

RECEIVED

AUG 09 2006

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

= = = = =

IN THE MATTER OF THE MERGER BETWEEN
NORTHWESTERN CORPORATION AND BBI GLACIER
CORP., A SUBSIDIARY OF BABCOCK & BROWN
INFRASTRUCTURE LIMITED

GE06-001

= = = = =

Transcript of Proceedings
August 8, 2006

= = = = =

BEFORE THE PUC COMMISSION

Chairman Robert Sahr
Vice-Chair Dusty Johnson
Commissioner Gary Hanson

COMMISSION STAFF

ORIGINAL

John Smith
Sara Greff

APPEARANCES

DAVID A. GERDES,
MAY, ADAM, GERDES & THOMPSON, Attorneys at Law,
503 South Pierre St., Pierre, South Dakota 57501,
appearing on behalf of NorthWestern Corporation;

DARLA POLLMAN ROGERS,
RITER, ROGERS, WATTIER & BROWN, Attorneys at Law,
319 South Coteau, Pierre, South Dakota 57501,
appearing on behalf of East River Electric and
Basin Electric;

JENNIFER L. WOLLMAN,
WOODS, FULLER, SHULTZ & SMITH, Attorneys at Law,
P.O. Box 5027, Sioux Falls, South Dakota 57117,
appearing on behalf of South Dakota Power Company
and Heartland Consumers Power District.

Reported by Carla A. Bachand, RMR, CRR

TUESDAY, AUGUST 8, 2006

CHAIRMAN SAHR: The first item on that is under gas and electric, although it is a gas and electric docket, it is more of an administrative type. It is GE06-001 in the matter of the merger between NorthWestern Corporation and BBI Glacier Corp., a subsidiary of Babcock & Brown Infrastructure Limited, and the question today is shall the commission file a protest or additional comments in FERC Docket EC06-127-000, and how shall the commission proceed? And I'm going to ask Mr. Smith if he would be nice enough to give us some background on this.

MR. SMITH: Thank you, Mr. Chairman. And you aptly perceived and characterized I think a mistake that's on the agenda. This was supposed to be a continuation of the administrative docket or filing, that agenda item that we had here some months ago. And we were all gone last week and due to the confusion of attempting to do business from 2,000 miles away, I note that this was put on as our state docketed item.

However, I don't think it's totally inappropriate to perhaps have that docket designation on there, even though we are not explicitly going to discuss that today. And that is the reason for having this proceeding here today, it relates to the fact that we have the pending state docket and sort of the quandary that's put the commissioners in in terms of their ability to deal with the federal proceeding while we have the state docket pending.

1 As I'm sure most of you out there know, the South
2 Dakota Administrative Procedures Act prohibits decision makers
3 in South Dakota from having discussions with parties to a case
4 about issues of fact or issues of law while a proceeding is
5 pending. And since we have a state proceeding pending, that
6 makes it very difficult for the commissioners either to discuss
7 what to do in the federal proceeding among themselves or to
8 discuss it with the other parties for purposes such as
9 discussing possible settlement options or even discussing the
10 filings in the case.

11 Ordinarily in a case where we are a party as opposed
12 to where we are the adjudicator, the commissioners themselves
13 make those decisions and they and their direct advisors, Ms.
14 Wiest and I and Mr. Rislov, usually perform that function as
15 opposed to staff, who does that function when the commission
16 are adjudicators. And I think the purpose here today is in
17 order to avoid running afoul of the ex parte statute, which is
18 1-26-26, if memory serves me correctly, and also to avoid
19 running afoul of the South Dakota open meeting statutes, the
20 commissioners felt that it was necessary for them to have the
21 discussions regarding the FERC proceeding in an open forum
22 where the public and the other parties to the state docket can
23 be present and will in fact not have had communications that
24 are outside of their hearing.

25 And I think the main purpose of this is initially

1 again, you have seen the questions on the agenda and there may
2 be one other administrative item that I'm going to request the
3 commissioners address, and that is with respect to the FERC
4 proceeding, whether they wish to authorize our legal counsel in
5 that case, Spiegel & McDiarmid, to retain a consultant with
6 expertise in terms of the financial and ring fencing issues
7 that we have raised in that proceeding.

8 But before we do that, I think what I want to do now
9 is turn the discussion over to the commissioners where they can
10 bring up the questions I think that they have, and again I
11 think they relate primarily to the commitments that
12 NorthWestern has made both in the FERC application and in your
13 answers to both ours and the bonding assurance company, and I
14 regret to say I forgot the initials, the acronym. MPIA? Okay.
15 And also frankly to East River and Basin.

16 A lot of those issues overlap to some extent,
17 particularly those I think related to agreeing not to attempt
18 to flow through the acquisition premium into rate base, and
19 that I think, as I read the answer filing, NorthWestern
20 committed in the FERC proceeding to do that at both the retail
21 and wholesale level, and so that's therefore relevant both at
22 the state jurisdictional level and at the FERC jurisdictional
23 level.

24 And so maybe we will start with there and maybe I'll
25 turn it over to the commissioners, who originally requested

1 that we have this proceeding, and again the reason we did this
2 is they did not, were adamant about not having substantive
3 discussions about this and violate the open meeting law. And
4 so the purpose of this today is to have a completely open
5 discussion and see if we can get this thing steered toward a
6 positive direction, I guess, for South Dakota rate payers and
7 for NorthWestern and for the commission.

8 CHAIRMAN SAHR: Do we need to take appearances or
9 since this is a dialogue, we don't? I know that I see counsel
10 from a number of the entities here and we do have a court
11 reporter.

12 MR. SMITH: Sure, why don't we do that, and thank you,
13 Mr. Chairman. Again we are not -- this is not a formal
14 adjudicatory proceeding I don't think, but on the other hand,
15 we might as well do that, and Mr. Gerdes on behalf of
16 NorthWestern, would you care to introduce yourself and those
17 persons who you are representing, who are representatives of
18 your client today.

19 MR. GERDES: Thank you, Mr. Chairman, members of the
20 commission. My name is Dave Gerdes, I'm a lawyer from Pierre
21 and I am appearing here for NorthWestern Corporation. With me
22 are Mike Hanson, the president, Tom Knapp, the general counsel,
23 and Mike Sydow and Pam Bonrud, and it's our purpose here today
24 to stand ready to respond to questions that the commissioners
25 might have about the filings in the Federal Energy Regulatory

1 Commission proceeding. And with that, I'll just leave it open
2 and feel free to pose those questions which you wish.

3 MR. SMITH: Mr. Gerdes, I have one question at the
4 outset. My assumption, and I think I know this, but
5 NorthWestern is in the FERC proceeding represented by counsel
6 that is FERC counsel; is that correct?

7 MR. GERDES: That's correct.

8 MR. SMITH: Are they on the line today or available?

9 MR. GERDES: No, they are not.

10 MR. SMITH: Thank you. I just wanted to know that.
11 Are there other parties in attendance in the NorthWestern case
12 who have any intention of appearing today or saying anything in
13 regard to this proceeding? I notice like, for example, Ms.
14 Rogers, again, this really isn't necessarily your proceeding
15 here today, but the purpose I think was to have a pretty open
16 discussion.

17 MS. ROGERS: My name is Darla Rogers and I represent
18 East River and Basin Electric. They are intervenors in the
19 state docket, which is GE06-001. I also -- I don't believe
20 anyone else from East River is on the line today, but I believe
21 there may be some parties from Basin Electric as well that are
22 on the phone today.

23 MR. SMITH: Would the persons from Basin Electric wish
24 to identify themselves? I think we caught you earlier, but
25 while the reporter is recording here.

1 MR. MATHER: Mr. Smith, this is Russ Mather, I'm one
2 of the staff counsel from Basin Electric. I'm somewhat
3 embarrassed, I'm not involved in this particular matter. We
4 are here on this end primarily to deal with a study we have
5 submitted with respect to another project.

6 MR. SMITH: Thank you and we are not expecting -- we
7 are not going to tie you to the rack or anything like that
8 today, so I wouldn't worry about it.

9 MR. MATHER: I would very much appreciate that.

10 MR. SMITH: Is there anyone else who would like to
11 identify themselves relative to this matter?

12 MS. WOLLMAN: Members of the commission, my name is
13 Jennifer Wollman and I'm here today on behalf of South Dakota
14 Power and Heartland Consumer Power District. Thank you.

15 MR. SMITH: Thank you. Anyone else? I'm assuming you
16 don't want to say anything, Brad. I couldn't resist that.
17 With that I think I'm going to turn it over to the
18 commissioners, if you want, and unless you want me to do
19 something else and to begin to outline maybe what you want to
20 talk about with the NorthWestern representatives that are here.
21 Maybe you want to have either Mr. Gerdes or Mr. Knapp or
22 someone explain their positions in the FERC proceeding and in
23 their filings there so you can ask questions.

