

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE COMPLAINT FILED
BY GENE DRONG, COLMAN, SOUTH DAKOTA,
AGAINST OTTER TAIL POWER COMPANY CE06-001
REGARDING THE PROVISION OF SERVICE TO A
PROPOSED DEVELOPMENT SOUTH OF EGAN

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Transcript of Proceedings
August 8, 2006

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BEFORE THE PUC COMMISSION

Chairman Robert Sahr
Vice-Chair Dusty Johnson
Commissioner Gary Hanson

COMMISSION STAFF

John Smith
Karen Cremer
Greg Rislov

APPEARANCES

GENE DRONG,
23325 471st Avenue, Colman, South Dakota 57017,
appearing pro se;

DAVID A. GERDES,
MAY, ADAM, GERDES & THOMPSON, Attorneys at Law,
503 South Pierre St., Pierre, South Dakota 57501,
appearing on behalf of Otter Tail Power Company;

Reported by Carla A. Bachand, RMR, CRR

ORIGINAL

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KEVIN KOUBA

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1 TUESDAY, AUGUST 8, 2006

2 CHAIRMAN SAHR: Let's go on the record. I have turned
3 on the Internet and we will go on the record. It is Tuesday,
4 August 8th at approximately 3 p.m. This is the time and place
5 for the hearing in CE06-001, in the matter of the complaint
6 filed by Gene Drong, Colman, South Dakota, against Otter Tail
7 Power Company regarding the provision of service to a proposed
8 development south of Egan. And we are here in room 412 of the
9 State Capitol building. I am Bob Sahr, chairman of the South
10 Dakota Public Utilities Commission, and with me here today are
11 Commissioners Dusty Johnson and Gary Hanson. With that, I
12 believe I will turn the hearing over to Mr. Smith to act as
13 hearing officer.

14 MR. SMITH: Thank you, Mr. Chairman. I regret to say
15 I have to admit I left my file downstairs and Tina is going to
16 go get it. She's on the way of getting it and for that I
17 apologize. Basically the issues in the case as we have refined
18 them out and as we stated them in the notice of hearing are
19 first of all whether or not Otter Tail has committed an
20 unreasonable rate -- committed an unlawful or unreasonable act,
21 rate, practice or omission, and if so, what relief would be
22 appropriate and whether the service to be offered by Otter Tail
23 Power Company is adequate. And at this time I think we will
24 begin by taking the appearance of the parties, and Mr. Drong,
25 we will start with you and could you please introduce yourself

1 for the court reporter and for the commission.

2 MR. DRONG: My name is Gene Drong from Colman.

3 MR. SMITH: You gotta push the button there. Thank
4 you, sir.

5 MR. DRONG: My name is Gene Drong from 23325 471st
6 Avenue in Colman. I want to thank the commissioners and
7 everyone here, ladies and gentlemen, for giving me this
8 opportunity. I am not like the attorneys, I'm just a dumb
9 Pollock, but anyway, that's who I am. The reason I'm here is I
10 have Sioux Valley Energy -- I was listening to your
11 conversation before. By no means are we -- we are just going
12 to build a little shack along the creek, about 15,000 square
13 feet, on the Big Sioux River. Sioux Valley Energy goes right
14 on the Egan/Trent tar right by our place, right by the
15 property, and I was listening before and you talk about
16 duplicate service and everything else. If Otter Tail is going
17 to come in, they are going to have to be running right along --
18 right along Sioux Valley's power lines. That's kind of
19 ridiculous.

20 Sioux Valley has given me a quote of \$1.80 a foot,
21 there's 4360 feet, we got a little driveway about eight-tenths
22 of a mile, about a mile long back to the creek, and Otter Tail
23 is the same, \$1.80 a foot, but they are having to come a half
24 mile further. Now, Sioux Valley is not requesting a per month
25 guarantee. If I pay Otter Tail what they want, \$544 a month,

1 that's going to equate out to about \$39,000 versus \$7500 or
2 \$7800 from Sioux Valley. I've been in business virtually all
3 my life and I don't know why I have to pay somebody or
4 guarantee them a monthly rate when I have power from another
5 power company going right by.

6 Now, I have been listening to your territorial deals
7 and everything else, but it's kind of ironic, Xcel Energy power
8 line goes right on the section line, to the south of the
9 section line is Sioux Valley, to the north of it is Otter Tail.
10 I mean, there's power lines, there's power all over the place
11 and it just bugs the heck out of me why I've got to pay roughly
12 \$40,000 versus \$8,000 to get power. And the power line of
13 Sioux Valley is going right down the line.

14 Now, like they were talking about before, the customer
15 has rights. Granted we are not a big power source, but as a
16 customer having rights, why can't I take the most economical
17 way of doing things and the power is already there? I think
18 that Otter Tail is usurping their authority by making demands
19 of me guaranteeing them \$544 a month of income when I plan on
20 putting geothermal heat in and trying and make the home as
21 efficient as possible.

22 So that's why I'm here. Like I said, I'm just a dumb
23 Pollock, but I know when it comes to my pocket, my pocketbook,
24 that \$8,000 versus \$40,000 is a pretty good whack. That's all
25 I have to say at the moment.

1 MR. SMITH: Thank you, Mr. Drong. Let me ask you
2 this. Maybe we will take the appearances of the respondent and
3 of staff and then maybe as we do sometimes with -- Mr. Drong,
4 you are not represented by an attorney at this proceeding; is
5 that correct?

6 MR. DRONG: That's correct.

7 MR. SMITH: Thank you. And as we do sometimes with
8 pro se complainants, I may ask staff if there's any things that
9 you might want to help complainant with in terms of making his
10 record. Is that fair?

11 MS. CREMER: Yes.

12 MR. SMITH: Mr. Gerdes, would you please make your
13 appearance on behalf of your client.

14 MR. GERDES: Dave Gerdes, I'm a lawyer from Pierre and
15 I represent Otter Tail Power Company.

16 MR. SMITH: Staff.

17 MS. CREMER: Karen Cremer from staff.

18 MR. SMITH: Okay, Ms. Cremer, I think we just heard
19 from Mr. Drong and I don't know whether you want to do this.
20 What I was going to suggest, maybe perhaps, Mr. Drong, are
21 there any pieces of paper other than your bare complaint and
22 perhaps including your complaint that you would like introduced
23 as part of the evidence in this case, such as letters and the
24 like, that you would like to have introduced as exhibits to
25 show us what happened to you in this case? Maybe Ms. Cremer

1 can help you with those.

2 MR. DRONG: Yes, I have a quote from Otter Tail and I
3 have a quote from Sioux Valley.

4 MR. SMITH: Have those been marked into evidence at
5 this point? Could you please deliver those to the reporter for
6 marking.

7 EXHIBITS:

8 (Drong Exhibit Nos. 1 and 2 marked for
9 identification.)

10 MR. SMITH: Are those originals?

11 MR. DRONG: They are the originals.

12 MR. SMITH: Do we have copies here of those documents?
13 Because I don't think I do. Otherwise we may have to take a
14 very short break and perhaps -- in order to get copies made for
15 everyone.

16 MR. DRONG: I think I have sent copies in to the
17 gentleman that I was talking to downstairs.

18 VICE-CHAIR JOHNSON: What's the date on the Otter Tail
19 letter?

20 MS. CREMER: The Otter Tail letter is April 27, 2006
21 signed by Kevin Kouba, and I believe you have that. And that
22 is marked as Exhibit 1. And then Exhibit 2 is a letter from
23 Sioux Valley Energy and that was attached to his complaint and
24 that's dated April 11th, and that's from Corey, I'm not sure
25 how you pronounce his last name, but from Sioux Valley Energy.

