

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Otter Tail Corporation :  
Advance Determination of : Case No. PU-06-481  
Prudence Application :

Montana-Dakota Utilities :  
Co., a Division of MDU :  
Resources Group, Inc., :  
Advance Determination of : Case No. PU-06-482  
Prudence Application :

TRANSCRIPT OF  
HEARING

(VOLUME III)

Taken At  
State Capitol  
Bismarck, North Dakota  
June 26, 27 & 28, 2007

BEFORE THE HON. AL WAHL  
-- ADMINISTRATIVE LAW JUDGE --



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**C O N T E N T S (continued)**

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1           (The proceedings continued, commencing at  
2 8:00 a.m., Thursday, June 28, 2007, as follows:)

3           JUDGE WAHL: We are on the record,  
4 counsel. The record will show that it is eight  
5 o'clock, June 28, 2007, the date for the  
6 continued -- or further hearings of Otter Tail  
7 Corporation and Montana-Dakota Utilities Co.  
8 advance determination of prudence applications for  
9 their respective participation and ownership  
10 interest in the Big Stone II Generating Plant, the  
11 application of Otter Tail Corporation being Public  
12 Service Commission Case No. PU-06-481, and the  
13 application of Montana-Dakota Utilities Co. being  
14 Public Service Commission Case No. PU-06-482.

15           Mr. Kuntz, with you, I think, yet.

16           MR. KUNTZ: Thank you, Your Honor. We  
17 would call Duane Steen.

18           JUDGE WAHL: Mr. Steen, as you are  
19 doubtless aware, your testimony is required to be  
20 under oath and in North Dakota I am required by law  
21 to advise you regarding perjury before  
22 administering the oath. Perjury is a false  
23 statement of material fact which you do not believe  
24 to be true, in other words, generally speaking, a  
25 lie. In North Dakota perjury is a Class C felony,

1 punishable by a fine up to \$5,000, imprisonment for  
2 a period of up to five years, or both. Will you  
3 raise your right hand, please?

4 (Witness sworn.)

5 JUDGE WAHL: Mr. Kuntz.

6 **DUANE STEEN,**

7 being first duly sworn, was examined and testified  
8 as follows:

9 **DIRECT EXAMINATION**

10 **BY MR. KUNTZ:**

11 Q. State your name and business address,  
12 please.

13 A. My name is Duane Steen. I'm employed at  
14 400 North Fourth Street, Bismarck, North Dakota  
15 58501.

16 Q. Who is your employer?

17 A. My employer is Montana-Dakota Utilities.

18 Q. What's your position with Montana-Dakota?

19 A. I am -- my title is director of new  
20 generation development.

21 Q. What are your responsibilities for that  
22 position?

23 A. I'm responsible to track new generation  
24 technologies, as well as being responsible for  
25 development of those -- of new resources to meet

1 our capacity and energy needs for new generation to  
2 meet our customers' demand.

3 Q. What's your educational background, Mr.  
4 Steen?

5 A. I have a bachelor of science degree from  
6 North Dakota State University.

7 Q. And your employment background?

8 A. My employment background, I have been with  
9 Montana-Dakota Utilities in various positions,  
10 starting with plant engineer up through my current  
11 position, and that's taken me 33 years with MDU.

12 Q. Have you caused to be prepared prefilled  
13 testimony and exhibits in this proceeding?

14 A. I have.

15 Q. I'm showing you what should be in front of  
16 you marked as Exhibit MDU-204 and 205. Do you have  
17 those exhibits there?

18 A. I do.

19 Q. And are those copies of your prefilled  
20 direct testimony and accompanying exhibit?

21 A. That's correct.

22 Q. Do you have any corrections or changes to  
23 make to those exhibits?

24 A. I do not.

25 Q. And if I were to ask you the same

1 questions that appear in Exhibit MDU-204, would  
2 your answers be the same as they appear in that  
3 exhibit?

4 A. They would be.

5 MR. KUNTZ: We would offer MDU Exhibits  
6 204 and 205.

7 JUDGE WAHL: Mr. Breen.

8 MR. BREEN: No objection.

9 JUDGE WAHL: Mr. Binek.

10 MR. BINEK: No objection.

11 JUDGE WAHL: MDU Exhibits -- or Exhibits  
12 MDU-204 and 205 are each received.

13 Q. (MR. KUNTZ CONTINUING) Mr. Steen, could  
14 you provide the Commission with a summary of your  
15 direct testimony, please, at this time?

16 A. I can. Basically my testimony covers our  
17 activities to review alternative generation sources  
18 which led us to BSPII participation, which is, we  
19 believe, the most cost-effective future resource.

20 As indicated by Ms. Stomberg earlier, our  
21 primary need for baseload power supply was the loss  
22 of our 66 megawatt baseload purchase agreement with  
23 Basin Electric Power Cooperative. In addition to  
24 that, of course, we want to cover our future load  
25 growth for our customers.

1           Our energy marketing department indicated  
2           that we are entering into a market capacity  
3           deficient time period. This is exactly as  
4           indicated by Mr. Uggerud in his prior testimony.

5           Like Otter Tail Power, MDU visited with a  
6           number of regional utilities, including various IPP  
7           groups that came to us about available capacity and  
8           energy. At that point we were unable to find any  
9           match for our needs. Knowing that baseload  
10          coal-fired opportunities don't come along very  
11          often, when Big Stone did present itself, we looked  
12          at it. But that being said, we wanted to test the  
13          waters further, so we issued an RFP both in 2004  
14          and again in 2006 to cover our baseload needs. The  
15          responses to that -- to both those RFPs were  
16          minimal, but about 50 percent of the responses did  
17          come from -- from IPPs, so we did test that market.  
18          But, again, none of those -- none of those actually  
19          matched what we were looking for for baseload  
20          requirements.

21          In addition to issuing two RFPs, we also  
22          participated in the Lignite Vision 21 Program. The  
23          Lignite Vision 21 Program is an unprecedented  
24          partnership between the State of North Dakota and  
25          individual utilities. There were four individual

1 entities that asked for funding in the Vision 21  
2 Program. One of those four was Westmoreland Coal,  
3 who was looking at exactly the same site that we  
4 identified, which was Gascoyne, North Dakota. The  
5 Industrial Commission asked us to investigate  
6 Gascoyne with Westmoreland, which we eventually  
7 did. Our initial studies for that site were for a  
8 500 megawatt lignite-fired mine mouth unit.

9           Knowing that MDU could not take the  
10 complete 500 megawatts off that unit, both  
11 Westmoreland and MDU visited a number of regional  
12 utilities throughout the MAPP region at that time  
13 trying to identify partners that would take some of  
14 the 500 megawatt unit. Being unable to identify  
15 any partners because of transmission issues and  
16 other issues at the site, we eventually reduced the  
17 size to 250 megawatts and then -- to test whether  
18 economy of scale would have a large impact on that  
19 unit. Seeing that it was somewhat significant, and  
20 still 250 megawatts at that point was more than MDU  
21 could take by itself, we again reduced the size to  
22 175 megawatts and investigated it further. The 175  
23 megawatts in comparison to some of the other  
24 options we had reflected that we had lost the  
25 economy of scale at that size. So there was no

1 cost -- it was no longer cost-effective compared to  
2 participation in Big Stone II.