24 CHAIRMAN SAHR: I think you did a good job setting up
25 the issues but maybe just bold point them again. What are the

1 issues you need us to decide so that we don't get too far off
2 track on perhaps side issues?

3 MR. SMITH: Well, I think the actual issues that --
4 the action issues I think we need decided is, first of all, do
5 we want to file any additional pleadings in the case? How
6 shall the commission proceed is much more general because,
7 again, I don't precisely know what direction this might go
8 today, and I just wanted to make sure we had a question that's
9 broad enough to allow you to fairly take action that might be
10 stimulated by the discussion that takes place today.

11 And then lastly, our legal counsel in the case has
12 suggested that we retain an economic consultant, if you will, a
13 financial consultant to help them develop, if we are going to
14 file any additional papers in the case, to help them develop
15 our filing with respect to the financial issues and in
16 particular ring fencing issues. So that's the last specific
17 question. Now, if you want me to begin to address -- do you
18 want me to address more specifically the --

19 CHAIRMAN SAHR: The phrase is file a protest or
20 additional comments. Maybe just review what has been filed by
21 the commission in the FERC docket to date and where we are at
22 on that.

23 MR. SMITH: We filed a petition, a notice of
24 intervention, not a petition, to intervene under the FERC
25 regulations. We have intervention as a matter of right as a

1 state commission. But we also requested in that proceeding an
2 extension of time for the filing of additional comments, along
3 with the Montana Consumer Council. FERC did in fact grant our
4 joint, our collective petitions in that regard. The filing
5 date under the extension is August 14th, which is still a very
6 tight time frame.

7 And in the original petition filed by NorthWestern, in
8 its application for approval by FERC and in its answer,
9 NorthWestern, for example, made various commitments in response
10 to the issues that we had raised and I think one of the
11 purposes of the discussion here today is to just discuss mainly
12 how NorthWestern sees those commitments working out, whether
13 this might be -- I'll just put it on the table, I guess, in
14 regard to those issues where NorthWestern has made explicit
15 commitments in the FERC proceeding, I guess the way
16 NorthWestern sees those as becoming executable by us, if you
17 will, in the future or enforceable by us and whether maybe the
18 company would be amenable, since you have already agreed to
19 those things, to reducing those to some kind of stipulation or
20 settlement agreement with the South Dakota commission to
21 resolve our involvement in the FERC proceeding. And if you
22 want to, we can start going down the litany of issues in there.
23 But maybe we might want to hear at least generally from either
24 Mike Hanson or Tom Knapp about the proceeding in general and
25 just how you guys perceive this and take it from there.

1 MR. KNAPP: Mr. Chairman and commissioners, Tom Knapp,
2 general counsel for NorthWestern Corporation. I guess maybe
3 it's best to just start out and describe the overall
4 transaction for you and others in the audience and that are
5 listening by phone. As you are probably aware, BBI, Babcock &
6 Brown Infrastructure Limited, has signed an agreement, a merger
7 agreement to purchase the company for \$37 per share. Under the
8 structure of the transaction, BBI, as we will refer to them
9 throughout this session that we are having today, set up a
10 separate company that will merge into NorthWestern, but
11 NorthWestern will remain the operating company going forward.

12 So under the -- so as a result of that and because
13 NorthWestern is a public utility regulated by the Federal
14 Energy Regulatory Commission, we needed to file an application
15 with FERC for approval of the merger because, as I described,
16 there will be a merger of an entity into NorthWestern and
17 because FERC has jurisdiction over NorthWestern as a public
18 utility and there will be a change of ownership. So generally
19 we filed an application with FERC seeking that merger approval
20 by the agency under its merger approval policy. It will have
21 180 days in which to review the transaction and provide a
22 decision.

23 As Mr. Smith indicated, when we filed our application,
24 there was a period of time for interested parties to file a
25 notice or petition to intervene. That took place. We had

1 asked the Federal Energy Regulatory Commission to provide a
2 certain period of time for that to happen. As Mr. Smith
3 indicated, the South Dakota Public Utilities Commission as well
4 as the Montana Public Service Commission and Consumer Council
5 asked for additional time. FERC granted that up until August
6 14th for not only the South Dakota Public Utilities Commission
7 and in Montana, but all other interested persons to provide any
8 additional comments, protests, or interventions, and then
9 NorthWestern has I believe a 14-day period after that to
10 respond. That's where we are currently at in terms of that
11 docket.

12 We are still waiting for any additional interventions,
13 protests or comments to come in by the August 14th deadline.
14 And then based on those comments or interventions or protests,
15 whatever they may be, we will respond to those and then the
16 commission will take that up. If there's a contested case --
17 if there's a contested series of facts, the commission will
18 take it up as a contested case. If there's not, the commission
19 will then deal with it under their delegation rules, but under
20 both circumstances we anticipate a decision within 180 days
21 from the date we file. Do the chairman, commissioners or
22 others have questions?

23 MR. SMITH: Commissioners, do you have questions,
24 comments?

25 VICE-CHAIR JOHNSON: Well, sure. I won't hog the

1 mike, I'll take -- raise one issue and then if other
2 commissioners want to share one, we will sort of do a round
3 robin maybe. But I was hoping that -- I thought in your answer
4 in your initial application you did a pretty good job of
5 talking about how decisions will be developed, NorthWestern
6 decisions will be developed by on site local NorthWestern
7 management and then assessed and approved by the board of
8 NorthWestern, and then later on talking about local management.

9 I was just hoping you could give -- I don't know, but
10 I suspect that a lot of South Dakotans who are currently
11 NorthWestern customers are going to be concerned that the
12 decision makers are going to be people that are going to be
13 people that don't know them, that don't know their communities,
14 that don't understand how important a player NorthWestern is in
15 South Dakota today and has been for generations.

16 Could you talk a little bit about what is that local
17 decision making, what does that local operating decision look
18 like? How is that going to feel to South Dakotans?

19 MR. HANSON: Mr. Chairman, commissioners, I'm Mike
20 Hanson from NorthWestern. I'll address that question, Mr.
21 Commissioner. I think for people to understand it, the first
22 concept to have in mind is simply that NorthWestern as a
23 separately incorporated legal entity will continue to exist and
24 so questions that are raised about our legal liabilities under
25 various agreements and the like will simply continue in force

1 and effect. Our responsibilities as a utility provider in
2 South Dakota continue as they are.

3 BBI's approach is to acquire companies and continue to
4 have the management and supervisory and for that matter the
5 field personnel they have continue. Our agreement has a
6 commitment to maintain staffing levels for two years following
7 the closing, and so in a nutshell, you have the same people in
8 each of our communities providing the same service. Mr. Sydow,
9 who is with us today, is the general manager of our South
10 Dakota/Nebraska operations. He is the operating manager of
11 those. He will continue in that role.

12 The management of NorthWestern will remain the same.
13 We will have a new owner and as such, there will be a new board
14 of directors, but just as we interact with our board today, all
15 of our operating plans, budgets, resource needs, other issues
16 will be dealt with by the management, presented to the board
17 for appropriate review, oversight and approval and continue
18 much as we do today.

19 VICE-CHAIR JOHNSON: And do we -- maybe you could talk
20 a little bit about anything that we might know today about what
21 a new NorthWestern board of directors might look like. Has BBI
22 given any indication of that?

23 MR. HANSON: Commissioner, Mr. Chairman, there's been
24 discussion about it. They have not finalized that so I'll just
25 share with you my understanding of the approach that they used

1 to the makeup of the board and what their intent is, the final
2 board members yet to be fully identified. But the chairman of
3 the board is expected to be Stephen Bolten, who is the CEO of
4 BBI Limited from Sydney. Steve has a utility background. He's
5 been in the industry for, if I recall, twenty some years. They
6 also have two operating management personnel, one that deals
7 with their transport sector, the other with energy. Jeff
8 Kendrew is their chief operating officer for energy and he
9 would be a member of the board. It's expected that the chief
10 financial officer of BBI, who is Jonathon Seller, would be a
11 member of the board, myself and perhaps one or more other
12 executives of NorthWestern and then some number of independent
13 directors that have yet to be named. And BBI's approach is to
14 have a majority of the directors would be U.S. citizens and
15 domiciled here and they like to have some number of independent
16 directors for various issues to just give advice for people
17 that are not directly connected to the company. So that's the
18 general makeup, with the final board slate yet to be named.

19 VICE-CHAIR JOHNSON: I'll just ask a follow-up
20 question and then turn it over to either of the other
21 commissioners. Obviously I think it's important to have
22 qualified people with expertise on the board as independent
23 directors as opposed to any sort of parochial interests, but in
24 other boards that are set up, has BBI ever taken a real
25 interest in making sure that the independent directors are from

1 the geography that's being served by a utility company? Or is
2 that their intention in this case, do you know?

3 MR. HANSON: Mr. Chairman, commissioner, to the best
4 of my knowledge, I think the answer is yes to both of those. I
5 could not recite off the top of my head who the independent
6 directors are for the various entities that they have, but in
7 general conversation, they like to have people that are not
8 only knowledgeable of the industry, they are knowledgeable of
9 the needs of the geographic locales that we serve.