1 MR. GERDES: I've never seen the Sioux Valley Energy
2 letter. I've got the complaint. I took it off the Web site.
3 Do you have a copy?

4 MR. SMITH: My complaint doesn't have that on there,
5 I'm sorry.

6 MS. CREMER: We will make copies of that.

7 (Brief pause.)

8 MR. SMITH: Maybe I'll ask you this, then, do we need
9 to wait until those are -- till we get those back or should we
10 begin? Are you comfortable with that, Dave, in holding that in
11 abeyance and starting or do you want to wait and deal with
12 these letters right up front?

13 MR. GERDES: We can go ahead, if you give me a couple
14 minutes to finish reading the letter.

15 MR. SMITH: Sure.

16 (Brief pause.)

17 MS. CREMER: We could move -- I would move to admit
18 those two exhibits.

19 MR. GERDES: No objection.

20 MR. SMITH: Exhibits, they are just marked 1 and 2; is
21 that correct? Exhibits 1 and 2 are received.

22 MS. CREMER: They are Drong Exhibit 1 and 2. Thank
23 you.

24 EXHIBITS:

25 (Drong Exhibit Nos. 1 and 2 received into evidence.)

1 CHAIRMAN SAHR: Those are the Otter Tail letter and
2 the Sioux Valley letter?

3 MS. CREMER: Correct.

4 DIRECT EXAMINATION

5 BY MS. CREMER:

6 Q. Mr. Drong, do you want to explain to us, you said you
7 were building a new residence, and that's in the Otter Tail --
8 that's currently in Otter Tail's territory; is that right?

9 A. That is correct, I assume that the north side of the
10 section line is Otter Tail, from what they have told me.

11 Q. Then at one point you had mentioned Xcel runs right in
12 that area also; is that right?

13 A. They call it a feeder line that runs right in
14 between -- right on the section line, yes.

15 Q. And then Sioux Valley is in that --

16 A. They are on the south side.

17 Q. Okay. And so your house would be -- somebody
18 submitted a map. This Egan township, did you send that to us
19 or did you send that, Dave? You are going to be putting that
20 in?

21 MR. GERDES: I can put it in now if you want to use
22 it.

23 MS. CREMER: If you would want to do that.

24 MR. GERDES: We will offer Otter Tail, OTP Exhibit 2,
25 which consists of the map. Can the exhibit be received?

1 MR. SMITH: Mr. Drong, do you have any objection to
2 the receipt of this exhibit?

3 MR. DRONG: None.

4 MR. SMITH: Yes, OTP 2 is received.

5 EXHIBITS:

6 (OTP Exhibit No. 2 received into evidence.)

7 Q. (BY MS. CREMER) And then, Mr. Drong, could you, even
8 though it says your name on there, do you want to just kind of
9 explain to the commission where you believe maybe Xcel's line
10 is or Sioux Valley is? Can you tell by looking at that?

11 A. Right on the bottom of the map, if you look at the
12 bottom, you see the river going through and they have Drong
13 mentioned. The town of Egan is outlined, this is about two
14 miles south of Egan and right on top of the hill is the -- the
15 bottom most line is where Xcel Energy goes to the east and
16 west. On the east side of that road where you see the little
17 dots or the main highway there, that is the Egan/Trent highway,
18 and Sioux Valley Energy runs their line right there. Xcel
19 Energy runs on the section line and I believe Otter Tail comes
20 up as far as the Luze house.

21 Q. Thank you. And so --

22 MR. GERDES: If I may. For clarification, is the top
23 of this map north? You were using directions.

24 A. Yes, the top of the map is north.

25 MR. GERDES: Thank you.

1 Q.. (BY MS. CREMER) So today why you are here is you do
2 not care to be in Otter Tail's territory; is that your
3 contention? What is it you want the commission to do for you
4 today?

5 A. I don't want to be in Otter Tail's territory because
6 they are going to charge me over four times as much money as
7 Sioux Valley to get the same service.

8 Q. So as I understand it, it's approximately -- they are
9 charging you approximately \$39,000 and that would be the
10 extension, the cost to extend the line to your place, plus
11 usage; is that your understanding?

12 A. Correct.

13 Q. Okay, so then with Sioux Valley, is it 8,000 or it was
14 like eighty-eight something, I would would have rounded it to
15 9,000.

16 A. Excuse me, Otter Tail does not have in their quote 400
17 amp service and that's what Sioux Valley has, 400 amp service
18 for an extra \$1,000, so I don't know what Otter Tail would
19 charge for a 400 amp service.

20 Q. Okay, and I guess we can ask them. But the \$8,000
21 that they are charging you, that's just line extension, that's
22 not your monthly usage; isn't that correct?

23 A. That's right.

24 Q. So did Sioux Valley give you any idea of how much your
25 monthly charge would be for electricity?

1 A. No, but I just met yesterday with the plumbing and
2 heating people and with geotherm heating and cooling, my cost
3 per -- for the house should be less than \$60 a month.

4 Q. And did you -- wow. Did you tell us how big that
5 house was?

6 A. Pardon?

7 Q. How big is that house?

8 A. It's going to be a little 15,000 square foot shack.

9 Q. And they are quoting you \$60 a month for that?

10 A. With geotherm, right.

11 CHAIRMAN SAHR: I have to ask, you said -- did you say
12 1500 square foot or 15,000?

13 A. No, 15,000. We will heat the pool with geotherm also
14 and everything will be through geotherm and it's supposed to be
15 much more economical.

16 VICE-CHAIR JOHNSON: Mr. Drong, I missed when you had
17 volunteered to host a commission meeting at your place.

18 MR. DRONG: Pardon?

19 VICE-CHAIR JOHNSON: When are you going to have us all
20 over to your place?

21 MR. DRONG: My wife has a Christmas party every year.

22 CHAIRMAN SAHR: Let's see how it goes today.

23 MR. DRONG: We had a couple of attorneys and bankers
24 that said they wouldn't come last year unless she had shrimp
25 and caviar, so she did.

1 Q. (BY MS. CREMER) Again just for clarification
2 purposes, what is it you would like the commission for you to
3 do today?

4 A. I would like to have this area where I'm going to
5 build my house put into -- let Sioux Valley give me service
6 because it's much more realistic. Electricity is electricity,
7 service is service. I've got a little shack on a swamp by
8 Colman right now, a little 10,000 square foot, and we have
9 never had an ounce of trouble with their service, so they have
10 given me very good service.

11 Q. The only reason I ask is because on your written
12 complaint, you had stated that you want Otter Tail to conform
13 to the same arrangement as Sioux Valley, and then I will admit
14 I have a hard time reading what you say after that, without any
15 of the strings attached.

16 A. Yeah.

17 Q. I didn't know if you wanted Otter Tail to provide the
18 service but at the same rate as Sioux Valley or if you are
19 asking them to change it and have Sioux Valley as your
20 provider.

21 A. Well, I would accept Otter Tail as a provider, but I
22 do not want to be committed to a four-year contract at I
23 believe it was \$500, \$600 a month that I have to guarantee them
24 revenue.

25 Q. And that place that you are building out there, is

1 that the only home -- there's currently nothing on any of that
2 area where that map shows Drong and then it shows I think you
3 said Luze. Are there any other residences?

