

16 CHAIRMAN HANSON: All right.

17 COMMISSIONER JOHNSON: I've just got  
18 a couple of big thoughts I've got to get done  
19 thinking.

20 VICE CHAIRMAN SAHR: If that's a  
21 Motion, I would second that Motion.

22 CHAIRMAN HANSON: And I would  
23 concur.  
24  
25

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 26th day of  
11 April 2005, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 6th day  
14 of May 2005.  
15  
16

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

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