3           However, the information we gathered from  
4 the two RFPs in addition to individual  
5 conversations with independent power producers that  
6 came to our table and our experience in the Lignite  
7 Vision 21, that information was utilized to  
8 generate base information that was given to PA  
9 Consulting for them to evaluate the optimal  
10 resource plan for MDU. That being said, their  
11 investigation, I think as you heard earlier,  
12 determined that Big Stone II was indeed the lowest  
13 cost baseload resource expansion option for MDU.  
14 And that concludes my summary.

15           Q. Mr. Steen, I would like to cover a few  
16 things that have come up during the course of the  
17 hearing that you may have some background on, but,  
18 first, could you provide us a little bit more  
19 information about the responses to the RFPs, why  
20 they weren't able to meet MDU's needs at the time?

21           A. The initial RFP that was issued in 2004,  
22 we had three respondents. Our RFP was for  
23 somewhere between 70 and 100 megawatts of baseload,  
24 is what we were looking for at that time in 2004.  
25 None of the respondents were able to give us any

1 more than 50 megawatts and generally it was  
2 gas-fired at that point. Most of the contracts  
3 were also for short durations, no longer than five  
4 years.

5 Q. And then the second RFP.

6 A. In the second RFP in 2006 there was only  
7 two respondents. One of them was for, again, the  
8 250 megawatt gas-fired unit, which MDU would be  
9 responsible for taking the entire output which  
10 didn't match our need. 250 megawatts was more than  
11 we needed. The second response was indeed from a  
12 coal-fired unit in south central North Dakota,  
13 which we continued -- or south central United  
14 States -- excuse me -- which we continued to  
15 monitor. However, that is a 750-megawatt  
16 coal-fired unit of which we would take whatever  
17 piece of that we wanted. However, the balance of  
18 the unit has not been subscribed to date.

19 Q. So at this point it may or may not go  
20 forward?

21 A. So at this point it may or may not go  
22 forward. As far as I know, they do not have any of  
23 their permits in place.

24 Q. Can you give the Commission a little bit  
25 of background in terms of what went into the

1 determination by Montana-Dakota to subscribe to 19  
2 and a third percent of the Big Stone II Plant?

3 A. Sure. Upon being invited to participate  
4 in Big Stone II, it was a business decision at that  
5 point to have a number of partners take an equal  
6 amount of the unit to -- because there was seven  
7 partners, it was a huge undertaking, and we wanted  
8 to -- to have at least four of the partners have  
9 equal participation, and our 19 percent was indeed  
10 less than our projected need for baseload at that  
11 point in time. 119 -- the 116 megawatts we were  
12 going to get off the unit would only give us  
13 surplus for one year. In 2012 we would again be  
14 deficit.

15 Q. But couldn't you have taken a smaller  
16 piece and then looked for another plant as it come  
17 along?

18 A. We absolutely could have taken a smaller  
19 piece, for example, 50 megawatts or 25 megawatts.  
20 However, our forecast at that time was that we  
21 needed at least 120 megawatts, and these projects  
22 do not come along every day. As you remember, our  
23 participation in Coyote was in, I think, 1981 and  
24 nothing has been built since then, so these do not  
25 come along every day, so we needed to cover

1 ourselves for at least up to the time that the unit  
2 was built and, hopefully, would have enough for a  
3 little bit into the future.

4 Q. There was a question, I believe, that was  
5 raised about the amount of wind that could possibly  
6 be built in MDU's footprint and added to and also a  
7 separate question how much could be added to MDU's  
8 system. Do you have any opinions on either of  
9 those two questions, Mr. Steen?

10 A. Yes, I do. We've been involved in wind  
11 generation for a long time. Our history with wind  
12 is back into the 1980s. I think you heard  
13 testimony earlier that MDU was the first utility in  
14 North Dakota to sign a PPA with a wind developer,  
15 but that project never come to fruition. So we  
16 have been monitoring wind for a long time.

17 In our model that we utilized with looking  
18 at PA's model, I guess referring to Mr. Heidell's  
19 testimony yesterday, you heard that we had 60  
20 megawatts in that model. A year ago when we ran  
21 that model, we indeed had one signed contract for  
22 31.5 megawatts, a wind farm in South Dakota, again,  
23 which never was built, but at the time the model  
24 was generated we knew we had to sign a contract, so  
25 we input that into the model. We also input into

1 the model our renewable portfolio objective in the  
2 State of Montana, which basically was 20 megawatts  
3 in 2010 and an additional 10 megawatts in 2014. So  
4 our model utilized 60 megawatts.

5 Now, whether or not that could have been  
6 built will really depend upon the queue process in  
7 MISO. The only way we would know whether or not  
8 that will actually fit into our system is get in  
9 the queue with MISO and then start doing the  
10 transmission studies. So whether or not an  
11 additional hundred megawatts will fit on our system  
12 or 200 megawatts will fit on our system we won't  
13 know until we actually get in the queue with MISO.  
14 Generally the MISO queue transmission modeling is  
15 somewhere between \$250,000 and a million-dollar  
16 venture.

17 Q. So you are in the queue for the Montana  
18 project?

19 A. We are in the queue for the Montana  
20 project.

21 Q. And once that's complete, what's the plan?

22 A. We are also in the queue for the South  
23 Dakota 30 megawatts -- pardon me. Can you --

24 Q. But, I mean, after the Montana project is  
25 built, what is Montana-Dakota's thoughts with

1       respect to additional wind?

2           A.     Okay.  We are currently internally doing  
3       ratepayer impact tests for -- to meet the North  
4       Dakota renewable portfolio objective.

5           Q.     When the AVS -- when you knew the AVS  
6       contract was going to expire in '06, was wind  
7       looked at as a replacement for that particular  
8       contract?

9           A.     When we knew the AVS contract was going to  
10      expire, wind was not looked at as replacement for  
11      baseload.  In the -- in the MISO system, we have to  
12      have accreditable capacity.  Wind only -- at this  
13      point in time in the MISO system wind only gets a  
14      20 percent accreditable capacity factor.  So in  
15      order to replace 60 megawatts of baseload, one  
16      would have to install at least 300-plus megawatts  
17      of wind in order to get the same accreditability.

18          Q.     Well, baseload or any capacity?

19          A.     Baseload or any capacity.

20          Q.     If you want -- any capacity that you want  
21      to provide with wind would basically take about a  
22      one-fifth of what you have?

23          A.     That would be correct.

24          Q.     There was also, I believe, a question or a  
25      comment, I believe it was from Commissioner Wefald,

1 about whether or not Montana-Dakota could use its  
2 existing gas turbines as backup for wind. Do you  
3 have any comments on that?

4 A. The existing gas turbines we have are  
5 already accredited in the MAPP system. I think in  
6 order to back up wind, generally you would put  
7 additional gas generation on to get that  
8 accreditation.

9 Q. To get any additional capacity?

10 A. To get any additional accreditation.

11 Q. And then, finally, Mr. Steen, there was  
12 some discussion about whether the plant  
13 participants should be looking at an ultra  
14 supercritical plant versus a supercritical plant.  
15 Can you provide any opinions on that issue?