4 A. No. I have five housing eligibility, I do have two
5 offers of builders that want to build executive homes out
6 there, but at the moment I haven't elected to have any
7 neighbors.

8 Q. So that would be to the east you have; is that it?
9 Where would those go?

10 A. I've got 212 acres there, so they can go most any
11 place and I bought the 66 feet of right-of-way from Mr. Luze so
12 I have a private road all the way through.

13 MS. CREMER: Okay. That's all I have.

14 MR. SMITH: Thank you. Mr. Gerdes, then, do you have
15 cross-examination of Mr. Drong?

16 MR. GERDES: I do, thank you.

17 COURT REPORTER: He was never sworn in.

18 MR. SMITH: That always happens right at the
19 beginning, but this time we sort of took off. Swear him in.
20 Thereupon,

21 GENE DRONG,
22 called as a witness, being first duly sworn as hereinafter
23 certified, testified as follows:

24 MR. SMITH: Mr. Drong, I gotta ask you one question,
25 then, because all of us I guess here, myself included

1 primarily, forgot about that. We are a little unusual in our
2 procedure here, but I gotta ask you, then, would all of the
3 answers that you have given thus far to questions that have
4 been asked of you be the same if you answered them after taking
5 the oath?

6 MR. DRONG: Yes.

7 MR. SMITH: Mr. Gerdes, you may proceed with
8 cross-examination.

9 CROSS-EXAMINATION

10 BY MR. GERDES:

11 Q. Mr. Drong, I'll show you what's been marked as Exhibit
12 1, which is the letter of April 27th, 2006 from Otter Tail. Is
13 that correct?

14 A. Correct.

15 Q. And this is the offer that they made to you after they
16 had initially priced the project; is that correct?

17 A. Correct.

18 Q. And this would show that, without going into detail,
19 that Otter Tail would charge \$12,870 to construct the electric
20 service, correct?

21 A. Correct.

22 Q. And that you were also -- and you had told them, had
23 you not, that you were planning on selling other lots and that
24 there were going to be other million dollar homes in the area?

25 A. No, I did not.

1 Q. You didn't tell them that you were going to have other
2 homes in the area?

3 A. I said I had opportunity to sell, but I did not give
4 them a specific state that I was going to sell lots at any
5 given time.

6 Q. Well, in any event, he offered you a four-year
7 development period and that the payments that you were making
8 could be allocated to the usage in those lots as well; isn't
9 that true, in that letter?

10 A. In the letter, yes.

11 Q. Now, I want to show you what's marked as Drong Exhibit
12 2, and that would be the letter from Sioux Valley Energy,
13 correct?

14 A. Correct.

15 Q. And if you look at the second paragraph of that
16 letter, they explain to you that the property that they were
17 asked to estimate was in fact in Otter Tail's territory, didn't
18 they?

19 A. Yes.

20 Q. They said, these assigned service territories were
21 established by the South Dakota Public Utilities Commission and
22 as a matter of law, no utility is allowed to provide service to
23 customers in another utility's assigned territory. They said
24 that, didn't they?

25 A. Yes.

1 Q. And so you knew that on April 11th, that in order for
2 you to have power on the location you had selected, you would
3 have to do business with Otter Tail, did you not?

4 A. Correct.

5 Q. Now, if you look at this Sioux Valley estimate, they
6 are charging you \$7,848 and that's to extend the line, correct?

7 A. Correct.

8 Q. And then they are charging \$1,000 for the 400 amp
9 service, correct?

10 A. Correct.

11 Q. And so this does not include the usage charge, does
12 it?

13 A. No.

14 Q. So in addition to that amount, if you were to make a
15 deal with Sioux Valley Energy, you would have to pay for
16 whatever electrical service you used, correct?

17 A. Correct.

18 Q. So you have to add something to this \$8,800, whatever
19 it might be, but it would be the electric usage for your home,
20 correct?

21 A. Correct.

22 Q. Now, if you look at Mr. Kouba's letter, that did
23 include the electrical usage, did it not?

24 A. Yes.

25 Q. So we are not quite comparing apples to apples and

1 oranges to oranges, are we?

2 A. But I have a house that is about three-fourths of the
3 size and my monthly electric bill is running about between 200
4 and \$300 per month, and with the more efficient home that I am
5 building now, plan on building, it will cost me considerably
6 less than what I'm paying now.

7 Q. Of course, you have got a more efficient or you are
8 planning to build a more efficient home and you are also
9 planning to put 5,000 more square feet in it, are you not?

10 A. Correct, but in sitting down with the heating and air
11 conditioning people and everybody else, I'm going with geotherm
12 and all the other efficient items that I do not have in the
13 home now. My heating and air conditioning bill should be
14 considerably less than what I'm paying now.

15 Q. So you're planning on heating this new house, you are
16 planning on heating it, correct? You are going to heat it.

17 A. With geotherm, right.

18 Q. But that takes a heat pump, right?

19 A. Right.

20 Q. Okay, and then you are going to cool it.

21 A. Right.

22 Q. You are going to have a swimming pool, as I understood
23 you to say.

24 A. Right.

25 Q. That requires you to heat the water, treat the water

1 and all the rest that goes with a swimming pool, correct?

2 A. But Otter Tail and Sioux Valley both give a
3 considerable reduction in rate for geotherm.

4 Q. Well, now, that's not what I'm talking about, but that
5 pool is going to cost you something for electric usage, is it
6 not?

7 A. Yes.

8 Q. I'm not sure what they build houses for over by Egan,
9 but if you are building a 15,000 square foot house and if it
10 costs you \$100 a square foot to build it, that's a \$1,500,000
11 house, is it not?

12 A. I suppose.

13 Q. Okay, and it's a big house.

14 A. It's a home.

15 Q. Okay. It's a nice home and I'm not trying to demean
16 your house, but it's a nice home, correct?

17 A. Right.

18 Q. You are entitled to build anything you want. So if
19 I'm understanding you correctly, you knew that you were in
20 Otter Tail's territory, that you are planning to build in Otter
21 Tail's territory, correct?

22 A. Correct.

23 Q. But you went and got an estimate from Sioux Valley
24 anyway, correct?

25 A. The reason I did it is because they are right on the

1 road. They have got immediate service, whereas Otter Tail has
2 to build it in.

3 Q. Yeah, but they told you that they couldn't serve that
4 territory, didn't they?

5 A. I would not be in the position today I am in if I
6 would have taken the first bid from everybody. I did not know
7 about this territorial stuff.

8 Q. Well, you got it in the same letter you got the price,
9 didn't you?

10 A. I didn't know it until I got a letter from Sioux
11 Valley. I have my service from them currently, they are the
12 ones I went and talked to. I notice the letter is dated April
13 11th. The one from Otter Tail is dated April 27th.

14 Q.. But you had an earlier letter from Otter Tail, didn't
15 you?

16 A. It was a much higher quote, too.

17 Q. You had one for April 11th, didn't you?

18 A. I don't have that one with me.

19 Q. But you had one, didn't you?

20 A. I could have. What is the quote on that?

21 Q. The one I'm looking at is \$39,000.

22 A. I did receive an earlier letter, yes.

23 Q. Is that the letter that you received?

24 A. Yes.

25 Q. So you got a quote from both of them on the same day.

1 A. Yes.

2 MR. GERDES: Let's mark that so we have got the -- so
3 that we have the record clear.

4 EXHIBITS:

5 (OTP Exhibit No. 3 marked for identification.)

