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

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IN THE MATTER OF
FERC DOCKET EC06-127-000

EC06-127-
000

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Transcript of Proceedings
October 10, 2006

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

ORIGINAL

COMMISSION STAFF
Rolayne Ailts Wiest
John Smith
Bob Knadle
Steve Wegman
Tina Douglas
Patricia Van Gerpen

APPEARANCES

Tom Knapp, Northwestern

ALSO PRESENT

Pam Bonrud, Northwestern

Reported By Cheri McComsey Wittler, RPR, CRR

1 TRANSCRIPT OF PROCEEDINGS, held in the above-entitled
2 matter, at the South Dakota State Capitol Building,
3 500 East Capitol Avenue, Pierre, South Dakota, on the 10th day
4 of October 2006, commencing at 3 o'clock p.m.

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1 CHAIRMAN SAHR: Good afternoon. This is the
2 continuation of the South Dakota Public Utilities Commission
3 meeting, and what we did was we went to -- we called the meeting
4 to order at 2 o'clock this afternoon, and then we immediately
5 went into recess until 3 o'clock, which is now.

6 And we have a court reporter present here in Pierre so
7 if anyone's participating telephonically, please take note of
8 that if you intend to make comments. And I don't think there is
9 anyone who will be doing so. But just for the record I wanted
10 to note that.

11 And we should note that this is the continuation
12 of the time and place for the Ad Hoc Commission Meeting of
13 October 10, 2006.

14 And with that, I think what we'll do is look to see if
15 either staff or Northwestern would like to proceed. And,
16 Mr. Smith, who do you think is appropriate to go first?

17 MR. SMITH: Either one. I guess, how do you want to
18 do it, Tom?

19 CHAIRMAN SAHR: Because we now have a court
20 reporter -- we didn't at 2 o'clock -- I should note my name is
21 Bob Sahr. I'm Chairman of the Commission. And with me are
22 Dusty Johnson and Gary Hanson as well. So we have all three
23 Commissioners here in Pierre in Room 468 in the State Capitol
24 Building. Thank you.

25 Mr. Smith.

1 MR. SMITH: Thank you, Mr. Chairman. What you have
2 before you and what we have posted on the website a few hours
3 ago and for those of you out there that might be listening I'll
4 tell you where it is. Because this doesn't involve a
5 South Dakota docketed proceeding, we did not post this in the --
6 under a South Dakota docket file. It is posted under the --
7 under the addresses, I guess, if you want to call it that, of
8 Commission actions Commission dockets but under a separate
9 category called FERC cases.

10 And if you look under there, this happens to be the
11 only FERC case filing that we have under there so you can access
12 it at that location.

13 I note -- and maybe he wants to make an appearance
14 here -- Tom Knapp from Northwestern and Pam Bonrud from
15 Northwestern are here today as well. Most of the actual dirty
16 work of this, I guess, the legwork of this -- of negotiating
17 this settlement of the FERC proceeding has been done by
18 Mr. Knapp and I. We've been at it for a long time now, over I
19 guess the exchange of, I don't know, what would you say, Tom,
20 probably 20 or more drafts at least?

21 And most discussions have involved everything from
22 very significant philosophical and practical issues down to a
23 lot of knittling over wordsmithing, et cetera. And at long last
24 following one last short hiatus last week we've come up with
25 what we think is an acceptable resolution of the PUC -- the

1 South Dakota PUC's involvement in the FERC proceeding.

2 I don't know to what extent the Commissioners want me
3 to go over the details of what's in here. If you want to, I'll
4 walk you through it, and we'll discuss the various provisions of
5 it. Otherwise, you have a copy, and if you don't want me to do
6 that, I won't.

7 CHAIRMAN SAHR: As far as I'm concerned, at this point
8 in time I don't think we need the step-by-step presentation, but
9 I'll certainly defer to my colleagues if they'd like that.

10 COMMISSIONER JOHNSON: Yeah. I think we certainly
11 have all reviewed the agreement, John, but maybe if there's
12 anything in particular, any concerns you'd have with the
13 document, any provisions that you think are particularly out of
14 the ordinary. I mean, if there's anything you want to bring to
15 light, certainly do so.