10 VICE-CHAIR JOHNSON: And I would just note as a
11 comment to close my interest in that particular matter for
12 today, I do think there is some concern with South Dakotans,
13 they just don't know what a new owner looks like yet, they
14 don't quite know -- I don't think they yet have confidence that
15 BBI understands South Dakota or South Dakotans, and I don't
16 know that that's a fair assumption on people's parts yet. But
17 I would just ask that you and BBI, if this is -- if this merger
18 receives all the necessary regulatory approvals, that you keep
19 that in mind and do everything you can to keep a strong South
20 Dakota, Nebraska, Montana voice throughout the operations and
21 decision making bodies of NorthWestern.

22 MR. HANSON: If I might, Mr. Chairman, commissioner,
23 just to respond briefly. In a nutshell, they are relying on us
24 to know the customers, the communities, the needs of the areas,
25 us being the employees of NorthWestern. We are the ones who

1 are responsible for meeting those needs today and that's the
2 intent later. BBI, frankly, would be a new owner and function
3 at the board level, but they rely on all of our employees to
4 meet the needs of our customers in each of the communities we
5 serve and that will continue.

6 VICE-CHAIR JOHNSON: Thanks.

7 CHAIRMAN SAHR: Good morning. Obviously of paramount
8 interest to the consumers and rate payers across the state are
9 things like rates, reliability, systems upgrades, making sure
10 that we are out there and that you are out there running a
11 first class utility. Maybe you can talk a little bit about
12 your plans of how you see this merger perhaps assisting in that
13 or some of the challenges that may be faced making sure that
14 you are delivering affordable, reliable electricity and natural
15 gas to consumers in this state and region. Thank you.

16 MR. HANSON: Certainly, and Mr. Chairman,
17 commissioners, as the commission knows, others may not be
18 aware, but the rates in South Dakota are based on the cost of
19 providing service within the state of South Dakota and that
20 doesn't change with a change in equity ownership. A question
21 has been asked about the acquisition premium or in other words,
22 the premium above book value. It's our understanding that
23 rates are based on the original cost less depreciation of the
24 property, plant and equipment that are used and our operating
25 expenses. Those do not change with a change in equity

1 ownership, and therefore, any premium paid by BBI would not be
2 reflected in rates as well.

3 In terms of our operating plans, it's been our goal
4 for many years to maintain high reliability, good customer
5 satisfaction, good public and employee safety and the like, and
6 be an active supporter in the communities that we serve.
7 Obviously as a distribution utility, we do well if our
8 communities do well, and if they suffer, we suffer with them.
9 So it's important to us that the communities are vital and a
10 viable place to live and work and raise a family.

11 With that in mind, we are actually very pleased with
12 the results we have had here in South Dakota. We are in the
13 first quartile in the industry as far as electric reliability
14 is concerned. We, as the commission may be aware, had a major
15 impact on our system last November. We have nearly completed
16 the reconstruction efforts. The result of that is we have -- a
17 lot of the system has been upgraded and replaced. We expect it
18 to perform well, and in the recent heat as an example, we
19 performed very well. Mike is here, could give more details,
20 but I was only made aware of a couple of small transformers
21 that overloaded and one that's not even ours, Northern State
22 University had their own transformer overload. So that's just
23 an indicator I look at to see how we are doing. We expect to
24 continue that type of reliability. We will make the financial
25 commitments necessary to upgrade, replace and maintain those

1 systems as need be.

2 As far as impacts from the BBI transaction, it really
3 boils down to having owners of the company that take a long-
4 term view. They are a patient utility investor, expect to earn
5 a modest return for a modest risk over a long time. That's not
6 the makeup of our shareholders today. That will be beneficial
7 in allowing the company to focus its attention on customer
8 needs and not spend so much time considering shareholder
9 desires, if you will.

10 Along with that, we would expect again not an
11 immediate impact, but BBI is a larger organization that
12 accesses capital markets around the world. They are in those
13 capital markets much more often than we, NorthWestern, and as a
14 result, arguably would have better access to capital or access
15 to capital on better terms again over the long run, not
16 necessarily in any given moment in time like right now. If you
17 wanted to compare our debt rates with theirs, I suspect they
18 are not substantially different. But as time goes on, we will
19 need to raise capital, either through equity or debt markets to
20 fund capital investment and we expect to be able to do that and
21 that would be beneficial to consumers in helping to provide the
22 service.

23 And the last thing would be access to expertise of
24 people that are involved not only with BBI but other firms that
25 Babcock & Brown is involved in. Should we decide to expand

1 investments, as an example, in renewable resources here in
2 South Dakota, there are branches of the Babcock & Brown family
3 of companies that that's what they do, they are experts in the
4 field. We could tap that expertise to advise us on what makes
5 the most sense for South Dakota. So if I had to summarize the
6 benefits, it's to bring stability, better access to capital and
7 access to expertise over the long run.

8 CHAIRMAN SAHR: You talked a little bit about the
9 current premium and perhaps along those same lines, but I want
10 to make sure that we are correctly interpreting this, we also
11 have bankruptcy costs, administrative costs with this
12 particular transaction, which this is a really rough estimate,
13 but I have been told it could be approaching or going in
14 advance of \$100 million, and maybe that's much higher than you
15 would expect, I don't know. And then also the previous
16 premiums paid for the Montana properties, do we have any
17 concern about sort of this stacking or is there stacking of
18 these premiums and these costs and should we have concern about
19 that as far as the health of the company going forward and is
20 there any potential effect on rates? And maybe the same answer
21 you gave earlier, Mike, when you talked about the rates and the
22 premium that's in effect now. But just to make sure we explore
23 that, because we probably are talking, when you add all that
24 up, something in the hundreds of millions and certainly over a
25 hundred million, so maybe you can discuss that briefly as well.

1 MR. HANSON: Mr. Chairman, the various costs
2 associated with our review of strategic alternatives in the
3 ultimate transaction are substantial. They certainly are not
4 in the range of 100 million. They would be millions but not
5 that high. Bankruptcy costs are behind us. Those costs have
6 been expensed by the company during the time that we went
7 through the bankruptcy and are reported in our historic
8 results.

9 But in terms of impact on rates, it's the same -- we
10 did not borrow money to finance those. We are not carrying
11 debt on our balance sheet for any of those and as a result, we
12 simply expense those as we go. There would be no impact,
13 again, when we are looking at the cost of providing service to
14 South Dakota customers, whether it's gas or electric, those
15 costs would not be included and so we would not be seeking any
16 recovery in rates of either bankruptcy or transaction-related
17 costs.

18 CHAIRMAN SAHR: And then one last question along the
19 lines of rates and I'll see if my counterparts here have other
20 questions. But the issue of whether or not you are going to be
21 seeking any type of rate increases or rate reviews in South
22 Dakota, any anticipation or expectations with that regard?

23 MR. HANSON: I would just share, Mr. Chairman, and
24 commissioners and other guests here, our view at this point is
25 that on the natural gas side of the business, the growth in

1 revenues has not kept pace with the growth in expenses and we
2 are seeing pressure on rates of natural gas. We don't see the
3 same immediate pressures on electric. That said, we have no
4 plans to file during 2006 for a rate case in either case, but
5 we will have to monitor the natural gas side of the business as
6 we go into '07 just to make sure that our rates are reflective
7 of the cost of providing service for that commodity.

8 CHAIRMAN SAHR: Thank you. I'll see if my fellow
9 commissioners have additional questions.

10 COMMISSIONER HANSON: Good morning. I appreciate very
11 much your coming here today and giving us an opportunity to
12 chat a little bit with you. I'm not accustomed, when I was
13 first elected to this position, of having to have to go through
14 a process, a formal process in order to talk to people about
15 certain situations. You pick up the phone and talk to them and
16 get it taken care of and go from there. And it seemed to make
17 things a lot easier, although occasionally people are accused
18 of not letting other people know what's taking place. So
19 there's a very good reason for us to meet here today under this
20 type of formal circumstances, although it doesn't necessarily
21 make our jobs easier, it does let the citizens know what's
22 taking place.

23 I have, during the process, made a couple of lists and
24 I should probably do more typing, but I have a tendency to
25 change my lists a lot and I like to carry them around with me

1 and I don't want to carry a laptop. If you would bear with me
2 a little bit, I'm going to jump around a little bit. I have
3 made one list of reasons why I think this is a good deal and
4 another list of concerns that might need to be covered.

5 On one side is the long-term potential stability that
6 BBI apparently is bringing, as opposed to short-term investors.
7 Reasonable utility rates with moderate return to owners is
8 something that we have been told is going to take place and
9 continue. You have vast transmission experience, I understand.
10 Is that accurate?