6 Q. (BY MR. GERDES) Mr. Drong, we have to worry about
7 what we call the record here, so I just have to ask you again.
8 What's marked as Otter Tail Power Exhibit 3, that would be the
9 letter that you and I were just talking about from Otter Tail
10 dated April 11th, correct?

11 A. Correct.

12 VICE-CHAIR JOHNSON: Mr. Gerdes, I don't know that
13 anybody is listening on the Internet, but if you do that again,
14 swivel that mike around. Thanks.

15 Q. (BY MR. GERDES) For the folks on the Internet, I just
16 asked you if that Exhibit 2 was what we just got done talking
17 about, correct?

18 A. Yes, sir.

19 Q. So just to finish up my questions, if I'm
20 understanding correctly, you agree with me that the price that
21 Sioux Valley Energy gave you does not include usage, correct?

22 A. Correct.

23 Q. Now, did you bring along any figures, estimates that
24 were made by anyone as to what usage this new house would
25 involve?

1 A. No, I did not.

2 Q. And have you started construction yet?

3 A. No, I have not.

4 Q. Okay, so the house has not been built.

5 A. No, sir. What good businessman -- I have got three
6 quotes on the house, why shouldn't I get more than one quote on
7 electricity? That's only good business. You go buy a car, do
8 you go to the first car dealer and say, hey, your price is
9 fine?

10 Q. Well, we sort of did a lot of wrangling about that
11 earlier in the day, Mr. Drong, and unfortunately, the
12 legislature passed a law in 1975 that says you have to buy the
13 power from the territory of the provider that you are in.

14 A. Well, that may be true, but I can put up a wind
15 generator for \$65,000 and I don't have to kiss Otter Tail's
16 hand.

17 Q. And you can do that, too.

18 A. I could sell the power to Xcel Energy.

19 MR. GERDES: I have no further questions.

20 MR. SMITH: Can I ask you this? With your Exhibit 3,
21 do you intend to offer that or are you going to lay additional
22 foundation or what do you want to do?

23 MR. GERDES: I offer Exhibit 3.

24 MR. SMITH: Any objection to Exhibit 3?

25 MR. DRONG: No, sir.

1 MR. SMITH: OTP Exhibit 3 is received.

2 EXHIBITS:

3 (OTP Exhibit No. 3 received into evidence.)

4 MR. GERDES: Excuse me, Mr. Smith. This is the filing
5 I have to make today.

6 MR. SMITH: I was kind of suspicious that's probably
7 what that was. After this day, Dave will be building a 15,000
8 square foot house.

9 MR. GERDES: I wouldn't want to go through all this to
10 build a house.

11 (Discussion held off the record.)

12 MR. GERDES: I have concluded my cross-examination of
13 Mr. Drong.

14 MR. SMITH: Staff, you kind of helped him with direct.
15 Do you have any additional examination in the nature of
16 cross-examination?

17 MS. CREMER: I do not have anything. Thank you.

18 MR. SMITH: Commissioners, do you have questions at
19 this time of Mr. Drong?

20 VICE-CHAIR JOHNSON: No.

21 COMMISSIONER HANSON: Thank you, no.

22 MR. SMITH: The only thing -- again, just so I
23 understand -- maybe I'll wait until we have heard from Otter
24 Tail's witness, because I just want to kind of get the
25 comparison between their \$12,000 that's on their letter and the

1 \$8,000 that's on Sioux Valley's letter. We will wait and see
2 what Kevin has to say here.

3 CROSS-EXAMINATION

4 BY MR. RISLOV:

5 Q. Hello, I'm Greg Rislov. I'm with the commission,
6 staff member. We talked about the \$60 for heating and cooling,
7 but a 15,000 square foot house, there should be an awfully
8 large number of lights and TVs and other electrical appliances
9 of that sort. That \$60 doesn't include every kilowatt hour
10 going through that home on a monthly basis, does it?

11 A. No, it does not.

12 Q. Do you have any idea what the consumption would be for
13 15,000 square feet for electricity in terms of kilowatt hours a
14 month? Has there been any estimate made of any sort?

15 A. No, but we have one that's two-thirds of the size now,
16 it's my wife and I and we pay between \$200 to \$300 a month.

17 Q. Do you have any idea how many kilowatt hours that
18 would be?

19 A. That's with a gas furnace and a lot more electricity
20 than what we anticipate using in the new home.

21 MR. RISLOV: Okay. Thank you.

22 MR. SMITH: Mr. Gerdes, do you want to proceed with
23 your --

24 MR. GERDES: Call Kevin Kouba.

25 Thereupon,

1 KEVIN KOUBA,
2 called as a witness, being first duly sworn as hereinafter
3 certified, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. GERDES:

6 Q. Would you state your name, please?

7 A. My name is Kevin Kouba, K-O-U-B-A.

8 Q. I never pronounce it correctly, do I?

9 A. Nobody does.

10 Q. And what is your occupation?

11 A. Area manager for Otter Tail Power out of Milbank,
12 South Dakota.

13 Q. And have you and others in your office had contact
14 with Mr. Drong?

15 A. Yes, we have.

16 Q. And the first thing I'd like to do is I'd like to show
17 you what's been marked as Otter Tail Power Exhibit 1. And can
18 you tell me what this is?

19 A. This is a response to a commission staff request. The
20 top page identifies four issues or key points that the staff
21 asked if I would provide comment to and that was done, albeit
22 somewhat late, but was done here sometime last week, I believe.

23 Q. And so this data request contains responses to the
24 first three questions, correct?

25 A. Correct.

1 Q. And then the response to the fourth question is the
2 map that we have had marked as Otter Tail Power No. 2.

3 A. Correct, that was sent prior to this actual
4 communication.

5 Q. And the response to request number one basically
6 details Otter Tail's policy as far as extension of service in
7 circumstances such as Mr. Drong's situation, correct?

8 A. Correct.

9 Q. And if I'm understanding correctly, on page two of
10 that document where in the middle it says extension of service
11 in larger capital letters, that is an excerpt from Otter Tail's
12 tariff on the subject, correct?

13 A. Yes, in our general rules and regulations.

14 Q. And did you or someone else in your office compute the
15 cost of providing service to Mr. Drong's home?

16 A. Yes.

17 Q. And was it consistent with this policy?

18 A. Yes.

19 Q. If you go to the fourth page -- first of all, on the
20 third page, the extension cost, which is the cost to do it,
21 that's calculated on the third page, correct, toward the
22 bottom?

23 A. Right.

24 Q. And is that consistent with the letter that Mr. Drong
25 received?

1 A. Yes.

2 Q. And then you performed an estimate of the electric
3 revenue that the house would require to operate that house.

4 A. We did, and obviously there's a difference. We were
5 under the understanding it was going to be a 12,000 square foot
6 home and had very limited knowledge as to what the heating
7 source would be and so we did the estimate based on I believe
8 four different scenarios.

9 Q. Can you --

10 A. Basing it on 12,000 square foot.

11 Q. Was it easy or difficult to get the information from
12 Mr. Drong as to the specific characteristics of his house as it
13 related to energy consumption?

14 A. I received that information from Chris Bartman, who I
15 believe is maybe the person that's somehow related to this
16 project, to Mr. Drong's home or something.

17 MR. DRONG: He is the architect for the project.

18 A. I received the information -- initially I think our
19 operations manager was told it would be propane and Mr. Bartman
20 informed me that it would be some sort of heat pump system.

21 Q. (BY MR. GERDES) So can you tell us the range of
22 estimates that you made, then, as far as the energy
23 requirements of the home?