16 MR. SMITH: Okay. Well, I want to state this at the
17 outset too. We do have a pending docket -- a docket pending
18 before the -- before you here at the State level before the
19 South Dakota PUC. That docket is GE06-001. And that is the
20 docket entitled Petition For Declaratory Ruling And For
21 Transaction Approval If Jurisdiction Found. That's a filing
22 made by the Northwestern entities and the BBI entities, first of
23 all, requesting your decision on whether or not you do have
24 jurisdiction and if you find that you do, to prove the
25 transaction.

1 This particular settlement document here is not a
2 settlement docket of that proceeding. This is not a document
3 here that -- where you are agreeing to a settlement of something
4 in which you're a decision-maker or adjudicator. We intervened
5 as a State Commission in the FERC proceeding because there is
6 Section 203 approval required for -- that's really unquestioned
7 in the case.

8 And, secondly, under our rather odd set of statutes we
9 have that provision, Section 38 of our Electrical Utility Code,
10 Public Utility Code, that under some circumstances deprives you
11 of decision-making authority in those cases where FERC does have
12 authority. At least that's what it appears to do.

13 And so we felt it prudent to get involved in the FERC
14 case, make our concerns known via filings to FERC. And in the
15 course of that process various people, particularly Mike Hanson
16 and Tom of Northwestern, we had discussions with them relatively
17 early on, and we talked over the possibility of whether it might
18 not be -- since Northwestern seemed amenable to the various
19 commitments it made in its FERC filings themselves and also in
20 discussions with me as to whether or not there was room to reach
21 a -- an agreement between our two sides at least in the FERC
22 case.

23 And, if you recall, then on August 8 Mike Hanson and
24 Tom Knapp and I think Mike Sydow and I can't remember if anybody
25 else was there or not appeared before you in a public session

1 and outlined their view of the transaction and made various
2 commitments publicly on the record before you.

3 And really what this document does is it takes pretty
4 much its basis are those things, those things that were publicly
5 discussed before you at that time and that were -- that were
6 made as public commitments in the -- in the FERC filings
7 themselves by Northwestern. And that's a lot of what you see in
8 here.

9 A lot of what you see are references to commitments
10 that were made, and then in those sections that do not reference
11 specific commitment documents those are -- largely grew out of
12 those things that President Hanson and others from Northwestern
13 committed to do at their meeting before you.

14 And that's really what we have in here. I mean, we
15 have things related to hopefully preserving the company's assets
16 and its resources needed to provide service in South Dakota.
17 Some things related to corporate governance and the maintenance
18 of some level at least of a separate and somewhat independent
19 governing body for Northwestern as opposed to BBI.

20 And I think that's important. Some commitments to
21 maintain the level of service adequacy that they have in
22 South Dakota now. And actually Northwestern, contrary to some
23 rumblings out there, actually has a very good reliability record
24 here. They have one of the best complaint records that we have
25 in the state. We like that, and I guess we'd like to see it

1 continue.

2 And that means as well as just infrastructure, we'd
3 like to see a sufficient operational level management be
4 maintained here in South Dakota to ensure that decisions can be
5 made here quickly, that there's some loyalty, I guess, if you
6 want to call it that, of the operations management to
7 maintaining and running a good ship here, allow the company to
8 respond rapidly to weather and other emergency situations,
9 and -- and that's really most of what's in here.

10 We do have a provision in here where they commit to
11 maintaining a corporate headquarters presence here for some
12 three-plus years -- but three years, maybe slightly more than
13 that. And that's the bulk of what we have here.

14 COMMISSIONER JOHNSON: Thanks very much, Mr. Smith.

15 MR. SMITH: Mr. Knapp, would you like to address the
16 Commission?

17 MR. KNAPP: Okay. Good afternoon, Commissioners.
18 Thomas Knapp, General Counsel for Northwestern Corporation.
19 Thank you very much for the accommodation. Appreciate that. My
20 flight was delayed. I was the culprit in the delay of this
21 Commission meeting so I appreciate your accommodation to that.