11 MR. HANSON: Mr. Chairman, commissioner, within the
12 Babcock & Brown family of companies, one of the things that
13 they are expert on is transmission development and financing,
14 and so as we look ahead, we at NorthWestern have the obligation
15 to identify whatever needs we do see, both need and opportunity
16 for some transmission development in South Dakota. If we need
17 the expertise, it's available to us to advise and assist on
18 finalizing those plans.

19 COMMISSIONER HANSON: Certainly we recognize that
20 there are challenges in South Dakota for transmission and
21 opportunities. Excuse me a little bit if I stretch the
22 envelope of where we are supposed to tread during this
23 particular meeting, but because we really don't have the
24 opportunity to pick up the phone and chat, I'm going to take a
25 little bit of opportunity to stretch the envelope.

1 You also, I understand, excuse me, BBI has significant
2 expertise in wind energy, as I understand. Are you the third
3 largest owner of wind in the United States?

4 MR. HANSON: Mr. Chairman, commissioner, Babcock &
5 Brown Wind Partners is an affiliated company. BBI has a
6 percentage equity ownership in BBW, but as they have
7 progressed, they intend to have those assets in a different
8 infrastructure fund. That said, I've heard a number of times
9 Babcock & Brown folks say that they are, BBW is the third
10 largest owner of wind resources in the country and I believe
11 fourth largest in the world.

12 COMMISSIONER HANSON: Thank you, and I understood
13 what -- and I was aware that BBI and BBW are separate entities
14 and that they are under BB and they pay the management fees, et
15 cetera. But I appreciate your pointing that out for the
16 record. You said fourth largest owner of wind in the world,
17 you believe?

18 MR. HANSON: That's my understanding, Mr.
19 Commissioner, that's my understanding.

20 COMMISSIONER HANSON: And I also understand that
21 there's potential for access to financing from BBI to working
22 with BB.

23 MR. HANSON: Yes.

24 COMMISSIONER HANSON: You always say Babcock & Brown
25 and I understand why.

1 MR. HANSON: Well, they commonly refer to it as B&B
2 for Babcock & Brown and BBI for Babcock and Brown
3 Infrastructure. The short answer to your question is yes.

4 COMMISSIONER HANSON: At the same time, on my concerns
5 list, which is perhaps a little bit longer, is that the new
6 structure needs to be relatively easy for regulators to
7 monitor. We need to have transparency, and as I understand
8 from your previous comments, that's not going to change.

9 MR. HANSON: That's right, Mr. Chairman, commissioner,
10 we, NorthWestern, will continue to file all the regulatory
11 reports we do in each of our jurisdictions, our FERC form ones,
12 our state filings. We will have publicly traded debt so we
13 will continue to file our SEC reports, the annual 10K, 10Q.
14 The only change is we would not be submitting an annual proxy
15 for solicitation of votes of shareholders because we would not
16 have public shareholders. But all the other reports and
17 information would be available. Likewise the commission's
18 access to information under your own jurisdiction remains the
19 same. So the transparency should be as good or better
20 afterwards as it is today.

21 COMMISSIONER HANSON: Certainly. And I appreciate
22 your elaboration, fleshing out some of these a little bit more
23 than what you did previously, because I know that as I'm going
24 through these, and I don't expect you to comment on all of
25 them, that you have already commented on some of them. One of

1 my concerns has been what we call ring fencing, the need for
2 entities to be separate. I had asked that question when we
3 first met, whether or not it's true ring fencing or whether
4 it's -- ring fencing to some people is a relative term. To me
5 it's pretty definite. You either have ring fencing or you
6 don't, and I know that with some folks, they have partial ring
7 fencing. Just how much of a separation will there be between
8 the entities, between BBI and NorthWestern? Excuse me, B&B.

9 MR. HANSON: Well, BBI in this case, the ring fencing
10 provisions that NorthWestern put in place in our bankruptcy
11 will remain the same. You might recall that we are under an
12 investment limitation for nonregulated assets. The only
13 nonregulated assets that we have today are some gas supply
14 services here in South Dakota to large volume users like
15 ethanol plants and a share of a power plant in Montana. We
16 have no intention of venturing into nonenergy businesses. The
17 structural ring fencing provisions remain in effect in
18 perpetuity. Those investment limitations are subject to
19 certain rating agencies.

20 So the ring fencing is complete in that the only debt
21 that we take at NorthWestern is to be used for our utility
22 purposes. We will not borrow money to be used for any other
23 purpose or to fund or upstream payments to BBI. Any other
24 financings that they have relative to other assets are
25 nonrecoursed to NorthWestern. Our assets are secured solely by

1 our own debt. We have an unsecured revolving line of credit
2 for working capital and we receive from them effectively equity
3 infusions, and so all of the debt that we have is nonrecoursed
4 to other BBI investments. Any debt that they have at BBI or
5 other entities is nonrecoursed to NorthWestern.

6 COMMISSIONER HANSON: Thank you, appreciate that. We
7 also need to be assured that there is financial vitality and
8 you have certainly covered that to an extent. There was a
9 statement in the press that I am somewhat concerned about and
10 you might like to cover that. It was pertaining to the very
11 rapid growth in the industry and rapid growth of -- potential
12 rapid growth, I'm not sure exactly what it was referring to, of
13 BBI, and stated that NorthWestern and several other companies
14 expanded too fast and wound up in bankruptcy and that this
15 company has experienced a lot of very rapid growth and I think
16 the inference was that there was potential challenges there.
17 Would you like to address that?

18 MR. HANSON: Yes, and I will try to do that as briefly
19 as I can, Mr. Commissioner. If I had to contrast
20 NorthWestern's growth, as became apparent, there was financing
21 done at the parent level based on effectively the net worth of
22 the utility to finance its investments in these other assets.
23 That is not the approach that BBI uses, the ring fencing
24 provisions prevent that. So while they certainly have grown
25 rapidly, each of the entities is a financially stand alone and

1 so in terms of financial viability, NorthWestern today is
2 generating positive cash flow after paying all of our operating
3 expenses, paying our people, financing our necessary capital
4 investments and the like. And so with positive cash flow, we
5 don't have the same concern, but the ring fencing provisions we
6 are talking about would prevent that leveraging that resulted
7 in the bankruptcy of NorthWestern from recurring.

8 COMMISSIONER HANSON: Thank you. To an extent you
9 answered. There is also another statement in that article
10 about Australia's disclosure process to insure officials can
11 get the necessary information to properly regulate NorthWestern
12 if the company is sold. I think you have addressed that to an
13 extent with your statement pertaining to ring fencing. Asset
14 shielding is a concern of mine and rate stability. You have
15 addressed those to an extent. With that statement, regardless,
16 as I understand, and I am understanding that regardless of what
17 Australia's laws are, you are still a South Dakota -- excuse
18 me, still a South Dakota company, emphasize South Dakota.
19 Regardless of that, am I understanding correctly that nothing
20 changes?

21 MR. HANSON: That's right, commissioner. Our
22 financial information obviously will flow up and would be
23 subject at BBI to their reporting requirements. We will
24 continue to meet the SEC reporting requirements here in the
25 U.S. with the filing of our annual 10K and 10Q.

1 COMMISSIONER HANSON: The reason I stated a South
2 Dakota company twice was that's something that we have talked
3 about a number of times, and I don't know how well we can nail
4 your shoes to an office building in Sioux Falls, but that's
5 something that we have a very strong interest in. We
6 understand that you have assured us to an extent back and forth
7 that you are going to remain in South Dakota. We understand
8 that there are other states that would like NorthWestern to
9 plant their flag and I'll just -- I don't expect you to comment
10 on it, although if you did, that would be fine. We have a very
11 strong interest in seeing NorthWestern remain a South Dakota
12 company.

13 MR. HANSON: We certainly prefer that, Mr.
14 Commissioner. South Dakota has been very good to this company
15 and we hope to be very good to the state and the communities as
16 well. It's no secret that we are under pressure from Montana,
17 there's intervenors that have argued that the headquarters
18 ought to be moved to Montana because we have a larger operation
19 in Montana. We intend to maintain adequate staffing,
20 supervision, management in all of our jurisdictions, and I
21 can't say that nothing would ever change that in the future.
22 Depending on circumstances, we will do that which is in the
23 best interests of the company. I can say very clearly, though,
24 we have no plans at this point in time to move the headquarters
25 of NorthWestern outside of South Dakota.

1 COMMISSIONER HANSON: Thank you. I have just two, I
2 think just two last questions and I'll turn it back. Going
3 through it usually affords me no questions, but I'll take a
4 little bit of an opportunity here to make a comment, too, and
5 that is on your reliability. I know that you went through,
6 along with a lot of other electric companies in South Dakota,
7 went through some serious challenges this last winter. Can you
8 tell us a little bit about number of poles and what happened
9 during that process? I understand you just, during this peak
10 period, you reached --

11 MR. HANSON: If it's all right, I could give you my
12 recollection and summary, but rather than do that, I'd like to
13 turn it to Mike, who not only manages our South Dakota
14 operations, he was the guy who led that entire effort.