24 A. Based on a 12,000 square foot home, and these again
25 are very rough estimates because we didn't know the R values or

1 a lot of different factors, the numbers of windows and such,
2 again it's a very unique home, and so we are basically having
3 to do it from comparable knowledge that we have on other homes.
4 So we based it on 12,000 square feet, 120,000 kilowatt hours
5 for heat per year, and then we also assumed normal lighting at
6 an additional \$1500 per year, that would be just straight
7 electric for lights and television and that type of thing.
8 Then with that in mind, we plugged in an electric furnace and
9 that came up to \$6144 a year, with a ground source heat pump
10 the cost would be about \$2,000, \$2,050 per year, and with the
11 air source system, the cost would be just a little over \$4,000
12 per year. And I can't honestly say at this point what rate we
13 were using for that, but as Mr. Drong indicated earlier, there
14 are some different rates that could be applied. I believe this
15 was just we were using the straight residential rate on this
16 home. I'm not positive of that, though.

17 Q. Then you wrote a letter to Mr. Drong dated April 27th.
18 Do you have a copy of that with you?

19 A. Yes, I do.

20 Q. I believe that's -- that's Drong Exhibit 1.

21 A. I have that.

22 Q. Do you have that?

23 A. Yes, I do.

24 Q. Would you explain the offer that you made in that
25 letter and how it came about?

1 A. I'll start with how it came about. Mr. Drong, myself
2 and Steve Wegman were part of a telephone conversation in which
3 we got together over the phone and I proposed, after hearing
4 from Mr. Drong and I believe Mr. Wegman, that the REA would
5 build to this residence for \$1.80 a foot and at that time I had
6 heard a \$500 transformer charge. Obviously that is different
7 than the bid. I came back with an offer to Mr. Drong based on
8 the fact that we did get numbers from our marketing department
9 identifying some electric usages that we didn't have prior to
10 that, so I took those into account and I went back to Mr. Drong
11 and Mr. Wegman and proposed that we would build out to Mr.
12 Drong's home for the cost of \$12,800, which was 7150 feet times
13 the \$1.80 a foot the REA had proposed.

14 I also went a little further by -- and again we heard
15 that there was the possibility, and I agree with Mr. Drong, the
16 possibility that other homes could be built there. And so
17 based on the usage numbers that we had and the possibility that
18 one up to I think it was five homes could be built, I proposed
19 to Mr. Drong a four-year development period, which is a year
20 more than our normal three-year revenue guarantee type thing,
21 that we would recover the difference, the \$39,000 less the
22 \$12,870 in that four-year developmental period. We would
23 monitor the usage of Mr. Drong's home and any others that were
24 built and at the end of that four-year period, we would take a
25 look and see where we were at in relation to the \$39,000.

1 Q. And this offer, then, would be consistent with Otter
2 Tail's tariffs and maybe perhaps just a little bit more liberal
3 than Otter Tail's tariffs; would that be correct?

4 A. Normally we would ask for a three-year -- a monthly
5 guarantee from the customer and I did not put that into this
6 offer. I was looking at recovering or monitoring the usage and
7 at the end of four years, doing a settle up, if you will.

8 Q. Based on your experience as an area manager for Otter
9 Tail, would this type of pricing be consistent with the type of
10 pricing that would be offered to other homeowners in similar
11 circumstances?

12 A. Yes, it would.

13 Q. And just so the record is clear, the figures you were
14 giving me was based on a 12,000 square foot house, correct?

15 A. Correct.

16 Q. And we now know that Mr. Drong has now said he's
17 building a 15,000 square foot house.

18 A. Correct. It's 120,000 kilowatt hours for heating,
19 simple math would say it would be 150,000 for that size of a
20 house. It all depends on how it's built and so forth.

21 MR. DRONG: How big do I have to build that thing to
22 qualify for, what was that other one you had, 200 megawatt?

23 MR. GERDES: That would be a big one. Well, as soon
24 as I'm done asking questions, you get a shot at him. Write
25 down all your questions now.

1 Q. (BY MR. GERDES) Have you received any communications
2 from Mr. Drong since this complaint was filed in terms of
3 construction plans or plans for other homes on the site or
4 anything like that?

5 A. No, we haven't.

6 MR. GERDES: I believe that's all I have.

7 MR. SMITH: Thank you. Mr. Drong, do you have
8 cross-examination of Mr. Kouba? I got that right. Next time
9 I'll get it wrong.

10 CROSS-EXAMINATION

11 BY MR. DRONG:

12 Q. From the way everything is drawn out, if there was
13 anything built to the south side of the Xcel Energy line,
14 that's going to be Sioux Valley territory, correct?

15 A. I don't have a territorial map, but I'm assuming it
16 is.

17 Q. So the burden of any construction is going to fall
18 upon me if everything is going to stay on the north side of the
19 section line?

20 A. The burden for construction of?

21 Q. Additional homes or additional usage.

22 A. No.

23 Q. Yes.

24 A. I think I know what you are getting at. But in the
25 letter that I sent to you on the 27th, I believe in there --

1 Q. Here is the map.

2 A. Right.

3 Q. Everything would have to be built on the north side of
4 the section line.

5 A. Correct.

6 Q. Otherwise --

7 A. You are right.

8 Q. Otherwise everything falls on me.

9 A. Yes.

10 MR. DRONG: At this point in time, I have no further
11 questions, other than my biggest beef is that I am locked in --
12 if I go with Otter Tail, I am locked into a \$544 a month
13 guarantee for four years for service. If my efficient home is
14 \$100, I'm paying \$344 more than I would be paying to Sioux
15 Valley, and that's why, you know, a penny saved is a penny
16 earned. That's why I'm here.

17 MR. SMITH: Is that all the questions you have at this
18 time, Mr. Drong?

19 MR. DRONG: That's all I have, thank you.

20 MR. SMITH: Ms. Cremer, are you prepared to proceed
21 with staff's questions?

22 MS. CREMER: Yes, thank you.

23 CROSS-EXAMINATION

24 BY MS. CREMER:

25 Q. I'm going to call you Kevin because I have pronounced

1 your name wrong for years.

2 A. That's perfectly fine. My wife pronounces it wrong,
3 too. Hope she's not listening on the Internet.

4 Q. This line that you are building or would build to Mr.
5 Drong's home, I don't want to say it's overbuilt, but is it
6 sized for one residence or did you estimate something that
7 would encompass five homes or is there a difference? I'm
8 trying to see if it's just one home. Does he need a line that
9 big or it's not going to matter?

10 A. You are talking to the wrong guy. I'm assuming that
11 the -- if you are looking at the map.

12 Q. Correct, Exhibit 2..

13 A. We are probably looking at, I'm just guessing here,
14 7200 line that is in the blue and continuing that line to a
15 transformer that would reduce the voltage down to 2400 and then
16 into the home at a different voltage. So I'm assuming that
17 that's what it is. These large homes, we don't have the
18 opportunity to build to a lot of them, so we really -- at this
19 point we don't know because we don't know what the usage is
20 going to be. We have very little information on the actual
21 load that this one home or the potential of others would bring.
22 So I'm assuming we would build a 7200 volt line, but I'm not
23 positive of that. That would be pretty standard as to what we
24 would normally do to a single, a large home or four or five
25 home development.