22 What Mr. Smith has indicated to be the outline of the
23 Settlement Agreement is -- it is essentially correct. We
24 have -- as Mike Hanson indicated to the Commission when we were
25 before the Commissioners and others back in August, that the

1 company view of the transaction was that -- that what the
2 Commission and others, customers, and others, rate payers, know
3 about Northwestern now is what will be Northwestern after the
4 transaction.

5 And so in line with those -- with that structure of
6 the transaction and the commitments we had -- we had made both
7 at FERC and our filings and in the statements that we made to
8 the Commission we -- and the Commission's I think view at that
9 time if we could put together a Settlement Agreement that dealt
10 with the State issues, that we should try to do that.

11 John is correct that we spent a lot of time back and
12 forth on these issues, and I think we put together a -- an
13 agreement that reflects the State concerns. And we've dealt
14 with them in the manner that's set forth in the Settlement
15 Agreement.

16 So I don't have anything additional to what John said.
17 If the Commissioners have any questions, I'd be more than happy
18 to answer them. And with that, I would ask the Commission, I
19 guess, to approve the transaction -- approve the Settlement
20 Agreement and I guess make it a public record. And then
21 eventually I think we'd probably see -- we'd probably have some
22 discussion with the Commission and staff to make the Settlement
23 Agreement part of the South Dakota docket at some point in time.

24 CHAIRMAN SAHR: Thank you very much, Mr. Knapp. And I
25 certainly want to thank our staff for all the time and effort

1 put into the work on the Settlement Agreement.

2 Mr. Smith, I have a procedural question. With the
3 Settlement Agreement the signatures on the agreement are you as
4 general counsel and Ms. Van Gerpen as executive director.

5 Do we need to -- if someone is going to produce a
6 motion, do they need to have instruction to that effect as
7 opposed to the regular PUC type motion where the Commissioners
8 actually sign?

9 MR. SMITH: Yes. I do think you do. I tell you, and
10 what -- I wrestled with this and how to deal with this. We're
11 in a legal proceeding, you know, at FERC which is a little
12 different than the normal things we do here. Normally when you
13 have a Settlement Agreement in a legal proceeding it's usually
14 the attorneys that sign.

15 Because of the statutes we have involving the special
16 status of the executive director and the statutes involving
17 delegation by the Commission, it occurred to me that we at least
18 ought to have the executive director sign. If you'll note, we
19 do have Mike Hanson, and we are -- Mike Hanson and Mr. Bolton
20 are both executive officers of their companies, and they're
21 going to sign for them.

22 And that's really their role. I mean, that's what the
23 executive director is here is is the executive officer of the
24 Commission. You guys are the equivalent of the board of
25 directors. And so I think that's what it boils down to is

1 authorizing then the executive director and me to sign on behalf
2 of the Commission. And, again, it's in a case that's in
3 Washington. It's not here. So it's kind of an unusual
4 situation in that regard.

5 I guess maybe one thing you might want to talk about
6 with the company -- and maybe Mr. Knapp can address this. What
7 we're asking the Commission to do today is approve the agreement
8 and approve the execution of it by the executive director and
9 myself on behalf of you.

10 It might be appropriate to inquire of Mr. Knapp where
11 the applicants, the BBI entities and Northwestern, are with
12 respect to ratification and approval of the document on their
13 end and what kind of time frame we might be looking at for
14 execution on their side if we're to go forward today -- if you
15 end up approving it today.

16 CHAIRMAN SAHR: Thank you. Mr. Knapp, if you'd
17 address that please. Thank you.

18 MR. KNAPP: Yes, Commissioners. In terms of the time
19 frame, once the Commission has given its approval for the
20 executive director and the general counsels execute the
21 agreement, both Northwestern Corporation and BBI stand ready to
22 sign the agreement. So we would be able to accomplish that
23 within a matter of a day or days. I assume we can accept
24 facsimile signatures, and then we'll get an original signature
25 as promptly as we can.

1 Mr. Bolton from -- Steve Bolton, the CEO of BBI, is
2 actually going to be in -- in Sioux Falls and Montana next week.
3 So if we can get a signature beforehand by fax and then we can
4 have an original here when he arrives. So that should take care
5 of that issue.