15 COMMISSIONER HANSON: I understand you set a new
16 record on the number of megawatts that you provided of
17 electricity just a few weeks ago.

18 MR. SYDOW: A week ago yesterday.

19 COMMISSIONER HANSON: That must have been somewhat of
20 a challenge considering the amount of damage that was done. I
21 am curious if you could tell us a little bit about that.

22 CHAIRMAN SAHR: Mike, I apologize, we do have a court
23 reporter so if you would identify yourself and spell your name
24 for her, that would be great.

25 MR. SYDOW: Mr. Chairman, commissioners, my name is

1 Mike Sydow, S-Y-D-O-W. I'm the general manager of operations
2 for South Dakota/Nebraska. Yes, we did sustain some heavy
3 damage in the ice storm at the tail end of November. We did
4 sustain nearly 700 poles collectively, both transmission and
5 distribution. Many, many miles of cross arms, insulators, and
6 in excess of probably 60 miles of conductor have been replaced.
7 So yes, regaining the reliability performance that we had prior
8 to the storm has been a challenge.

9 We found ourselves in many, many cases literally going
10 pole to pole having to check insulators for cracks and for
11 broken ties and the likes of those type of things.

12 Collectively we worked on storm damage right up till about June
13 1st. We have addressed all of the issues that we have been
14 able to identify and locate and as Mike had stated earlier in
15 testimony to the rebuilding process was realized about a week
16 ago Monday when we jumped from a total system load from July of
17 '05, which was the previous peak of about 304, to 327, so a
18 significant load increase and actually incurred very few
19 instances. We had, as Mike stated, we had one grocery store
20 and one distribution transformer and essentially we ended up
21 changing NSU's transformer when it faulted internally for them
22 as well.

23 COMMISSIONER HANSON: You can certainly empathize then
24 with the South Dakota Rural Electric Association that lost
25 about 14 times as many poles as you did.

1 MR. SYDOW: I sure can.

2 COMMISSIONER HANSON: And the challenges they were
3 confronted with. Appreciate your giving us that information.
4 I have one last question at least at this juncture and that is
5 that on April 26th we received a letter from Pam Bonrud,
6 director of regulatory affairs, and in that she states that BBI
7 is a long-term conservative utility owner with a proven track
8 record. Additionally, there will be no reductions in
9 employment in the communities we serve and no reductions in
10 customer service. The transaction will have no adverse impact
11 on the cost, reliability or quality of our customer service.
12 BBI intends to insure local management accountability with a
13 focus on excellent customer service and BBI is also intending
14 to make additional capital available for NorthWestern to pursue
15 economic transmission and generation investment opportunities
16 to insure NorthWestern remains a stable provider of energy in
17 Montana, South Dakota and Nebraska. At the end of that letter,
18 it states that this letter contains forward looking statements
19 and these statements are based upon our current expectations
20 and speak only as of the date hereof. I would have loved to
21 have seen it without that last statement in it. It means that
22 I am going to have to somehow contact you on a weekly basis and
23 see whether or not that's changed. Can you tell me, has any of
24 that changed at this juncture?

25 MR. HANSON: Not at all, commissioner, and all of

1 those statements are correct and we expect them to stay there.
2 The disclaimer for forward looking statements is a legal term
3 we have to add whenever we are predicting the future. Having
4 been through a number of shareholder and derivative lawsuits
5 now, we perhaps are a little overly sensitive, but that's the
6 reason for the legal disclaimer about forward looking
7 statements that us and other publicly traded companies use.
8 But everything she said in there is absolutely correct.

9 COMMISSIONER HANSON: And you expect that to be the
10 case one year, two years, three years from now?

11 MR. HANSON: Yes, I do.

12 COMMISSIONER HANSON: Thank you. That's all the
13 questions I have.

14 VICE-CHAIR JOHNSON: I have a couple of follow-ups, if
15 it's appropriate, Mr. Chairman.

16 CHAIRMAN SAHR: Absolutely.

17 VICE-CHAIR JOHNSON: In the FERC filing of Michael
18 Garland, president of BBI U.S. holdings, it gives a brief
19 overview of investments and BBI's historical investments and
20 some of its other assets, and we have talked quite a bit -- a
21 little bit about reliability today and you all have done a good
22 job of erasing some of our concerns. But something neither the
23 application nor the answer addresses is whether or not BBI or
24 NorthWestern is planning to conduct any kind of a reliability
25 study that would sort of give everybody, consumers, the

1 acquiring company, the existing company, an idea of exactly
2 what's the status of the infrastructure of NorthWestern.

3 MR. HANSON: Commissioner, we don't have a plan to
4 undertake a formal study here in South Dakota. We did that, as
5 you are probably aware, in Montana. We learned a lot from it.
6 We are applying the learnings that we have received there to
7 our South Dakota operations. Mike, for example, is looking at
8 some of the line clearance practices that came out of it and
9 the like. We are not opposed to it, but I would tell you it
10 was quite expensive. It cost us, if I recall, roughly \$250,000
11 for that study, and if we can apply the learnings without
12 incurring that cost, we would prefer to do that.

13 VICE-CHAIR JOHNSON: And I think that is a good
14 comment and it's not the kind of thing obviously I have had an
15 opportunity to chat with my fellow commissioners about, but
16 with regard to the FERC proceeding, that may be something that
17 I ask that the commission mention in its filing, in its
18 pleadings, that as we focus on reliability, and I will mention
19 I will reiterate what you have said, which is the reliability
20 statistics for NorthWestern have been very good. You have
21 handled a great deal of usage recently very well and I'm
22 certainly not criticizing anything you have done in the recent
23 past with regard to reliability.

24 The only other follow-up I have, we have talked a
25 little bit about political pressure being applied by another

1 state, Montana, with regard to moving the operations, and I
2 understand you are not in a position where you can make long-
3 term promises, and I'm certainly not asking for one. But as
4 NorthWestern deals with the Montana commission and the Montana
5 Consumer Council, is that an area where if a settlement were to
6 be reached with Montana that NorthWestern or BBI would be
7 willing to have that be part of a concession by NorthWestern,
8 that as a result of approval by the Montana commission, the
9 headquarters would be moved?

10 MR. HANSON: I can't speculate on the possible
11 settlement discussions, commissioner, but I would tell you that
12 we understand the concern voiced about having the right
13 management, supervision familiar with and focused on issues in
14 that state just as we should have here in South Dakota and in
15 Nebraska. We intend to make sure that our regulators in that
16 state are satisfied that we have the right people, the right
17 skill sets focused on that. We do not intend to move the
18 headquarters from South Dakota.

19 VICE-CHAIR JOHNSON: And I understand that and I know
20 NorthWestern is going to be a well-run company regardless of
21 whether BBI is the ultimate owner or not. I would just want to
22 make sure that the location of key management personnel is an
23 issue that is decided by NorthWestern based on what's right for
24 the consumers and for the company as opposed to political
25 pressure, and that is my only concern, that as you all move

1 through the Montana process, that I would have serious concerns
2 about that being a concession that NorthWestern would make in
3 order to secure Montana approval.

4 MR. HANSON: I fully understand, commissioner, and
5 agree with your comment.

6 VICE-CHAIR JOHNSON: Thanks very much. That's all I
7 have right now, Mr. Chairman.

8 CHAIRMAN SAHR: Thank you, and I would just like to
9 state as long as the political pressure keeps the headquarters
10 in South Dakota, I'm fine with political pressure.

11 MR. HANSON: Same answer.

12 CHAIRMAN SAHR: One of the issues raised by
13 Commissioner Johnson was the question of a reliability study
14 and maybe I'll get us in trouble for talking behind closed
15 doors, but we did that a long time ago. The commissioners and
16 I had discussed that, and I do think with Xcel, the commission
17 predating the three of us, but I worked on parts of it. The
18 commission did some sort of a -- well, not some sort, the
19 commission did a reliability study with Xcel and I think a lot
20 of very positive things came out of it and I appreciate your
21 interest in looking at what you have learned in Montana and
22 certainly I believe you could come up with some type of system
23 that would work well and have a certain degree of flexibility
24 and make sense for South Dakota without having you to reinvent
25 the wheel. But I think that it would give the public a certain

1 level of comfort and some sort of assurances.

2 So I as well would be interested in seeing if staff
3 might be able to come up with something along those lines and
4 again it hopefully wouldn't be something where you are doing
5 the exact same things. Hopefully you would be able to apply
6 what you have learned in Montana to South Dakota and come up
7 with something that would work well for our state and to a
8 certain extent that you can rely on some of the information you
9 learned up in Montana, that would be great.