16 A. I can. As you heard Mr. Rolfes indicate,  
17 there are about 15 ultra supercritical units  
18 operating with -- and the incremental cost for an  
19 ultra supercritical is some 2 to 5-plus million  
20 dollars. As he indicated, we, as owners, do not  
21 know at this point what that total incremental cost  
22 might be. It could very well be 5 million, it  
23 could very well be 10 million, it could very well  
24 be 15 million. We don't know.

25 Most of the 15 units that are currently

1 operating are located in Japan, which has a very  
2 high fuel delivery cost, and that might have driven  
3 their decision to go to ultra supercritical. In  
4 addition, these plants in Japan were not  
5 manufactured using U.S. technology or U.S.  
6 manufacturers. So not all U.S. manufacturers have  
7 an ultra supercritical plant that they have built.  
8 Most of them have ultra supercritical options that  
9 they have on paper, but none of them have been  
10 built.

11 In addition, the plants in Japan do not  
12 have an extended operational time period. These  
13 are not -- these boilers are not your father's  
14 boiler. They do not have long-term operational  
15 experience. The analogy I like to use internally  
16 is that Toyota manufactures the Prius, not that GM  
17 couldn't build one and GM might have on the shelf,  
18 a paper one, but they could build one. Okay. But  
19 even the Prius doesn't have 100 or 150,000-mile  
20 operating experience. And those are some of the  
21 things we have to look at as we look at the ultra  
22 supercritical decision.

23 Q. So nobody has really got a long operating  
24 history with those extra operating pressures and  
25 temperatures and the effect on the plant

1 components?

2 A. That would be correct. And that's one of  
3 the nice things about being involved in the Big  
4 Stone project where you have seven co-owners. Each  
5 one of the seven co-owners are an experienced  
6 utility that bring a lot of experience to the  
7 table, and so we are indeed as a group looking at  
8 ultra supercritical.

9 Q. But the decision has not been made?

10 A. But the decision has not been made.

11 Q. I just want to back up to the beginning of  
12 your answer. I was a little confused because I  
13 thought you said first it was 2 to 5 million and  
14 then you said it was somewhere between 5 and 15.

15 A. Well, I guess the point being we have  
16 indications that it could be 2 million, we have  
17 indications that it could be 5 million, we also  
18 have indications that it could be 10 million. So  
19 we do not know what the price for the ultra  
20 supercritical -- total price might be.

21 MR. KUNTZ: That's all the questions I  
22 have for Mr. Steen and I would tender him for  
23 cross-examination.

24 JUDGE WAHL: Mr. Breen.

25

**CROSS-EXAMINATION**

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**BY MR. BREEN:**

Q. Sir, correct me if I'm wrong about this statement. I thought I heard in your testimony the co-owners of the Big Stone II project reached an agreement to build the Big Stone project sometime in 2005?

A. The -- the group of co-owners came together to discuss building Big Stone in 2004, I think, initially and that jelled in 2005.

Q. In 2005 it was formalized in a letter of agreement of some sort?

A. That's correct.

Q. Now, the PA analysis you referred to did not consider the issue of environmental cost for carbon dioxide; isn't that true?

A. That would be correct.

Q. And you didn't consider the issue of environmental cost for carbon dioxide; is that true?

A. That would be correct.

Q. And when you submitted this evaluation before the proceedings in Minnesota and South Dakota, you and PA did consider the issue of environmental cost in your evaluations; is that

1 correct?

2 A. Could you -- could you restate that again?

3 Q. I'll break it up. When yourself and the  
4 PA analysis group -- consulting group considered  
5 presenting this testimony before the proceedings in  
6 Minnesota you did consider the issue of  
7 environmental cost?

8 A. I did not testify in Minnesota.

9 Q. Oh, you did not?

10 A. No, I did not.

11 Q. When you and your consultant did an  
12 evaluation to determine if Big Stone II was the  
13 least-cost alternative amongst your choices, you  
14 and your consultants did not consider the issue of  
15 environmental cost for carbon dioxide; do we agree?

16 A. I don't know. My position is one to give  
17 information to PA so that they can do their  
18 modeling.

19 MR. BREEN: I have no other questions.

20 JUDGE WAHL: Mr. Binek.

21 **CROSS-EXAMINATION**

22 **BY MR. BINEK:**

23 Q. Mr. Steen, on page 4 of your direct  
24 testimony you talk about the proposals and in your  
25 summary you had talked about the proposal from

1 Iowa. I guess I would like a little bit of  
2 clarification of what the situation is with that  
3 plant in Iowa. Apparently you're still looking at  
4 that plant as a possibility for providing your  
5 needs?

6 A. We are still monitoring that plant as a  
7 possibility.

8 Q. Okay. And there has been no firm  
9 commitment to participation in the Big Stone  
10 project; is that correct?

11 A. We have not gone through financial close,  
12 if that's your question -- answer to your question.

13 Q. Right. Yes. In your testimony, I believe  
14 it was on page 8, you talk about Big Stone II  
15 remaining the lowest option for MDU and that it  
16 also confirms Montana-Dakota's plan to use demand  
17 side management, renewable energy sources and other  
18 resources along with that plant to meet your needs.  
19 What are the other resources you're referring to  
20 besides demand side management and renewable energy  
21 resources?

22 A. We have signed some confidentiality  
23 agreements, but you should be aware that wind is  
24 not the only source of renewable credits.

25 Q. Okay. So the other sources you're talking

1 about are other renewables?

2 A. We're looking at other renewable options.

3 MR. BINEK: I have no further questions.

4 JUDGE WAHL: Questions from the  
5 Commission. Commissioner Wefald.

6 MR. BINEK: Excuse me. I do have one  
7 additional one.

8 JUDGE WAHL: All right.

9 Q. (MR. BINEK CONTINUING) And that's  
10 relating to the Gascoyne plant. And my question is  
11 the same question that I asked Andrea yesterday,  
12 and that is whether Gascoyne -- I realize it's not  
13 a viable option at this point. Is Gascoyne a  
14 viable option in the future, in your opinion?

15 A. My opinion is that Gascoyne is indeed a  
16 viable option. I'm probably the best cheerleader  
17 for Gascoyne there is.

18 MR. BINEK: Thank you. I have no further  
19 questions.

20 JUDGE WAHL: Commissioner Wefald.

21 **EXAMINATION**

22 **BY COMMISSIONER WEFALD:**

23 Q. Good morning.

24 A. Good morning.

25 Q. MDU has had some really -- MDU has had

1 some really unfortunate experiences as it's  
2 attempted to purchase wind.

3 A. That's correct. That's correct.

4 Q. Every project you seem to pick fails, so I  
5 feel sorry for the Montana project. That's the  
6 truth. We think of the ones you've announced to  
7 us, every single one has failed that you've told us  
8 that you've signed an agreement for, so --

9 A. Questionably, that's one of the reasons  
10 why we wanted to self-build. It's a self-build  
11 option.

12 Q. I was wondering, did you ever consider the  
13 PPM project in northern North Dakota, which is  
14 adjacent to your service territory, that offered --  
15 has still offered 150 megawatts of wind and has  
16 gone through the whole queue process with MISO?