6 CHAIRMAN SAHR: And I guess I'll state the obvious.
7 For whatever reason -- it sounds like it's not anticipated --
8 somebody didn't sign, then the agreement's nonbinding unless all
9 the parties that are listed on the agreement sign; is that
10 correct?

11 MR. SMITH: That's correct.

12 MR. KNAPP: That's right. That's right. I just have
13 one issue to --

14 (Mr. Knapp confers with Mr. Smith)

15 COMMISSIONER JOHNSON: Those listening on the
16 Internet, we'd just note that the dead air isn't because you've
17 gone off the line. It's because Mr. Knapp has taken a moment to
18 speak to Mr. Smith.

19 MR. KNAPP: I was just bringing to the attention of
20 Mr. Smith one issue that I just want to raise and just put on
21 the record for the Commissioners, and that is the Interveners in
22 the South Dakota docket and the Interveners in the FERC docket
23 are somewhat similar. And at one point in time I understood
24 there was some discussion that one of the Commissioners may
25 recuse themselves.

1 And so just to make sure we don't have any issues with
2 respect to anyone coming back later and saying that the -- that
3 through some oversight a Commissioner voted when they shouldn't
4 have voted, I just wanted to make sure that we're all aware that
5 the interventions in the South Dakota docket pretty much mirror
6 the interventions in the FERC docket. So I just want to raise
7 that and bring that to the Commission's attention.

8 CHAIRMAN SAHR: Thank you. Do we have any other
9 questions or comments from Commissioners or our acting advisers?

10 COMMISSIONER HANSON: I do. I have just a couple of
11 questions of Mr. Smith. And I imagine anyone can answer the
12 question. But I just wanted to make sure since I understand
13 there have been some -- I don't know whether there's been
14 considerable discussion which would result in considerable
15 changes, but there certainly has been considerable sending of
16 messages back and forth over the past week when we were first --
17 when we were gathered to look at this last week in Sioux Falls.

18 MR. SMITH: Right.

19 COMMISSIONER HANSON: And I just want to make certain
20 that some of the key components are still intact that we had
21 discussed at that time.

22 MR. SMITH: Uh-huh.

23 COMMISSIONER HANSON: I haven't had an opportunity to
24 discuss that with you. But I understand that the agreement
25 requires ring-fencing at this juncture, that Northwestern will

1 have financial protections in place to keep utility assets from
2 being used to finance nonutility assets and operations. Is that
3 still the case?

4 MR. SMITH: It is, yes. Those are included actually
5 in two or three different places in there. Some of them less
6 obvious than others. There are specific provisions in this
7 agreement that involve the encumbrance of utility assets to
8 finance nonutility operations. There are covenants in here that
9 involve the transfer of assets from Northwestern to an
10 affiliated entity, BBI in particular.

11 We also have incorporated by reference in here
12 reference to the commitments that were made in the application
13 before FERC which include ring-fencing commitments. And also
14 certain of the covenants that were contained in the Montana
15 bankruptcy Settlement Agreement that again involve certain
16 covenants to hopefully protect against the, I guess, unwise or
17 use of utility assets to finance other things.

18 COMMISSIONER HANSON: That includes the sale of those
19 assets?

20 MR. SMITH: It does. At least -- yes, it does. It
21 includes the sale of those assets in -- at least under certain
22 circumstances.

23 COMMISSIONER HANSON: Okay. Do you know if there's
24 any changes that were made in regards to the reliability
25 standards that --

1 MR. SMITH: No. There were none.

2 MR. HANSON: I was waiting for you -- you were shaking
3 your head which wasn't going to work for the court reporter.

4 MR. SMITH: No. There were none that I can recall.
5 The only change that was really made of any substance and it was
6 the last thing we were talking about really before the last
7 session and what we had not resolved and Northwestern agreed to
8 our treatment of it so it's now resolved, and that was the issue
9 of whether the agreement should have an absolute sunset deadline
10 on it and just disappear after three, four, five years.