10 MR. HANSON: If I could offer a comment. In light of
11 where we are relative to our industry peers for reliability and
12 the like, I think we need to think carefully about the value
13 and necessity of such a thing. But cutting to the chase, if
14 the commission believes there is value, it would like to see
15 something, we would be happy to go back and propose a study of
16 some sort. We would likely try to have it more targeted to
17 specific issues or concerns that might be raised just to limit
18 the scope and expense and make the maximum use and value out of
19 the information we have already received. But if that's the
20 desire of the commission, we can work on that and I would just
21 comment we need not do it through this docket or other formal
22 docket. We can simply work with the commission to satisfy you
23 that our approach to maintaining reliability is sound and
24 reflective of solid industry practice.

25 CHAIRMAN SAHR: Well, and whether right or wrong,

1 those are some of the concerns we do hear from the general
2 members of the public. So I think looking at what you have
3 learned in Montana, looking at maybe some of the indicators
4 that you have, perhaps you and staff could come up with
5 something that would be sensible and again be something that
6 would be able to be done at a fair cost without unduly
7 burdening the company but at the same time being able to look
8 at some South Dakota specific issues and just kind of be I
9 guess I would say a checkup, so to speak, to make sure the
10 system is in good shape going forward.

11 It has been mentioned a couple times about Babcock's
12 interest in wind and transmission and I have also read about
13 ethanol plants and so on and so forth. Do we have any concern
14 from the commission standpoint -- a lot of those I think are
15 positive things for the state. Most people are supportive of
16 wind power, new transmission ventures could help make us more
17 of an energy exporter than we already are, so I think there are
18 some advantages with the expertise within the overall
19 organization.

20 Should we have any concerns about making sure that
21 these type of, if these were to go forward, these type of
22 ventures were treated as an arm's length transaction from a
23 consumer standpoint to make sure that because you are dealing
24 with another Babcock & Brown or BBI entity, that we are not in
25 a situation where we have to be concerned, and I will

1 incorrectly use a term, but just to kind of put it out there of
2 some type of cross subsidization or some situation where a
3 Babcock entity gets better treatment than maybe the Broin and
4 Company entity would receive or vice versa with a contract for
5 maybe wind energy? We want to make sure that the consumers are
6 being adequately represented and not paying any sort of
7 additional costs that they shouldn't be from that entity and,
8 again, there are a lot of positives from the expertise in these
9 other areas, but it does give us a little bit of concern just
10 to make sure it's being done fairly and that the rate payers'
11 interest is being respected.

12 MR. HANSON: Mr. Chairman, I think the financial
13 structure and ring fencing that we talk about prevent any kind
14 of cross-subsidization. I do think as we approach that,
15 NorthWestern will look at what are the needs of our utility
16 consumers in this state and we look at things like renewable
17 resource generation, transmission needs. I would just say I
18 think it is a fair line of inquiry on the part of the
19 commission to make sure the process we use to identify
20 contractors or bidders or project developers was fair,
21 transparent and competitive and decisions made at arm's length.
22 We would anticipate that kind of a review.

23 CHAIRMAN SAHR: And then just to make sure I have it
24 clarified, Commissioner Hanson did a good job talking about the
25 disclosure and transparency issues. You talked about

1 NorthWestern's filings, the 10K, the 10Q and so on and so
2 forth. The transparency issues, do they, the ability for this
3 commission to look into any of the investment concerns or any
4 of those type of issues, financial records, so on and so forth,
5 is it of your opinion, do we have the ability to look at
6 NorthWestern's or do we have also the ability to review BBI's,
7 B&B's, whoever might be up the line from NorthWestern? Because
8 I want to make sure that I understood that, if you were just
9 speaking of it strictly in terms of we can look at
10 NorthWestern's books and look at their filings, but do we have
11 the ability to also look at the parent's information?

12 MR. HANSON: Mr. Chairman, I will start by just
13 telling you I haven't given a great deal of thought to that.
14 It is a publicly traded company. BBI has substantial
15 information available in the public domain on its activities,
16 its finances and the like. I think in terms of specific
17 review, the commission can look at NorthWestern and anything
18 else that would impact rates to South Dakota customers, so to
19 the extent there are any costs associated with upstream things,
20 I don't expect that to occur, frankly, but I think the
21 commission would be able to satisfy itself on the
22 reasonableness of such costs and the like.

23 CHAIRMAN SAHR: I'm not trying to say whether it's a
24 good or a bad thing, so to speak, I'm trying to figure out what
25 concerns we might have to make sure that we adequately

1 understand how the overall company is being run and the sort of
2 financial backing involved with the deal. Now, the parent
3 company, is that incorporated under Australia laws; is that
4 correct?

5 MR. HANSON: The parent for NorthWestern would be a
6 U.S. corporation. Tom, you correct me, I believe it's called
7 BBI U.S. Holdings II Corporation.

8 CHAIRMAN SAHR: Going all the way up -- who is at the
9 top of the food chain?

10 MR. HANSON: Babcock & Brown Infrastructure Limited.

11 CHAIRMAN SAHR: Where are they incorporated?

12 MR. HANSON: They are in Australia.

13 CHAIRMAN SAHR: I assume obviously they follow
14 Australian disclosure laws and filings and so on and so forth.

15 MR. HANSON: Yes.

16 CHAIRMAN SAHR: In your mind are there any substantial
17 differences between Australian laws and United States laws when
18 it comes to disclosures and transparency and those type of
19 issues?

20 MR. HANSON: I'll let Tom comment if he has one. I'm
21 obviously not an expert on Australian law, but our review of
22 that, they are very similar, not identical but certainly no
23 significant differences that I'm aware of.

24 MR. KNAPP: I don't have any other comment.

25 CHAIRMAN SAHR: You don't know if there's any -- I

1 don't want to misstate you and I'm not -- believe me, I'm not
2 trying to put you on the spot as an expert on Australian
3 securities exchange law because that would be a difficult spot.
4 I'm just curious, and if you don't know the answer for sure,
5 maybe you can do a little bit of research and just get back to
6 the commission on that.

7 MR. HANSON: We will be happy to follow up, Mr.
8 Chairman. I am saying our understanding of it is the
9 differences are not significant.

10 CHAIRMAN SAHR: And one of the challenges that we face
11 when we are having a proceeding like this where we are asking
12 questions, and typically our commission proceedings, as you
13 know, involve a significant amount of staff preparation, input.
14 We have the ability to have our staff or it is charged with
15 taking an independent review. We have the commission and
16 advisors who assist the commission. And one of the challenges
17 that I think I see facing the commission is that state
18 procedure gives us a lot of I guess the ability to continue to
19 look at -- ask the follow-up questions and go down the roads
20 that we think are appropriate because a lot of times, like we
21 are doing here today, sometimes you can just on the spot
22 adequately answer questions and sometimes we need follow up,
23 and I think certainly our staff has done a good job
24 historically working with NorthWestern and other utilities on
25 these sort of issues, whether it's reliability, rates,

1 transparency, on kind of an ongoing basis.

2 And I don't want to -- your attorney is here and I
3 don't want to put you in a difficult spot, but I hope you can
4 appreciate one of the challenges we face is, first of all, it
5 becomes kind of cumbersome because we are dealing with a
6 situation like this as opposed to an open PUC docket. Second
7 thing is as we go to the federal level, we have the ability to
8 intervene in the case, but we really don't necessarily have the
9 ability to ask the sort of questions and have the sort of
10 follow-up that we do at the state level, and again, I know you
11 have a pending motion and I understand your position on that
12 and certainly you have got a good faith position and this
13 commission will end up ruling on that.

14 But just out of curiosity, Mike, going forward, with
15 the possibility we may not have a state review, how do we --
16 what sort of commitment can we get from NorthWestern or what
17 sort of -- what sort of ability do you see us -- on the federal
18 level, we can raise interest but we are not running the show at
19 the federal level. How do we keep this sort of dialogue open
20 and keep going through these sort of follow-up questions that
21 we need? Maybe I can look at my attorney as well on that. You
22 know how these things are, it's an evolving target, it's a
23 learning process. How do we move forward if we don't have
24 state review?

25 MR. HANSON: Mr. Chairman, commissioners, I'm glad you

1 asked the question. Without commenting on the jurisdictional
2 question that has been discussed at some length and that will
3 be decided by this commission, we don't presume to tell the
4 commission what its jurisdiction is, simply ask that you decide
5 what it is and then if you determine you have such
6 jurisdiction, we are asking for approval.

7 Likewise, the participation in FERC, the reality of it
8 is we are regulated by this commission in this state and we are
9 interested in making sure that you have whatever information
10 you need to make sure that you are comfortable with our
11 company, our service, and our prospects of going forward. So
12 if it turns out that the formal dockets are resolved in one
13 fashion or another, it doesn't prohibit the commission from
14 calling us in on an informal basis, but open to the public,
15 open meeting and ask questions and we will be pleased to
16 provide the information you ask for.

17 CHAIRMAN SAHR: And the other challenge in that, if we
18 do not have a state proceeding, of course is the inability of
19 the intervenors, members -- I know generally members of the
20 public don't have standing before the commission, but the
21 inability for the people on the streets and in the communities
22 of South Dakota to have an opportunity to ask questions. And
23 as smart as we all sometimes think we are in this meeting room,
24 a lot of times you get some good information.