1 MS. CREMER: That's all I have, thank you.

2 MR. SMITH: Commissioners, do you have questions of
3 Mr. Kouba?

4 CROSS-EXAMINATION

5 BY VICE-CHAIR JOHNSON:

6 Q. Mr. Kouba, did Otter Tail Power ever pursue or
7 consider a territorial swap with another utility in the area?
8 A. Yes, we did. Initially when we got the request
9 through our service rep, our operations manager called, I
10 forget the name of the gentleman at Sioux Valley, and he was
11 referred to another person and talked to him. At that point
12 the response from Sioux Valley was basically what the response
13 was in the letter, that they wouldn't entertain any discussion
14 unless there was a release signed for us to transfer or to
15 release this customer to them. In subsequent conversation I
16 had with I think his name is George Colome, I called him up to
17 entertain the idea of a trade, which is another option that we
18 have when there's issues of extending service to some of these
19 developments or homes outside of the norm. Keeping in mind
20 that this was a 12,000 square foot home and the possibility of
21 others, we discussed the matter and it's hard to come up with
22 trade values in the same areas where you don't have to spend a
23 lot of money to get to them, for example. And so we basically
24 agreed at that point that the trade was not probably something
25 we wanted to do from our perspective, from Otter Tail.

1 Q. There seems to be -- if you don't mind, I'd like to
2 walk through the numbers because there seems to be a pretty big
3 difference between the first Otter Tail offer and the second
4 one. If you look at the first offer, it was I think \$39,000
5 for line extension, for construction; is that right?

6 A. Initially the first rough estimate was \$36,000 and
7 that's without knowing anything about -- without actually going
8 out and doing a site visit, walking out there, seeing where the
9 buildings are to be built and that type of thing. The second
10 estimate of \$39,000 was after our operations manager actually
11 went out there, measured line distances and inputted the
12 necessary information into a work order estimating system to
13 determine the numbers of poles, wire, those types of things in
14 order to get service to it. So the only two estimates that we
15 have even talked about was \$36,000, rough estimate up front,
16 \$39,000 straight from the work order estimating system.

17 Q. So under the first -- under the first Otter Tail sort
18 of offer to Mr. Drong, after you had done some analysis, was
19 \$39,000 for line extension, and then you -- if we look at that
20 four-year time horizon, you would add usage. In response to a
21 staff data request, you mentioned if he were to do a ground
22 source heat pump, it would be \$300 a month.

23 A. Right.

24 Q. So if you take \$300 times, rounding to 50 months in a
25 four-year period, that's \$15,000 of energy usage.

1 A. Right. Are you including the general usage into that
2 or just the heat pump or cooling and heating? \$1500 per year
3 is an additional charge for lights and other various electrical
4 usage.

5 Q. I think that 300 was all in.

6 A. Okay.

7 Q. Because on page five of I believe this is OTP 1, the
8 sentence before the one I'm quoting says, assuming the customer
9 installs air source heat pumps, his total yearly energy cost
10 would be somewhere in the neighborhood of \$5600 a year or an
11 average monthly billing of \$467. With ground source heat
12 pumps, his average billing would be roughly 300.

13 A. Okay. I see that.

14 Q. So if you add the 39 line extension plus the 15 in
15 usage, Mr. Drong would be in to Otter Tail for basically
16 \$56,000 over a four-year period.

17 A. No. The \$39,000 was the estimate to provide the line
18 extension and then we would charge the \$12,000 up front cost
19 and so the difference would be. . .

20 Q. That's what I'm trying to get at, I was trying to
21 figure out if we were talking about a single offer or two. I
22 did see the Otter Tail letter where you talk about the up front
23 cost. What would be the charge if he wasn't interested in sort
24 of committing himself out four years but were to pay for the
25 line extension one time up front? Was that an offer that was

1 ever made by Otter Tail?

2 A. I don't know if it was. I think at one point the
3 operations manager and Mr. Drong had a conversation about that.
4 I don't recall what that is, but I'm looking at the 36 and the
5 39,000 was the two offers we proposed.

6 Q. And I think that cleared up my question. I got
7 confused about whether it was two offers, a 13 plus usage,
8 which just happened to add to 39, or 39 all up front, and I
9 think you have cleared that up for me. In the complaint by Mr.
10 Drong, he mentions some hostile behavior and some double
11 talking by Otter Tail and I wanted to give you an opportunity
12 to respond to those concerns he raised.

13 A. I'm not sure.

14 Q. I'll preface that by saying I understand that the
15 commission is not the politeness police, but when we read
16 something like that, I do feel like we have got to ask about
17 it.

18 A. In the conversations I had with Mr. Drong, we shared
19 with him -- I can remember the one with Mr. Wegman that we
20 wanted to do what we could to provide service. I forget what
21 terminology I used, but essentially trying to convey the
22 message that this is a good opportunity for us, too, we want
23 to -- we don't get that many opportunities to provide -- to put
24 up these types of facilities and we also aren't necessarily
25 looking to give away territory, but I don't know that -- I

1 can't speak for the other Otter Tail employees that he's dealt
2 with, but I guess if he feels I was unreasonable or such, I'm
3 not sure that that was the case.

4 VICE-CHAIR JOHNSON: That's all I have, Mr. Smith.
5 Thanks. Thank you, Mr. Kouba.

6 MR. SMITH: Thank you. Commissioner Hanson, do you
7 have any questions?

8 COMMISSIONER HANSON: No, I don't. Thank you.

9 CROSS-EXAMINATION

10 BY MR. SMITH:

11 Q. Maybe, Kevin, just following up on Commissioner
12 Johnson's discussion of the -- either a swap, did that include,
13 and I think you might have said this, but did your discussions
14 include the possibility of just a service rights exception that
15 might have some outs in case a development were to occur there?
16 Something like that that would sort of treat it like an
17 irrigation pump unless something else happened out there.

18 A. Correct, and again I would reiterate, the more we
19 heard from the various parties, the more positive it looked
20 like, first of all, Mr. Drong was going to build this home. It
21 looked fairly certain that that was going to happen and also
22 that there was -- we heard not only from Mr. Drong there was a
23 possibility, but also from his architect that there was other
24 possibilities of other homes, and that pretty much is what
25 determined that I really wasn't too excited about giving up the

1 territory. Because we don't get the opportunity to do that and
2 our towns we serve don't generally have developments like that
3 going on.

4 Q. With respect -- you had said it was what, 7200?

5 A. 7200, I believe.

6 Q. Is that watt or volt?

7 A. Volt.

8 Q. Okay, and I saw that's a single phase line extension.

9 A. Yes.

10 Q. Then like to convert that over to like a more robust
11 distribution line, if like say you were to get -- I don't know
12 what your -- what might happen out there, you never know, but
13 if there were to be a significant development occur out there,
14 is that something then that can be pretty well piggy backed on
15 the infrastructure you are going to build or is this going to
16 be a duplication at some point?

17 A. Most of our distribution is 7200 volts, with the
18 exception of some of the larger towns are converted to 12.5 or
19 12,500 volts. But most of our smaller locations, smaller
20 cities are 7200, very normal.

21 Q. And would you generally -- would that generally be
22 single phase service even into a more significant development?

23 A. Yes. We build in three phase for very much larger
24 loads, motor loads and those type of things, and certainly if
25 this development got to that point where there was many motors,

1 you would upgrade it to three phase.

2 MR. SMITH: I think that's all I have. I would remind
3 Mr. Gerdes that I don't believe you have offered Exhibit 1
4 unless --

5 MR. GERDES: I would offer Exhibit 1. Thank you.

6 MR. SMITH: Objection, Mr. Drong? That's this thing,
7 the data staff requested.

8 MR. DRONG: The big one?

9 MR. SMITH: I'm asking if you have an objection to us
10 receiving that into evidence.

11 MR. DRONG: No objection.

12 MR. SMITH: Staff, do you have an objection? I guess
13 you asked the questions.

14 MS. CREMER: We have no objection to it being
15 admitted.

16 MR. SMITH: Thank you. OTP 1 is received.

17 EXHIBITS:

18 (OTP Exhibit No. 1 received into evidence.)