17 A. We are looking -- we are looking at that  
18 project as one of the possibilities to satisfy our  
19 North Dakota renewable objective.

20 Q. Have you looked at it in the past?

21 A. We did not look at it to meet the Montana  
22 renewable portfolio standard. As far as in the  
23 past, yes, we have -- we have met with them  
24 individually.

25 Q. Thank you. How or would the company

1 participate in the Big Stone II project if the  
2 Commission determined it would be prudent to allow  
3 MDU to purchase, let's say, 90 megawatts of energy  
4 and capacity from the Big Stone project and with  
5 the remainder of load requirement and demand met  
6 through demand -- excuse me -- and the requirement  
7 of load requirement met through demand side  
8 management and renewables?

9 A. How would we participate, is that your  
10 question?

11 Q. How would the company participate?

12 A. I think you have to understand that we  
13 have done an extensive expansion of our -- of our  
14 demand side management at this point and put that  
15 into the model, and the model still picks 116  
16 megawatts of Big Stone.

17 Q. I understand that.

18 A. Okay.

19 Q. I understand that. How or would the  
20 company participate in the Big Stone II project if  
21 the Commission determined it would be prudent to  
22 allow MDU to purchase, let's say, for example, 90  
23 megawatts of energy and capacity instead of the  
24 116?

25 A. I guess as a policymaker, I'm not the

1 policymaker for the company, so I would have to  
2 just assume that we would participate with 90  
3 megawatts.

4 COMMISSIONER WEFALD: Thank you.

5 JUDGE WAHL: Any further questions from  
6 the Commission? Commissioner Clark.

7 **EXAMINATION**

8 **BY COMMISSIONER CLARK:**

9 Q. Just a couple on Gascoyne versus Big Stone  
10 II so I understand the timeline and the procedure.  
11 You had said that when MDU looked at Gascoyne as a  
12 250 megawatt unit, you thought that it perhaps --  
13 it was still in the ballpark, it passed the smell  
14 test, you lost some efficiencies, but not as much  
15 as you lost when you went to 175 and it became  
16 unviable; is that right?

17 A. That would be correct.

18 Q. Okay. At the point that it was  
19 potentially a 250 megawatt project, was Otter Tail  
20 included in discussions? Because it occurs to me  
21 here that we have, exclusive all those Minnesota  
22 utilities that want to participate in Big Stone,  
23 two utilities whose megawatts you're going to be  
24 drawing off it roughly equates to 250 megawatts.  
25 Were you able to compare Big Stone II at 250, Otter

1 Tail and MDU participating in it with Gascoyne --  
2 I'm sorry. I didn't say that right -- Gascoyne at  
3 250, Otter Tail and MDU participating in it versus  
4 Big Stone II?

5 A. As far as I know, we did not run the  
6 generation capacity expansion model utilizing the  
7 Gascoyne unit at 250 as one option versus Big Stone  
8 II as one of the other options. I don't think we  
9 ever did that. You should be aware, however, that  
10 I personally believe that Big Stone II would  
11 probably still come out because -- because at the  
12 250 -- even at the 250 megawatt level, and we chose  
13 that specifically because the options for boilers  
14 range up to 250 megawatts. The 500 megawatt unit  
15 had to have two separate boilers, and that's one of  
16 the reasons why it drove the cost up. You know,  
17 even at 500 megawatts, the capital cost at Gascoyne  
18 is significantly more than the capital cost at Big  
19 Stone II.

20 Q. Right. Although one of the things that I  
21 think is becoming clear through this process is we  
22 have to consider not just capital cost, but  
23 delivered cost to consumers, which would be  
24 inclusive of the delivered cost of fuel. When you  
25 said probably Big Stone II would come ahead, is

1 that -- does that take into account -- how do I ask  
2 it -- are you assuming that the cost of fuel is  
3 going to be a 2-and-a-half percent increase roughly  
4 a year at Big Stone II?

5 A. And we assumed that same inflation rate at  
6 Gascoyne.

7 Q. Okay. The Montana wind farm, help me  
8 understand this a little bit, walk through it a  
9 little bit. This may come up somewhere else not  
10 necessarily in this case. The rationale for  
11 building that one in particular, what need does it  
12 fill from an engineering standpoint, from an  
13 integrated resource standpoint versus what need  
14 does it fill to meet a statutory requirement in  
15 Montana? In other words, if you just ran the  
16 model -- your IRP planning process, would that be  
17 one that would get picked barring the mandate in  
18 Montana?

19 A. In an integrated resource model or in a  
20 generation expansion program, generally wind will  
21 not get picked as the low-cost option.  
22 Consequently, the way -- the way that wind is being  
23 presented in these models is it's being forced in.  
24 It's essentially a must-run unit. It's forced into  
25 the model. The same thing occurred when we did the

1 model with the 30 megawatts from the South Dakota  
2 project, that was forced in, it was a must-run.  
3 And the same thing in the model with the Montana,  
4 it was forced in as a must-run unit.

5 Q. Okay.

6 A. Generally it will not pick wind as the  
7 least-cost option.

8 COMMISSIONER CLARK: Thank you. That's  
9 all I have.

10 COMMISSIONER WEFALD: I have one.

11 JUDGE WAHL: Commissioner Wefald.

12 **FURTHER EXAMINATION**

13 **BY COMMISSIONER WEFALD:**

14 Q. It's on that same topic. What was the  
15 forced -- what made it forced in for 30 megawatts  
16 in South Dakota?

17 A. Well, we had a contract. We had a  
18 contract with the wind developer.

19 Q. What made you -- what made you decide to  
20 put that contract in then? You said it was a  
21 forced in. Why did you force it into the model?  
22 Why did you force in 30 megawatts then if you  
23 didn't --

24 COMMISSIONER CRAMER: Why did you even  
25 consider it?

1 Q. (COMMISSIONER WEFALD CONTINUING) Why did  
2 you even consider it then in South Dakota?

3 A. Well, the --

4 Q. Did they tell you you had to build 30  
5 megawatts of wind there as part of your deal with  
6 the Big Stone Plant? Is that part of it? I mean,  
7 is that the forcing like with Montana, the 10 --  
8 the 15 megawatts there because they have the  
9 mandate to have wind? You know, is that the  
10 reason? Is that what you mean by "forcing it in"?

11 A. No. No. I guess what I mean by forcing  
12 it in is, the generation expansion model has to  
13 include all of the knowns at the time you run the  
14 model to push the start button on how. And those  
15 knowns are your existing units, which are Heskett  
16 I, Heskett II, Lewis & Clark. Those units are also  
17 put into the model as well as any knowns, such as a  
18 purchased power agreement with Basin Electric or a  
19 purchased power agreement with a wind developer.  
20 Those are put into the model. And if you have a  
21 purchased power agreement with Basin where Basin  
22 says you must take the energy off of this unit, the  
23 model forces that in and says on a dispatch region  
24 this energy has to come from Basin Electric, and  
25 it's the same thing with wind. It says this amount

1 of energy has to come from that contract, so it's  
2 forced into the model. So the model doesn't pick  
3 it -- doesn't have the option of picking it. It's  
4 forced into the model.