11 We decided on another approach. And I regret to say I
12 can't remember the paragraph number, but the approach that was
13 decided on is that if either the companies or you determine at
14 some point in the future that the agreement is producing an
15 unreasonable or imprudent or unlawful result or is likely to
16 within the foreseeable future, if you can see it coming, that
17 either the applicants, any of them, or you could come back here
18 before this Commission, subject to full rights of legal review,
19 appeal rights before the Circuit and Supreme Court, and we would
20 deal with it that way, rather than trying to predict the future.

21 And I think -- I know there was hesitation on the part
22 of Northwestern to agree to that. But I think after some
23 discussion we went over the fact that the company is in here all
24 the time requesting and usually receiving approval of tariff
25 changes and that to react to changes and circumstances we just

1 approved two of those -- on Thursday, last Thursday. And those
2 involved, for example, allowing Northwestern to offer an
3 economic development rate to an ethanol plant, a large facility
4 in Redfield, that we hope will actually be in that very positive
5 thing for the company over time as they obtain more favorable
6 load factors and so on.

7 And I think we've had that kind of relationship over
8 the years. And I don't think we see this agreement as etching
9 things in stone so completely that we don't probably see the
10 need as we go along for adjustments to allow us to react to what
11 happens out there.

12 Any other thoughts, Tom?

13 MR. KNAPP: No. Tom Knapp. I don't have any other
14 thoughts. It's paragraph 91 of the Settlement Agreement that
15 John was just alluding to. And I think both sides recognize
16 that there should be an opportunity in the future in the
17 event -- in both situations, both the Commission and
18 Northwestern and BBI, that if there is a material change or
19 there's some changes in the law that indicates that both sides
20 need to reevaluate certain of these provisions or the entire
21 agreement, there should be an ability for either Northwestern or
22 BBI or the Commission to be able to reevaluate that and either
23 make changes to the agreement or to terminate the agreement
24 based on those factors.

25 And so that was our -- our compromise on the -- on the

1 sunset provision that we had discussed earlier.

2 MR. SMITH: The only other change, and it was really
3 just a language change that was in paragraph 6, Northwestern had
4 wanted introduction of some language. I think Mike Hanson,
5 president of Northwestern's, request involving a little further
6 definition of which assets it is that are subject to the
7 particular sale restriction in that paragraph.

8 And so we agreed to language between then and now
9 resolving that. And that's really the only thing I can think
10 of. The other changes that were made were extremely minor and
11 editorial and typographical in nature since then.

12 COMMISSIONER HANSON: So there has been no changes.
13 I'm sure we're all particularly interested in this agreement and
14 interested in the relationship with the consumers but also with
15 the history of some corporations, the commitment to employee and
16 employee benefits.

17 MR. SMITH: Those are -- those remain in there in the
18 form that they've been in there for some time now. Those are in
19 a couple of places. The one that's notable I guess is
20 paragraph 5. And that -- that does contain certain protections
21 related to employees and retiree benefits, that kind of thing.

22 There is -- there is a limitation on that -- on those
23 commitments. And to some extent the limitation that's in there
24 is the limitation that's contained in the agreement plan merger.
25 They don't go on forever. And to some extent it's probably not

1 prudent to do that.

2 And I think we are willing to accept that, that, you
3 know, things change. I mean, the laws change. Circumstances
4 change. And it seemed at least to us that that level of
5 commitment that was made in there was reasonable in that
6 context.

7 COMMISSIONER HANSON: And in that regard for duration,
8 the portion that -- that discusses that Northwestern will
9 maintain fully staffed operational capability in South Dakota,
10 including personnel necessary to provide planning, budgeting,
11 management, operation, and maintenance functions, is there a
12 duration to that?

13 MR. SMITH: No, there is not. That would be subject
14 and to the General Provision No. 18 -- or 91 I guess it is. If
15 somebody wanted to change that, including the company or the
16 Commission in the future, they would have to come back before
17 the Commission and seek your -- your decision on that.

18 And, again, subject to approval, if the Commission
19 acts unreasonably, the companies will have recourse to the court
20 system to obtain review of that.

21 COMMISSIONER HANSON: Thank you. And my final
22 question would be one of the things that we were curious and
23 interested about was whether Northwestern would maintain its
24 corporate headquarters in South Dakota. Agreements that we have
25 looked at up to this juncture have all included that as part of

1 it. And looking for you for --

2 MR. SMITH: It does -- it still includes that. It
3 does include that with a time limitation on that. And that time
4 limitation is -- and I'm going to go on recollection here.