19 MR. GERDES: Otter Tail rests.

20 MR. SMITH: Staff, do you have a case-in-chief here?

21 MS. CREMER: Staff does not. I believe that you or
22 someone asked Kevin a question and Mr. Drong knew the answer,
23 but I can't remember what the question was. Do you remember?

24 MR. DRONG: The only question I had was how big a
25 house do I have to build to get the bigger.

1 MS. CREMER: No, something here.

2 MR. SMITH: Was that with respect to the architect, is
3 that what you are talking about?

4 MS. CREMER: I don't remember. I remember Kevin said
5 he didn't know the answer, that maybe Mr. Drong did, and he was
6 over there nodding as though he did so I was going to give him
7 an opportunity. That's all right.

8 MR. SMITH: Does staff have a case that you want to
9 put on?

10 MS. CREMER: No, staff has nothing, thank you.

11 MR. SMITH: Mr. Drong, it's your turn now to rebutt or
12 to put on any additional facts that you might want to to
13 respond to any of the questions you have heard or Mr. Kouba.

14 MR. DRONG: No response.

15 MR. SMITH: I think that concludes the evidence in the
16 case. Do any counsel or Mr. Drong disagree with that, or
17 commissioners, do you have any last questions you would like to
18 ask of any of the witnesses?

19 COMMISSIONER HANSON: Mr. Smith, I have a question of
20 Karen. Could you tell me in staff's opinion what the
21 commission is constrained to legally in this type of -- we have
22 heard from Mr. Gerdes, I'm curious what your position is.

23 MS. CREMER: I'm looking for my notes where I wrote
24 that all out for you.

25 MR. SMITH: Karen, pardon me for interrupting. Once

1 we got done taking evidence, then I was going to ask the
2 parties to make closing arguments and maybe that would be a
3 forum in which she could do that.

4 COMMISSIONER HANSON: Ms. Cremer, would you do that at
5 that time?

6 MS. CREMER: I will do that, thank you.

7 COMMISSIONER HANSON: Good suggestion.

8 MR. SMITH: At this point if there's no other
9 evidentiary questions, what the facts are, I guess what I'd
10 like to do, Mr. Drong, is have you begin and just make your
11 argument, if you want to call it that, to the commission. I
12 guess we will put it this way, your argument about right and
13 wrong and what you want the commission to do in this case.

14 MR. DRONG: I want -- I would like to see the
15 commission have a -- allow me to put a line in there at a
16 reasonable amount and not be tied to a penalty, so to speak,
17 that I am going to use X number of dollars every month. That's
18 ridiculous. I realize that Otter Tail has -- they are a for
19 profit company, but then the gas companies are for profit also
20 and we know what's happening there. So if they can't waive
21 their \$544 a month deal, then I ask the commissioners to allow
22 me to deal with Sioux Valley. No further comments.

23 MR. SMITH: Can I ask you just one follow-up question
24 on that? If the \$500 minimum charge wasn't on there, would you
25 be okay with the \$12,800?

1 MR. DRONG: Yes.

2 MR. SMITH: You would be okay paying it?

3 MR. DRONG: Yes.

4 MR. SMITH: Mr. Gerdes, your closing argument.

5 MR. GERDES: Commissioners, staff, Mr. Drong,

6 unfortunately, a good part of this case is dictated by the laws

7 of the state of South Dakota, and the laws of the state of

8 South Dakota provide that electric service is provided

9 according to assigned service areas. My understanding of the

10 law is that within those assigned service areas, investor-owned

11 utilities, which are regulated utilities as opposed to

12 municipal utilities and rural electric utilities, which are

13 only minimally regulated, so the one feature of this is that

14 Otter Tail is constrained by the statutes in the state of South

15 Dakota and basically Otter Tail must treat everybody the same.

16 It must treat them according to their tariffs and must not give

17 any unwarranted preference to any customer. So it's within

18 those confines that Otter Tail needs to or must deal with Mr.

19 Drong.

20 We were just talking about it at an earlier case today

21 and that is the often quoted language from the Willrodt case,

22 which basically says that just because it's a financial

23 advantage to someone, that doesn't mean they are entitled to be

24 in one territory over the other. That was a case that was

25 decided shortly after our current law was adopted. It was

1 decided in 1979 and our current law was adopted in 1975.

2 I sympathize with Mr. Drong because none of us like to
3 think we are getting taken to the cleaners, but I have to
4 mention that we don't have the entire story here because we
5 really don't know what it would cost Mr. Drong to do business
6 with Sioux Valley because we don't have all the figures. All
7 we have is what it would cost to extend the line. We don't
8 know what it would cost for the product. I know, because I am
9 in West Central Electric's area, and I know that West Central
10 Electric is one of the highest REAs in the state in terms of
11 price, and so I pay more than lots of other people, but that's
12 where I'm located and that's what I pay.

13 In a way we take -- we have to take our power as we
14 can find it. That's what the law is. I would submit that
15 within the confines of this case and the rules that Otter Tail
16 must abide by, that Otter Tail has followed its tariffs. To
17 the extent that it can, it has tried to work with Mr. Drong.
18 It also has to consider the various business options it has. I
19 know this isn't an answer, but Mr. Drong could go across the
20 road and build his house and then he would have Sioux Valley
21 Electric. The other thing I'll say is if I'm building a
22 million and a half or two million dollar house, I can probably
23 afford an extra 100 bucks a month, and I know we don't like to
24 pay more than we are supposed to pay for things, but sometimes
25 that's a hard fact of life that we have to live with.

1 The question for the commission stated in the order
2 for hearing is whether Otter Tail Power Company has committed
3 an unlawful or unreasonable act, rate, practice or omission. I
4 would submit that Otter Tail is guilty of no unlawful or
5 unreasonable act, rate, practice or omission, and in fact has
6 scrupulously adhered to the law that it is required to operate
7 under. Unfortunately, the concept of regulated utilities is
8 such that the regulation is the alternative to competition, and
9 therefore, we have to take the price that the regulated
10 utilities give us. So we would ask that the commission dismiss
11 the complaint.

12 MR. SMITH: Staff.

13 MS. CREMER: Thank you. I believe Mr. Gerdes probably
14 answered your question, Commissioner Hanson, and that is, you
15 know, what is it you are confined to here and it's exactly as
16 he stated and that is whether Otter Tail committed an unlawful
17 or unreasonable act, rate, practice or omission. I would
18 submit if they had done anything but what they did here, then
19 they would have violated that exactly, because they would not
20 have been following their tariff. And then there would be a
21 complaint to be heard that had merit. At this point Otter Tail
22 has done exactly as it is supposed to do. Therefore, I do
23 believe that the complaint should be dismissed.

24 The second question is whether the service offered or
25 to be offered is adequate. I believe Mr. Kouba stated the size

1 of the line and that that service that would be offered would
2 be adequate to serve Mr. Drong's property. Again, as Mr.
3 Gerdes said, the case law in this is very clear and it's in
4 both the west river -- WREA, I can't even think what it is,
5 West River Electric Association and Black Hills Power case in
6 1989 and again in the Willrodt case in 1979. In there the
7 court has clearly stated that customer preference is irrelevant
8 under the assignment of service area, even when a customer
9 would enjoy significant economic benefits by purchasing
10 electricity out of the assigned service area. The established
11 boundaries would not be disturbed. Customer preference would
12 defeat the orderly assignment of service areas. And that's it
13 exactly.