5 Q. So you're saying that Mr. -- yesterday  
6 when we had the testimony, and he was here at that  
7 time but he's not here now any longer, his analysis  
8 from his company, his study showed 50 or 60  
9 megawatts of wind in his -- in his plan for MDU  
10 resources?

11 A. Okay. I don't know about how he set up  
12 the model -- his model.

13 COMMISSIONER WEFALD: Thank you.

14 THE WITNESS: I can't respond how he did  
15 that.

16 JUDGE WAHL: Commissioner Cramer.

17 MR. KUNTZ: Just a -- before you were  
18 talking about Mr. Heidell, weren't you,  
19 Commissioner Wefald? I'm not sure the two of you  
20 were on the same page.

21 COMMISSIONER CRAMER: Yeah, I wasn't sure,  
22 either.

23 COMMISSIONER WEFALD: Is it Mr. Heidell  
24 or --

25 MR. KUNTZ: From PA Consulting?

1 COMMISSIONER WEFALD: PA Consulting.

2 MR. KUNTZ: Right.

3 COMMISSIONER WEFALD: What name did I use?

4 MR. KUNTZ: You didn't have a name and I  
5 think --

6 THE WITNESS: Okay. I was thinking of Mr.  
7 Schlissel when you said his model.

8 COMMISSIONER WEFALD: No, I was talking  
9 about Mr. Heidell.

10 THE WITNESS: Okay. Can you restate your  
11 question again, please?

12 Q. (COMMISSIONER WEFALD CONTINUING) Mr.  
13 Heidell had 50 megawatts of wind in his model --

14 A. That's right. That's correct.

15 Q. -- that he came with to MDU and he said  
16 this is your model.

17 A. That's right. Yes. His 50 megawatts that  
18 he put in his model were known wind projects that  
19 we had on our system -- that we thought we would  
20 have on our system in 2012. Those known wind  
21 projects for 50 megawatts were 30 megawatts in  
22 South Dakota with a PPA and 20 megawatts in  
23 Montana.

24 Q. But you're telling me that the resource  
25 model you used would never choose wind unless there

1 was --

2 A. Unless you force it in.

3 Q. Unless you force it in.

4 A. I believe that's true.

5 Q. And why do you -- well, I should have  
6 asked -- been able to ask Mr. Heidell that, but I  
7 can't, because we're seeing wind coming in at much  
8 cheaper costs these days than it did before and  
9 with the -- and with the production tax credit  
10 we're finally seeing that other utilities are  
11 picking it as their least-cost resource. So, you  
12 know, it's just interesting that your model doesn't  
13 put it in at all, never would put it in.

14 A. Well, I guess I respectfully disagree that  
15 wind is coming in cheaper. We've seen the same  
16 price increases in wind because of the copper and  
17 the steel that we have seen in other generation  
18 resources, so wind is getting -- wind is expensive.

19 COMMISSIONER CLARK: Does wind sometimes  
20 work, though, as a -- as a peaking resource? A lot  
21 of what I've heard is that that's often where it  
22 seems to fit because it kicks off natural gas that  
23 would otherwise run and that's where you get some  
24 of the economies of wind. Is that incorporated  
25 into the model, or how does that --

1           THE WITNESS: It can -- it can if your  
2 utility is really dependent on natural gas to cover  
3 its peak. In MDU's system we do have natural gas  
4 to cover our peak, but our peak is for a very short  
5 time period in the summertime. We're a  
6 summer-peaking utility. You know, a hot, hot day  
7 in July we would generally start up a combustion  
8 turbine to cover that peak. And generally on those  
9 days the wind is not blowing. I wish it were.

10           COMMISSIONER CLARK: Does wind tend to do  
11 well also paired with highly dispatchable firm  
12 hydro where hydro is sort of the backbone and then  
13 again wind is the variable resource?

14           THE WITNESS: My personal observation is  
15 that's the best backup for wind, is hydro.

16           COMMISSIONER CLARK: But you're telling us  
17 that on MDU's system it doesn't seem to fit that  
18 profile?

19           THE WITNESS: MDU, it does not fit that  
20 profile.

21           Q. (COMMISSIONER WEFALD CONTINUING) Why then  
22 can't -- if you only use those gas combustion  
23 generators that you're invested in and they're  
24 sitting there all year long and you use them for a  
25 couple hours a year, why then wouldn't it be a

1 better use of resources to have wind pair up with  
2 those so that you could be using them throughout  
3 the year and create a baseload resource?

4 A. Generally wind, because it's  
5 nondispatchable, will -- will offset coal, is  
6 really what happens.

7 Q. But systems all across the country are  
8 using it for offsetting natural gas because the  
9 price is so much higher.

10 A. If they have a lot of natural gas on their  
11 system.

12 Q. But you have 110 megawatts. That's --

13 A. But we don't operate it very often, only  
14 when MISO calls. Only when MISO calls now.

15 COMMISSIONER WEFALD: Thank you.

16 JUDGE WAHL: Anything further from the  
17 Commission?

18 COMMISSIONER CRAMER: Yes.

19 JUDGE WAHL: Commissioner Cramer.

20 **EXAMINATION**

21 **BY COMMISSIONER CRAMER:**

22 Q. I want to get back, I think, to clarify --  
23 well, at least a question that popped into my mind  
24 when Commissioner Wefald was asking you about why  
25 the South Dakota deal. Model aside, completely

1 understand you have to force it in to make -- you  
2 know, to make it work, what was the impetus or what  
3 was the driver to considering 31-and-a-half  
4 megawatts in South Dakota?

5 A. The 31-and-a-half megawatts in South  
6 Dakota came about because of the PURPA  
7 requirements.

8 Q. Oh, that's right.

9 A. It actually went in as a qualifying  
10 facility before the Commission.

11 Q. When exactly did MDU know for certain that  
12 the AVS contract would not be extended?

13 A. I wasn't directly involved in that, but I  
14 was involved from the standpoint that I knew we  
15 tried numerous times to get that contract extended.  
16 The exact date when, you know, we were notified  
17 that it would be no longer an option, I am not  
18 sure.

19 Q. Was it a year ago, two years ago?

20 A. It was shortly before the contract  
21 expired -- real short. We're talking months before  
22 the contract expired.

23 Q. I think one of the frustrations that I've  
24 had in -- not just in this, but overall with  
25 utilities is not very good planning. Now, I

1 realize it's not a simple thing and I realize when  
2 you're talking about billions, not millions, it's  
3 really not a simple thing, but just hearing your  
4 answer saying we tried numerous times causes me to  
5 wonder, at what point even prior to the certainty  
6 of months prior, shortly prior to the contract  
7 ending, did you have a pretty good indication that  
8 this probably wasn't going to happen? Because I  
9 get the sense that somebody was hoping for  
10 something that wasn't very likely.

11 A. Well, I think you're probably correct in  
12 that we're eternal optimists. From the standpoint  
13 that -- and the other part of that is that we're  
14 always looking for the cheapest solution, you know,  
15 should we make a cheap solution decision today,  
16 what happens if something comes cheaper tomorrow?  
17 So I think we're always looking for the cheapest  
18 solution. And these power plant opportunities like  
19 Big Stone II don't come along very often. You  
20 know, I think you know that we're involved with the  
21 Milton R. Young III, which is quite a ways into the  
22 future, 2015, but that's a long -- you have to have  
23 that ten-year window to get these large coal units  
24 built.