5 COMMISSIONER HANSON: 2010, I think.

6 MR. SMITH: June 30, 2010 or three years following
7 consummation of the merger, whichever is later. And so we're
8 looking at about a three-plus year of duration of that.

9 Again, it was talked about whether that should be
10 perpetual, but companies evolve over time. You know, at this
11 point in time we have to be realistic, I think. We like having
12 the headquarters here. It's been good. But things evolve over
13 time. And at some point it may or may not be prudent for that
14 structure to continue to exist.

15 If it's not good for rate payers at some point, it's
16 not necessarily something that should be maintained forever,
17 necessarily, again. And I don't know that we can foresee that
18 far out.

19 But, again, the operational level capability in
20 South Dakota which mainly means those people located in the
21 center in Huron and then the other James River towns, primarily
22 our -- the agreement is perpetual with respect to that, and
23 hopefully that will result in a high level of -- of professional
24 and operational capability here forever.

25 COMMISSIONER HANSON: Thank you, John. Thank you,

1 Tom.

2 MR. KNAPP: You're welcome.

3 COMMISSIONER JOHNSON: Mr. Chairman, I don't see any
4 other questions, although I guess I would look to staff to see
5 if they have any before I --

6 CHAIRMAN SAHR: Fire away.

7 COMMISSIONER JOHNSON: I mean, I -- I would just note
8 I mean I thought Commissioner Hanson asked a lot of very good
9 questions. They kind of highlight some of the real strengths of
10 this agreement. And obviously with the recent history of
11 Northwestern there are a lot of South Dakotans that are going to
12 be pretty interested in this.

13 What I like about this agreement is it guarantees that
14 Northwestern is going to be a traditional asset-based utility
15 company that's going to be focused on supplying electricity and
16 natural gas to South Dakota consumers and, you know, listen to
17 the day-to-day decisions -- regardless of who, you know, owns
18 Northwestern, the day-to-day decisions are still going to be
19 made by South Dakotans for South Dakotans.

20 I think that is -- I think that's great news for
21 South Dakota. And I appreciate all of staff's efforts to get us
22 here. I appreciate Northwestern's willingness to make these
23 commitments to show that they do want to focus on being a
24 traditional utility focused on South Dakota customers.

25 And with that, I would move that the Commission

1 approve the Settlement Agreement and that we authorize the
2 executive director and general counsel to execute that agreement
3 with regard obviously to the FERC proceeding only.

4 COMMISSIONER HANSON: I'd like to echo what
5 Commissioner Johnson has said. There's a lot to like in this
6 agreement. And I sincerely appreciate the dedication that the
7 staff -- the tremendous amount of work that staff did and no
8 doubt mirroring on Northwestern's side the significant amount of
9 work that you had to do as well in that negotiation process.

10 I'm pleased to see that one of the many things that we
11 have on our plate, at least John's plate, is coming to fruition
12 to an extent. And I'd like to compliment everyone that's been
13 involved in this process for that dedication for the amount
14 of -- the work product that you were able to produce and getting
15 through the challenging points that you did get through.

16 I think this is going to benefit significantly the
17 citizens of South Dakota. It eliminates a lot of the questions,
18 concerns that certainly even -- even Northwest (sic) employees
19 might have and citizens of South Dakota certainly have.

20 So I appreciate very much that you were able to
21 accomplish that, and I will second the motion.

22 CHAIRMAN SAHR: And this is Commissioner Sahr. I'm
23 going to abstain on the motion because I'm recusing myself in
24 the case. Thank you.

25 With that, is there anything else to come before the

1 Commission and for this Ad Hoc Meeting?

2 MR. SMITH: No, sir.

3 CHAIRMAN SAHR: All right. Seeing none, we stand
4 adjourned. Thank you.

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STATE OF SOUTH DAKOTA.)

:SS

CERTIFICATE

COUNTY OF HUGHES)

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

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 10th day of October 2006, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 27th day of October 2006.

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