14 We can't start or the commission should not allow
15 customers to start jumping lines like this. We would have --
16 my concern would be utilities would then be building lines out
17 all over their territory that may not be necessary, just so
18 that they are always right on the edge of their territory and
19 then I do think you would have duplication of services and all
20 that wasteful stranded investment out there. So I believe that
21 the court is right. I believe that the tariff that has been on
22 the books since 1971 that I could find back that Otter Tail has
23 is an appropriate tariff and that they did follow that, and
24 staff would submit that the complaint should be dismissed.

25 Thank you.

1 COMMISSIONER HANSON: Thank you, Karen.

2 MR. SMITH: Thank you. Any last commissioner comments
3 or questions stimulated by the arguments of the attorneys at
4 least?

5 VICE-CHAIR JOHNSON: I don't know that it's much of a
6 comment, but just I'll test my memory here of state statute,
7 but to me I can only think of four provisions in South Dakota
8 law for someone essentially to change their utility provider.
9 Number one is if they are annexed into a municipal utility
10 service territory, number two the large load exception, number
11 three, I think due to some inadequacy of service maybe the
12 commission can make a change, and then the fourth would be
13 under the mutual agreement of the providers. And so the
14 commission may be in a situation here where even if we think
15 Mr. Drong should be allowed a choice, even if we think he's not
16 getting a good deal from from Otter Tail Power, there wouldn't
17 be any power for us to make that determination. I don't know
18 if that's the case, but that's how I remember state statutes
19 and if somebody thinks I'm in error, I wish they would let me
20 know.

21 MR. SMITH: It occurred to me in the argument on the
22 tariff and that -- I opened up the tariff language again and
23 maybe I'm a little out of line and out of order here, maybe,
24 and maybe this is something the attorneys can address, but this
25 just -- for some reason it was stimulated by the discussion of

1 the tariff affording no flexibility. I think we all agree that
2 state law is what it is, and I think that's probably -- the
3 commissioners have to follow the law no matter what, Mr. Drong.

4 I guess what I'm more interested in maybe is with
5 respect to the tariff language, which is found on page two of
6 Otter Tail Exhibit 1, and I'm looking at the general extension
7 of service paragraph. I guess where I'm coming from here is,
8 and again, Mr. Drong obviously is not a poor individual, but on
9 the other hand, I think what we are just -- what he's looking
10 for is treatment that he feels is reasonable, something where
11 he feels like he's okay.

12 Again I'm not accusing anybody of anything, but I'm
13 just asking you this again, and he's already stated he doesn't
14 have any problem with the higher original cost, it's the
15 monthly minimum of \$5500 or so, or I mean \$550 bucks, which
16 isn't enormous, but it's a big electric bill, I guess, maybe.
17 My question is this, and maybe it's for Mr. Gerdes here, does
18 that tariff language afford Otter Tail some discretion in order
19 to honestly look at this situation and say, we think there's
20 enough of a good bet that this is going to offer us development
21 potential over the next five, six, ten years, that we are
22 willing to cut a break and -- I know you already did that and
23 gave him the extra 12 months over your normal policy, which is
24 three years, but to take that initial down payment and reduce
25 that monthly payment down to where it's more in line with what

1 he might think is reasonable. Is that something that Otter
2 Tail feels it can do under the tariff? If you feel you can't,
3 then that's the end of the story.

4 MR. GERDES: Well, there are two considerations.
5 Number one is this is the same deal that they have offered
6 other people and so all of a sudden now you are going to cut it
7 down and cut it back and you are treating people differently
8 and that's contrary to state statute. The other consideration
9 is that if you don't -- if you don't get quite a bit of it up
10 front, there's nothing to say that there would be somebody
11 there three years from now, things like that, and Otter Tail
12 would have already expended the money. So this is based upon
13 their experience and they just don't -- Kevin just told me,
14 look, I made the same deal to some guy over in Waubay, so what
15 am I going to do? So now if I cut down the payments, then I've
16 treated people differently and I just don't think that
17 that's -- that would be an unreasonable act or service, I
18 believe, under the statutes. So as much as I'd like to say
19 yes, I don't think so.

20 MR. SMITH: Any further questions or comments by
21 commissioners? Any last words from anyone else? Any of the
22 attorneys or parties? Is that it? Do the commissioners want
23 to go into take a short recess before deciding what to do?

24 MR. DRONG: I do have one other thing. When I was
25 talking to one of the gentleman from Otter Tail, he says, this

1 is our deal, take it or leave it. And this is what really got
2 me PO'd.

3 MR. SMITH: Anything else? Commissioners, what's your
4 pleasure in terms of do you want to take a short break before
5 making a decision?

6 VICE-CHAIR JOHNSON: I certainly don't mind taking a
7 break if any single commissioner wants it. I don't need one.

8 COMMISSIONER HANSON: Neither do I.

9 CHAIRMAN SAHR: Neither do I.

10 MR. SMITH: Mr. Chairman. Then I'm going to return
11 the hearing to the chairman and you may proceed to either make
12 a decision or decide you are not going to make one today.

13 CHAIRMAN SAHR: Thank you. Do we have a motion?

14 COMMISSIONER HANSON: It's a dual question here, one
15 is dismiss and the second part is?

16 MS. CREMER: The issue that you have before you -- I
17 am missing the back part of my pages -- you need to determine
18 whether Otter Tail Power committed an unlawful or unreasonable
19 act, rate, practice or omission. So if you answer yes to that,
20 then you would answer the question -- or then the next question
21 is what relief is appropriate. If you answer no to that, the
22 relief -- there wouldn't really be relief, but then it would be
23 a dismissal of the complaint. Then the second question you
24 have listed is whether the service to be offered by Otter Tail
25 is adequate. Do you want me to -- you want this so you can

1 make your motion?

2 MR. SMITH: I really think if you answer the very
3 first question no and the second one yes, then you find for
4 Otter Tail. If you answer either of those questions the
5 opposite, then you find for Mr. Drong.

6 COMMISSIONER HANSON: So you are saying that -- I want
7 to make sure I get the verbiage correct.

8 MR. SMITH: The first question is whether Otter Tail
9 committed an unreasonable or unlawful act, rate, practice or
10 omission. The second question is whether the service offered
11 by Otter Tail will be adequate.

12 COMMISSIONER HANSON: I move that the commission find
13 that Otter Tail Power Company has not committed an unlawful or
14 unreasonable act, rate, practice or omission, and further move
15 that the service being provided or offered by OTP is adequate
16 as described to us.

17 VICE-CHAIR JOHNSON: Second.

18 CHAIRMAN SAHR: And I concur.

19 (Whereupon, the proceedings were concluded at 4:20
20 p.m.)
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23
24
25

C E R T I F I C A T E

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, CRR, Freelance Court
Reporter for the State of South Dakota, residing in Pierre,
South Dakota, do hereby certify:

That I was duly authorized to and did report the
testimony and evidence in the above-entitled cause;

I further certify that the foregoing pages of this
transcript represents a true and accurate transcription of my
stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my hand on
this the 16th day of August 2006.



Carla A. Bachand, RMR, CRR
Freelance Court Reporter
Notary Public, State of South Dakota
Residing in Pierre, South Dakota.

My commission expires: June 10, 2012.