25 Q. Then, finally, and I don't know how

1 relevant this is, but it's interesting to me given  
2 the Gascoyne discussions. Were you aware that  
3 Westmoreland had an air permit hearing yesterday on  
4 Gascoyne here in the Capitol?

5 A. I was aware that Westmoreland was here at  
6 the Capitol. I was not aware that it was for an  
7 air permit hearing.

8 COMMISSIONER CRAMER: I have nothing else.

9 JUDGE WAHL: Anything further from the  
10 Commission? Mr. Kuntz.

11 MR. KUNTZ: Thank you.

12 **REDIRECT EXAMINATION**

13 **BY MR. KUNTZ:**

14 Q. Mr. Steen, in response to Commissioner  
15 Wefald's question that if the Commission were to  
16 determine only 90 megawatts of the plant were  
17 prudent from MDU's standpoint and assuming that MDU  
18 could back down its participation in Big Stone  
19 II -- do you know if, indeed, that's a fact, that  
20 Montana-Dakota would be allowed to back down its  
21 participation in Big Stone II?

22 A. I do not know that MDU would be allowed to  
23 back down.

24 Q. Assuming it could, if I understood your  
25 testimony correctly, that would mean that the

1 company would have to make up about -- find about  
2 26 extra megawatts in order to have capacity  
3 available by that 2012 time frame; is that correct?

4 A. That would be correct.

5 Q. Do you believe that in addition to the DSM  
6 that the company has already included in Mr.  
7 Heidell's model plus what it already has in place  
8 or on the boards, that you could make up that 26  
9 megawatt deficit through additional DSM over and  
10 above that on your system?

11 A. I am not the DSM expert, but I know from  
12 conversations that there is concern about DSM  
13 penetration in our North Dakota consumers.

14 Q. So if you weren't able to do it through  
15 DSM, what would be your most likely next option if  
16 you couldn't do it through Big Stone II?

17 A. Our next most likely option would be  
18 natural gas-fired combustion turbines.

19 Q. In combination with wind?

20 A. Very possibly in a combination with wind.  
21 Because we do plan on achieving if -- if it's best  
22 for our customers in North Dakota renewable  
23 portfolio objective.

24 Q. Based upon your studies and analysis, Mr.  
25 Steen, how does the comparison of a capacity

1 megawatt for megawatt of a wind CT gas turbine  
2 compare with the cost of Big Stone II?

3 A. I know from experience in our Montana wind  
4 project that wind is approximately, rough numbers,  
5 \$2,000 a kilowatt. To back that one kilowatt up, I  
6 think you heard testimony yesterday from Mr.  
7 Heidell that a gas turbine is about \$900 a  
8 kilowatt. So the combination of the two, add the  
9 two together, 2,000 plus 900, is about \$2,900 a  
10 kilowatt. That's as expensive or maybe a little  
11 bit more expensive than Big Stone.

12 Q. And you'd have to add transmission for  
13 that, as well, then?

14 A. All those scenarios would have to have  
15 transmission, that would be correct.

16 Q. And just so the record is clear, when you  
17 say that you have to force in wind into the model,  
18 you're basically telling the model to assume a  
19 certain amount of wind?

20 A. That would be correct. By forcing it in,  
21 I'm saying you set the model up so that it says so  
22 much of the energy required for our customers has  
23 to come from this source.

24 Q. So it doesn't have the option of picking  
25 or not picking it?



1 relatively small percentage. And, of course, that  
2 20 percent is a given for the first couple years  
3 that the wind farm is on line. If you happen to  
4 select a poor resource area, that can go  
5 considerably less than 20 percent.

6 Q. Okay.

7 A. So it might drop to 15. So 15 percent of  
8 that megawatt probably can be covered, but the  
9 other -- the other 85 percent has to be covered by  
10 natural gas.

11 Q. So if we accept your numbers for \$2,000  
12 per -- what is that, kilowatt installed?

13 A. \$2,000 a kilowatt, that would be correct.

14 Q. And 900 for natural gas. And it's a  
15 little under that \$2,900 number?

16 A. Yeah. You could probably take 85 percent  
17 of that \$2,000, whatever that number is.

18 Q. Okay. Thank you. Has MDU looked at  
19 buying into MidAmerican Energy Company's current  
20 permitted 545 megawatts in western Iowa?

21 A. I'm not familiar with that, no.

22 Q. Are you familiar with the current price of  
23 renewable energy credits on the Chicago Climate  
24 Exchange?

25 A. I am not -- I have not looked today.

1 Q. Are you familiar with the current price of  
2 carbon sequestration credits on the Chicago Climate  
3 Exchange?

4 A. I guess I would admit I have never looked.

5 Q. It's very interesting. The 750 megawatt  
6 plant in Iowa hasn't yet begun its permit  
7 applications; is that right?

8 A. That's what I believe.

9 Q. And what coal does that plant propose to  
10 burn?

11 A. As I understand and the information  
12 they've given us on that, it would be Powder River  
13 Basin.

14 Q. Has the Gascoyne 500 begun its permit  
15 applications?

16 A. The Gascoyne 500 did not start any of the  
17 permit applications.

18 Q. And has MDU quantified the exact  
19 transmission costs for either Coyote or Gascoyne?

20 A. Quantified, meaning if we were to have an  
21 expansion at Coyote versus Gascoyne?

22 Q. Right.

23 A. We have not quantified exactly those  
24 transmission costs.

25 Q. When you model the least-cost option, does

1 that include projected fuel costs for the life of  
2 the plant?

3 A. It does.

4 MS. LA SEUR: Thank you. Nothing further.

5 JUDGE WAHL: Mr. Binek.

6 MR. BINEK: Thank you.

7 **RECROSS-EXAMINATION**

8 **BY MR. BINEK:**

9 Q. Mr. Steen, how often does MISO require you  
10 to start your gas turbines?

11 A. That -- I'm in -- you know, looking at  
12 expansion -- generation expansion, so existing  
13 units I have very limited knowledge of that. But I  
14 do know they run some -- maybe two, three hundred  
15 hours a year on average.

16 MR. BINEK: Thank you. No further  
17 questions.

18 JUDGE WAHL: Any further questions from  
19 the Commission?

20 COMMISSIONER WEFALD: No.

21 JUDGE WAHL: All right.

22 COMMISSIONER WEFALD: Oh, I have one  
23 comment or question. It's probably both.

24 JUDGE WAHL: Commissioner Wefald.

25

**FURTHER EXAMINATION**

**BY COMMISSIONER WEFALD:**

1  
2  
3 Q. You said that you're not certain whether  
4 your customers in Montana-Dakota Utilities would be  
5 interested in any demand side management options?

6 A. No. I said I didn't know if there -- that  
7 they could achieve the penetration levels required  
8 for some of the options.

9 Q. How will you know that until you offer  
10 them?

11 A. Even if they're offered, I don't know how  
12 you would know whether they -- that's one of the  
13 problems with demand side management, as I  
14 understand it, is how do you quantify it.