25 Are you willing to commit to some type of process or

1 some type of ability for the public to have an opportunity,
2 short of hiring an attorney in Washington, D.C., to go out
3 there and be able to maybe raise some issues? And frankly, I
4 think from a public relations standpoint, it may give you the
5 opportunity to raise comfort level and sometimes the unanswered
6 questions are more dangerous than reality as going forward, and
7 I'm curious to see if you would be willing to talk about some
8 type of process along those lines. I know you have done some
9 public meetings, but maybe something a little more in-depth.

10 MR. HANSON: We are, Mr. Chairman. I get calls,
11 e-mails, letters every day. We respond to the best of our
12 ability. If the commission would open it up to public question
13 or comment, that's more than fine with us, except to the extent
14 they are asking for proprietary business information that we
15 couldn't provide, absent a protective order of sorts. But
16 those are very limited, as you know. So the general types of
17 questions that may come up, we would be pleased to answer those
18 as well.

19 CHAIRMAN SAHR: And we may have some additional
20 comments or questions from commissioners. But those are what I
21 had and I would just pose it to Mr. Smith. One of the things
22 we did see from Montana was some type of agreement I believe
23 between NorthWestern and -- should I call it an agreement?
24 What should I call it it? But basically they reduced some of
25 these similar type issues to writing and I'm curious, is that

1 something we should be looking at doing here, having staff I
2 don't know if I want to say negotiate but work with
3 NorthWestern on those type of things.

4 MR. SMITH: In the bankruptcy case, again I'm not sure
5 whether, Tom, you were there or not. I know you were, Mike.
6 In the end the Montana participation in the bankruptcy case was
7 resolved with an agreement, a stipulation and agreement, which
8 I regrettably gave away my copy of today. But I can't remember
9 exactly what it was called. But one of the thoughts we had,
10 and I'm not trying to muscle you here, I'm really not, but just
11 to throw out as something maybe for the commissioners to decide
12 whether that's a path they might want to go down via the staff,
13 is whether NorthWestern -- you have made various commitments
14 and I'm assuming you believe by making those in a FERC
15 proceeding that those are binding on the company.

16 MR. HANSON: Yes.

17 MR. SMITH: And whether you would be willing to take
18 those and a few of the other things, I don't think I have heard
19 anything that sounds too unreasonable, and of course you may
20 have a different view, but of maybe entertaining discussions
21 with the staff on a fairly expedited basis in terms of maybe at
22 least trying to put together maybe such a settlement document
23 or stipulation, whatever we want to call it, between this
24 commission and the company for purposes of at least maybe
25 reaching an acceptable resolution of our concerns at the

1 federal proceeding. And again I don't want to presume any
2 outcomes, but at least whether the company believes it would be
3 worth going down that road of discussions to see whether we
4 could find a mutually agreeable basis. And again you have
5 heard the discussions here today. We have a transcript, so you
6 know, we will all know what the concerns of the commissioners
7 are. I just appreciate your views on that and also if the
8 members of the commission have any thoughts on that.

9 MR. HANSON: John, I would make a quick comment and
10 Tom can jump in. In the bankruptcy setting, the commission and
11 consumer council were parties in interest and so there was a
12 settlement agreement between the parties in interest and it was
13 submitted to the Court so that it was approved by the Court and
14 therefore backed by the Court order. It's analogous, I
15 suppose, to the extent you consider the commission as a party
16 in interest in the FERC proceeding, although as you pointed
17 out, it's a matter of right. Is it necessary to have it then
18 adopted and approved by order? I don't know. Yes, we would
19 think that the commitments and statements we make are binding
20 on us. But if it gives this commission some additional
21 comfort, we would be pleased to talk about that.

22 MR. SMITH: Well, and I think one of the reasons for
23 that is -- and I agree probably these are probably binding. I
24 think Chairman Sahr raised the issue of not only the expense
25 but the difficulty that it presents sometimes for this

1 commission to have to deal with the enforcement of commitments,
2 if you will, before a federal agency. It just can be an
3 awkward deal for us to -- a situation for us to deal with.

4 And also there are a few concerns the commissioners
5 have raised that at least it didn't appear to me or in my
6 hearing of them to be too burdensome, but they have concerns
7 that go a little bit beyond what may or may not be raiseable
8 really as issues in a FERC proceeding. I mean things like a
9 distribution reliability study, that's not within FERC's
10 jurisdiction. It is within our jurisdiction, albeit perhaps
11 not with the proceeding we have pending now. But it most
12 assuredly is within the authority of this commission, I think,
13 as you pointed out, Mike, to request such a thing, just under
14 our ordinary regulatory powers here.

15 I'm just throwing that out. Again I'm not presuming
16 an outcome, I'm just saying it just strikes me as a situation
17 where there doesn't appear to me to be a huge divergence
18 between what I'm hearing the commissioners discuss as concerns
19 and what you are willing to make as commitments, and if there's
20 a way for that to resolve itself, it would seem to make sense
21 to me to see if we couldn't explore a way to go down that path
22 and make it happen.

23 MR. HANSON: We agree.

24 CHAIRMAN SAHR: Can I add one more? And this will be
25 very, very brief. Mike, I believe you are probably okay with

1 this, I want to make sure, and maybe legally it's not even an
2 issue, but if we have any sort of pending issues or things that
3 are ongoing or that would predate the official approval of the
4 actual transaction, is the new NorthWestern or however you want
5 to look at it, are you willing to continue to work on any sort
6 of I guess I would just say pending matters?

7 MR. HANSON: Certainly, Mr. Chairman. Certainly.

8 VICE-CHAIR JOHNSON: Mr. Smith, I would -- I'm
9 changing topics so go ahead.

10 MR. SMITH: Yeah, and on that issue, I was a corporate
11 attorney before coming here. I think I can assure the
12 commissioners that whether they want to be liable for them or
13 not, except to the extent they are discharged in bankruptcy,
14 they don't have any choice in the matter. That's the form of
15 this --

16 MR. HANSON: But we are still willing.

17 MR. SMITH: It's a merger transaction and both parties
18 to a merger are bound by the obligations of the constituent
19 entities.

20 VICE-CHAIR JOHNSON: I just wanted to comment on your
21 suggestion, Mr. Smith. I'm kind of 50-50 on it. I see real
22 benefits either way. I think it sounds -- what I'm hearing
23 from the commissioners, there are still some concerns, perhaps
24 a bit milder, those concerns are more mild than they were
25 before we began this conversation. But I see some benefit in

1 making sure that the South Dakota PUC has made note of those
2 concerns in the FERC proceeding through a pleading, although I
3 also see real benefit to getting some sort of a settlement
4 agreement so that we know, we have absolute faith that
5 everything that's been committed to by NorthWestern is on some
6 level enforceable by this commission. What do we need -- do we
7 need to direct you or other staff members to begin a dialogue
8 with NorthWestern? Obviously no official action -- nothing can
9 be approved by the commission without a meeting, but. . .

10 MR. SMITH: Well, I think at some point, if we want to
11 go down that route, obviously we have to have discussions and
12 that has to lead to something for you to approve, and again I'm
13 not presuming that will happen because maybe it won't. And
14 someone has to actually -- that's where the rubber hits the
15 road always, is somebody has to actually do the work. I think
16 that ordinarily it's the staff that does that. I guess if you
17 want to direct me to go down that path and become the staff in
18 this case, you can do that and at that point I guess if that
19 were to happen, I would have to relinquish my commission
20 counsel role on this to Ms. Wiest.

21 VICE-CHAIR JOHNSON: I don't know that I care about
22 what particular personnel does it. I would leave that to our
23 executive director to make that determination. Go ahead.

24 MR. SMITH: I agree.

25 VICE-CHAIR JOHNSON: And I think it also is important,

1 I think it's very important to note that what we would be
2 talking about is only a resolution of concerns vis-a-vis the
3 federal proceeding and that that isn't determining anything
4 about the jurisdiction of this commission over a state
5 proceeding, but really rather it deals with our pleadings with
6 regard to FERC. Am I right in making that clear?

7 MR. SMITH: I think that's -- it's not that you
8 couldn't settle the state proceeding, but you can't settle it
9 in the current procedural status because you have got a bunch
10 of intervenors that have interests in the proceeding and unless
11 they bought into anything that was done, no, you can't resolve
12 the state proceeding without resolving the concerns -- without
13 having the intervenors join in the stipulation. And I don't
14 know, maybe that's possible.

15 One of the issues that's very challenging here is, it
16 really is, is the issue of timing at the FERC level. That's
17 really what gets us in this bizarre quandary here. Initially
18 we didn't know what the timing would be, and we did know, we
19 have known from the outset that there was a jurisdictional
20 issue presented because we know what our own statutes say.