15 Q. Well, doesn't part of it -- isn't part of  
16 it how attractive the offer is? Just to give an  
17 example, some utilities have offered green pricing  
18 options to their customers.

19 A. Like we did.

20 Q. Like you did. And lots of people took  
21 them. MDU offered them and no one -- almost no one  
22 signed up. Maybe the factor was the price that you  
23 put on that green pricing option. I mean, maybe  
24 other places they offered it a lower rate or maybe  
25 it was the same or whatever. So perhaps part of it

1 is the -- just like it is if you're selling a car,  
2 people look for the best price. Maybe it has to do  
3 with the terms of the offer.

4 A. Mm-hmm. I would agree with you. In fact,  
5 I think that's one of the reasons why we have  
6 expanded that program and now have a dedicated  
7 person responsible to implement that program so  
8 that he can make those exact judgment calls.

9 COMMISSIONER WEFALD: Thank you.

10 JUDGE WAHL: Any further questions from  
11 the Commission?

12 COMMISSIONER CLARK: No.

13 COMMISSIONER CRAMER: No.

14 JUDGE WAHL: Anything further?

15 **REDIRECT EXAMINATION**

16 **BY MR. KUNTZ:**

17 Q. I think in response to a question by Ms.  
18 La Seur you wanted to add something about  
19 quantifying transmission costs at Gascoyne or  
20 Coyote. Did you have some additional follow-up  
21 information on that?

22 A. No.

23 MR. KUNTZ: Then we have nothing further.

24 JUDGE WAHL: Ms. La Seur, anything  
25 further?

1 MS. LA SEUR: No. Thank you.

2 JUDGE WAHL: Mr. Binek?

3 MR. BINEK: No.

4 JUDGE WAHL: Thank you very much, Mr.  
5 Steen. Next.

6 MR. KUNTZ: Montana-Dakota would call Rita  
7 Mulkern.

8 JUDGE WAHL: Ms. Mulkern, as you have  
9 heard me advise previous witnesses, your testimony  
10 is required to be under oath and I'm required by  
11 law to advise you regarding perjury before  
12 administering the oath. Perjury is a false  
13 statement of material fact which you do not believe  
14 to be true, in other words, generally speaking, a  
15 lie. In North Dakota perjury is a Class C felony,  
16 punishable by a fine up to \$5,000, imprisonment for  
17 a period of up to five years, or both. Will you  
18 raise your right hand, please?

19 (Witness sworn.)

20 JUDGE WAHL: Mr. Kuntz.

21 **RITA A. MULKERN,**

22 being first duly sworn, was examined and testified  
23 as follows:

24 **DIRECT EXAMINATION**

25 **BY MR. KUNTZ:**

1 Q. State your name and business address.

2 A. My name is Rita A. Mulkern, and my  
3 business address is 400 North Fourth Street,  
4 Bismarck, North Dakota 58501.

5 Q. Whom are you employed by?

6 A. I am employed by Montana-Dakota Utilities.

7 Q. And what's your position with  
8 Montana-Dakota?

9 A. I am the regulatory analysis manager for  
10 Montana-Dakota.

11 Q. And what are your responsibilities  
12 included in that position?

13 A. Among my responsibilities are doing cost  
14 of service studies. I'm responsible for the fuel  
15 cost adjustments and the purchased gas cost  
16 adjustments now in the states that Montana-Dakota  
17 serves.

18 Q. What's your educational background?

19 A. I have a bachelor of arts degree from  
20 North Dakota State University with majors in  
21 economics and business administration and a minor  
22 in statistics.

23 Q. What's your work experience background?

24 A. I began working at Montana-Dakota in 1981  
25 in the regulatory affairs area and have progressed

1 through that department, and I believe I assumed my  
2 current position in 1999.

3 Q. Have you caused to be prepared prefilled  
4 direct testimony, as well as supporting exhibits in  
5 this proceeding?

6 A. Yes, I did.

7 Q. I'm showing you what should be in front of  
8 you marked as Exhibits MDU-206, 207 and 208, with  
9 Exhibit 206 being your prefilled direct testimony  
10 and 207 and 208 being supporting exhibits. Are  
11 those numbers?

12 A. Yes.

13 Q. And that is your prefilled direct testimony  
14 and exhibits?

15 A. Yes.

16 Q. Do you have any corrections or additions,  
17 changes to make to that testimony?

18 A. I do not.

19 Q. If I were to ask you the questions that  
20 appear in Exhibit 206 today, would your answers be  
21 the same as appears in that exhibit?

22 A. They would.

23 MR. KUNTZ: We would offer Exhibits MDU-  
24 206, 207 and 208 into evidence.

25 JUDGE WAHL: Mr. Breen.

1 MR. BREEN: No objection.

2 JUDGE WAHL: Mr. Binek.

3 MR. BINEK: No objection.

4 JUDGE WAHL: MDU Exhibits 206, 207 and 208  
5 are each received.

6 MR. KUNTZ: Thank you, Your Honor.

7 Q. (MR. KUNTZ CONTINUING) Ms. Mulkern, could  
8 you give the Commission a summary of your  
9 testimony, please?

10 A. Yes, I will. The purpose of my testimony  
11 is to present an overall revenue requirement for  
12 our North Dakota share of the Big Stone II Power  
13 Plant.

14 As testified by Mr. Rolfes in his direct  
15 testimony, the capital cost of Big Stone II is  
16 projected to be about 1.6 billion dollars.  
17 Montana-Dakota's participation in Big Stone is  
18 approximately 19.33 percent of the total and its  
19 share of the investment is approximately 309  
20 million dollars.

21 Generation facilities are allocated to the  
22 jurisdictions on the basis of the sum of the 12  
23 monthly peak demands by jurisdiction. North Dakota  
24 customers contribute 68.53 percent of annual peak  
25 demand. Therefore, the North Dakota allocated

1 share is 212 million, which represents 68.5 percent  
2 -- 68.53 percent of Montana-Dakota's investment.  
3 Ultimately the inclusion allows for funds used  
4 during construction or construction work in  
5 progress, would add 18.8 percent or 6.6 percent,  
6 respectively, to the cost of the plant.

7           The estimated revenue requirement of the  
8 Big Stone II Plant exclusive -- reflecting only the  
9 investment, exclusive of any operation and  
10 maintenance expenses, depreciation expense, ad  
11 valorem taxes, and effects of fuel and purchased  
12 power is 1.87 cents per kilowatt-hour for North  
13 Dakota customers. And I just want to clarify that  
14 is the effect of the capital cost. What I'm trying  
15 to do in my testimony basically is define the  
16 ballpark. And there will be other -- at the time  
17 we come in -- we're not requesting any change of  
18 rates in this proceeding. Any new request for a  
19 change in rates would be in a separate proceeding,  
20 and at that time we would take into account all the  
21 factors that affect the price of electricity or the  
22 price of the generation at the Big Stone II Station  
23 and they would be quantified at that time.

24           That, I believe, concludes my summary of  
25 my testimony.

1           Q.     So, Ms. Mulkern, if I understand your last  
2 comment then, the number that you gave -- what was  
3 it, 1 point --

4           A.     1.87 cents.

5           Q.     -- 87 cents doesn't necessarily transfer  
6 into the amount of the rate increase that would be  
7 seen as a result of Big Stone II coming on line; is  
8 that correct?