21 I guess it wasn't clear originally whether or not --
22 and ideally what would have been nice was for us to have been
23 able to resolve that early on before we had to become very
24 actively involved at the FERC level by default, but we were
25 unable to make that happen and so now we are just trying to

1 juggle this in a way that gets a satisfactory resolution for
2 everybody, hopefully.

3 MR. HANSON: Mr. Chairman, John, if I could, I know
4 there's a short time frame and having given one extension, FERC
5 may desire to get the documents in. I do think, though, it's
6 fairly common practice at FERC if they receive notice from both
7 sides they are in discussions for potential resolution of the
8 issues, that they would defer a filing date. You could ask for
9 that here. I wouldn't rule out the possibility that with a
10 concentrated effort, that we could work through this between
11 now and the 14th as well.

12 MR. SMITH: Okay. It might be almost logistically
13 necessary, Mike, if we were going to go down that road to get
14 some kind of an -- again, I know, I have been through enough
15 acquisitions myself to know how time critical they are, but on
16 the other hand, this is an important thing and I think we are
17 talking in the weeks, not months here to pound something out,
18 maybe even less than that. But at least in that kind of time
19 frame, not a long time.

20 VICE-CHAIR JOHNSON: I know we need to get to some
21 point of resolution and to answer the question of how shall the
22 commission proceed, but I guess before we were to direct staff
23 to enter into discussions with NorthWestern, I want to get a
24 feel from the other commissioners, not to put anybody on the
25 spot, but if they have some comment as to whether or not they

1 think this is the right approach. I would be interested in
2 hearing other opinions, I guess.

3 COMMISSIONER HANSON: Well, if we give staff an
4 assignment, we need to be specific as to what the assignment is
5 so that they don't just get together and chat. We need to --
6 are there specific areas that we want to have some conclusions?
7 Through the discussion here, I think we have expressed some
8 concerns, but I don't know what -- I have expressed it to John
9 earlier, I get into a bit of a challenge here. At what point
10 do we decide that we do or we do not have jurisdiction? If we
11 don't have jurisdiction, then I get in a little bit of a -- I'm
12 wondering if we go through this process and then we decide
13 later on we don't have jurisdiction, does that come into play
14 here, or do we get the opportunity to just go ahead and sit
15 down and reach some agreements with them regardless of that?

16 MR. SMITH: Well, I think FERC clearly does have
17 jurisdiction.

18 COMMISSIONER HANSON: Exactly, and I recognize we are
19 talking about that at this time. But we are also talking
20 about --

21 MR. SMITH: Some other things, and I agree. The
22 jurisdictional -- the oral argument, and please correct me if
23 I'm wrong, Dave, is scheduled for October 19th is my
24 recollection. Is that it?

25 MR. KNAPP: I think it's the 12th, but I could be

1 wrong.

2 COMMISSIONER HANSON: To answer your --

3 MR. SMITH: The decision is on the 19th, we have
4 scheduled the decision for the 19th. So the problem is -- and
5 we have got a filing that's got to be made at FERC on the 14th
6 and so I think what we are talking about is do we want to
7 pursue going down the path of some positive outcome for both
8 the commission and NorthWestern and everybody here in the room,
9 including the intervenors, that we might be able to effectuate
10 in the FERC proceeding, and again we can't stipulate to a
11 resolution of the state proceeding until the issues in that
12 case have been resolved, unless all the intervenors decide to
13 go down that path, too.

14 COMMISSIONER HANSON: To answer the question as I was
15 saying it, I don't have a problem with our staff meeting with
16 the NorthWestern folks and attempting in some way to flesh out
17 and memorialize some of the concerns that we have expressed
18 here today. But I don't know to what degree we need to specify
19 these are our specific concerns or do we just let them go ahead
20 and sit down with the report that's being typed out now and go
21 through that process?

22 MR. SMITH: I thought the recitations made by the
23 various commissioners were fairly easy to understand and gave a
24 pretty good framework. If you feel you want to do it via a
25 more explicit direction, I think we can do that. I don't know

1 if we can get that accomplished here this morning, because we
2 got a whole lot of other people in the crowd and --

3 COMMISSIONER HANSON: If you interpret our positions
4 thusly, then I don't have a problem with that, no.

5 CHAIRMAN SAHR: Here is what I -- I see Mr. Gerdes
6 wants to make a comment. Here is what I might suggest, is the
7 question today is whether or not to file a protest. I believe
8 that we could file the protest, and Mike, you are an attorney,
9 Dave, you are, too, a lot of attorneys in the room, but protest
10 doesn't necessarily mean that we are -- it's the legal term
11 more than the lay term. Set forth some of these issues at the
12 federal level, not try to get something done in less than a
13 week, and lay out some of those concerns.

14 Then I do believe there is some merit to staff and
15 NorthWestern, based on the general propositions set out today
16 by the commissioners, plus I would give them a fair amount of
17 leeway to also look into what else reasonably may come up,
18 start to talk about this, and I don't know if we get to a
19 situation where ultimately we say to the feds, everything is
20 taken care of, or maybe a situation where we have gotten these
21 assurances and if -- again this becomes a little bit of a
22 negotiation, but certainly whether we could get everything
23 resolved or if we get things partially resolved and so to speak
24 some of the issues taken off the table, if after staff and
25 NorthWestern meets and they can come forward to the commission

1 with either kind of a full resolution or partial resolution
2 that both NorthWestern and the commissioners are comfortable
3 standing on, signing onto, I think that has significant value
4 and would be progress.

5 But we also have to know going into it that it may not
6 be a full resolution, it may be partial issues, partial
7 resolutions and some of these issues being resolved and not all
8 of them, and there may be still a level of inquiry that the
9 commission feels it's going to go forward on. This morning you
10 said a lot of the right things. At the same time, the ability
11 to look into the transaction, understand the finances and so on
12 and so forth, you can say it's a great deal, but without a
13 little more due diligence on behalf of the commission or
14 consultants on our part or staff, it's pretty hard at this
15 point in time for us to say that it is or it isn't. So I do
16 think there's merit to that, but I also think where we have an
17 August 14th deadline.

18 MR. SMITH: We do, but if I heard you right, Mike, you
19 might be amenable to at least some level of stipulation with us
20 to some deferral of that date, if we are genuinely engaging in
21 discussions.

22 CHAIRMAN SAHR: We would have to make sure with FERC
23 that that's acceptable.

24 MR. HANSON: We certainly are, John. It may come
25 after checking with FERC, you may decide that the most

1 reasonable course of action is to go ahead and make a filing if
2 for no other reason as a placeholder on your issues and go
3 forward.

4 VICE-CHAIR JOHNSON: If it's appropriate at this time,
5 Mr. Chair, I echo your comments. I wonder if sort of a three-
6 prong motion isn't in order. I'll offer it just for discussion
7 purposes, but first that we do file additional comments in the
8 FERC proceeding, secondly, that we do authorize staff to enter
9 into discussions with NorthWestern, and three, that we do allow
10 our FERC counsel to retain the services of a financial
11 consultant so we can get a better idea of exactly what does
12 this mean for the customers of NorthWestern and maybe answer
13 some of these questions that Chairman Sahr had about
14 transparency and filing requirements in Australia.

15 MR. SMITH: Before there's a second, might I -- can we
16 incorporate the possibility that we might get a deferral of the
17 14th date in your motion? I'm assuming it's maybe implied, but
18 that if we were to obtain a deferral of that date that -- do
19 you want us to attempt to obtain a deferral of that date or not
20 do you think?

21 VICE-CHAIR JOHNSON: Well, I am more than happy to
22 allow staff the discretion to work on that and I'll add that to
23 my motion.

24 MR. SMITH: I think that's sufficient, thank you.

25 COMMISSIONER HANSON: I'll second the motion.

1 MR. HANSON: Go ahead and vote.

2 CHAIRMAN SAHR: I'm going to concur. We have
3 forgotten poor Mr. Gerdes, he's been at that mike for ten
4 minutes.

5 MR. GERDES: I just wanted to answer Mr. Smith's
6 question. I've got the scheduling order here, took me a little
7 rummaging to find it, but October 19th is the date that's set
8 for oral argument on the jurisdiction motion. And the
9 scheduling order does not say when the decision will be made.
10 That's the last entry, just so you know.

11 CHAIRMAN SAHR: I think that concludes item number one
12 this morning and I do want to thank you gentlemen for coming to
13 town and being very forthcoming in answering the questions. We
14 appreciate it.

15 MR. HANSON: Thank you, Mr. Chairman and
16 commissioners.

17 (Whereupon, the proceedings were concluded at 11:10
18 a.m.)
19
20
21
22
23
24
25

C E R T I F I C A T E

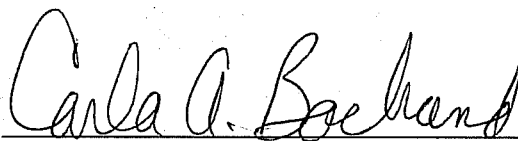
STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

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 9th 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.