9           A.     That is correct.

10          Q.     It could be more, could be less?

11          A.     Could be more, could be less. One of the  
12 factors that will affect the rates at the time the  
13 plant goes on line is the fact that we are  
14 purchasing power from the MISO market and we  
15 anticipate that when Big Stone goes on line, we  
16 will see a reduction in our fuel costs. So we're  
17 going to have a cost of capital, we'll have some  
18 depreciation, some O & M, but we also will see a  
19 reduction in fuel costs. And so at this time it's  
20 really not possible to quantify what the effect  
21 will be at the time rates go into effect.

22          Q.     And Big Stone II, being -- having the  
23 latest technology, would expect to be from a fuel  
24 -- or an energy standpoint be a relatively  
25 efficient plant in terms of cost of the overall

1 power the company uses?

2 A. From what I understand, it will be more  
3 efficient, it will use less fuel, which would --  
4 less fuel means lower fuel costs even, you know,  
5 considering that the price may be higher than  
6 today.

7 Q. But it might replace more expensive  
8 alternatives that would be available to  
9 Montana-Dakota either within its existing  
10 generation or through the MISO market?

11 A. That is correct.

12 MR. KUNTZ: No further questions and we  
13 would tender Ms. Mulkern for cross-examination.

14 JUDGE WAHL: Mr. Breen.

15 **CROSS-EXAMINATION**

16 **BY MR. BREEN:**

17 Q. It's not possible at the present time for  
18 you to predict with any probability the actual cost  
19 this -- these capital costs will turn into for a  
20 rate increase for the customer; is that correct?

21 A. I can't quantify at this time the overall  
22 cost change that customers will experience in 2012.

23 Q. Thank you.

24 A. There are many variables other than the  
25 ones I just discussed.

1 MR. BREEN: Thank you.

2 JUDGE WAHL: Are you finished, Mr. Breen?

3 MR. BREEN: Oh, I'm sorry. Yes, I am.

4 JUDGE WAHL: Mr. Binek.

5 MR. BINEK: I have no questions for this  
6 witness.

7 JUDGE WAHL: Questions from the  
8 Commission?

9 COMMISSIONER CLARK: None.

10 BY COMMISSIONER WEFALD: I have one.

11 JUDGE WAHL: Commissioner Wefald.

12 **EXAMINATION**

13 **BY COMMISSIONER WEFALD:**

14 Q. It's my understanding that -- did you just  
15 -- let me just ask the question. Did you just say  
16 that customers may experience these price increases  
17 in 2012? Is that your plan?

18 A. No. We have not decided our plan yet. I  
19 mean, we're not asking for a rate change at this  
20 time, and, as I mentioned, it depends on if we  
21 request construction work in progress or allowance  
22 for funds used during construction. So that's  
23 another reason I can't quantify exactly what the  
24 rate change will be.

25 Q. So potentially if the Commission decides

1 it's prudent and reasonable to proceed with this,  
2 it's your understanding that probably within a year  
3 you'd come in for a rate increase for customers?

4 A. We have not decided what we will do at  
5 this time.

6 COMMISSIONER WEFALD: Thank you.

7 JUDGE WAHL: Any further questions from  
8 the Commission?

9 COMMISSIONER CRAMER: I have none.

10 JUDGE WAHL: Mr. Kuntz.

11 MR. KUNTZ: Nothing further.

12 JUDGE WAHL: Commissioner Wefald.

13 COMMISSIONER WEFALD: I have a question  
14 for you, sir. Is it possible to call Mr. Steen  
15 back for one more question?

16 JUDGE WAHL: Oh, I'm sure it is.

17 COMMISSIONER WEFALD: Okay.

18 JUDGE WAHL: Thank you very much, Ms.  
19 Mulkern.

20 MR. KUNTZ: I told you you should have  
21 went back to the office.

22 MR. STEEN: I would much rather discuss it  
23 with Commissioner Wefald.

24 JUDGE WAHL: Mr. Steen, you understand, of  
25 course, that your testimony continues under oath

1 and subject to the penalties of perjury?

2 THE WITNESS: Yes, I do.

3 JUDGE WAHL: Commissioner Wefald.

4 **DUANE STEEN,**

5 having been previously duly sworn, was examined and  
6 testified as follows:

7 **FURTHER EXAMINATION**

8 **By COMMISSIONER WEFALD:**

9 Q. Okay. That's the problem, you kind of  
10 think a little bit more.

11 A. Sure.

12 Q. I'm still concerned about and thinking  
13 about these peaking plants that MDU has, the 110  
14 megawatts.

15 A. Yes, ma'am.

16 Q. In the proposal before us with the Big  
17 Stone II project, would you characterize that as  
18 baseload power or peaking power?

19 A. Big Stone II will be baseload.

20 Q. Baseload. And isn't MDU also planning to  
21 build peaking units -- well, at least I saw in your  
22 resource plan that in around 2014 that there's  
23 plans for more gas turbines to be put on your  
24 system.

25 A. I believe it's farther out than that, but

1 I don't -- you know, without having that  
2 information right in front of me, I don't know, but  
3 I believe that there's additional need for peaking  
4 farther out into the future, that probably would be  
5 correct.

6 Q. Okay. I saw those dates yesterday, but I  
7 can't find those right now. Okay. The 110  
8 megawatts that you have in gas turbines right now,  
9 those are mainly used for peaking; right?

10 A. That would be mainly used for peaking.

11 Q. So what is the problem with turning some  
12 of that into baseload? You need baseload. You  
13 could do that by using those plants either a  
14 hundred percent, which I don't think anyone in this  
15 room would think would be a very good use because  
16 we all know the prices of natural gas. All right?

17 A. That would be correct.

18 Q. But if you built wind which could offset  
19 the cost for a portion of the time of those gas  
20 costs, what's the drawback of doing that when you  
21 already have those facilities in place that could  
22 be used as baseload?

23 A. Well, the existing combustion turbines, I  
24 think, are already in the system and their capacity  
25 is already accounted for.

1 Q. But that's capacity that is used only at  
2 peak.

3 A. But it is part of the capacity -- let me  
4 use an example, I guess. Our peak load might be  
5 500 megawatts on July 14th.

6 Q. Mm-hmm.

7 A. On the 14th of July it might be 500  
8 megawatts. Of that -- and so we need 500 megawatts  
9 plus 15 percent for reserve margins.

10 Q. Yes, I understand that.

11 A. And so right now those turbines are  
12 already part of that 500 plus 15 percent. They're  
13 already counted. Now, next year we're going to  
14 need another 5 megawatts because our load grows  
15 from 500 to 505. Okay. In order to accredit that  
16 other 5 megawatts, it has to be an additional 5  
17 megawatts of capacity. You can't dip back in and  
18 use what you have. That's already consumed. The  
19 next 5 megawatts has to be new capacity.

20 Q. But you said that wind does have a  
21 capacity value of 20 percent if it's nameplate, so  
22 let's say you put in -- let's say you put in 50  
23 megawatts of wind --

24 A. Yes.

25 Q. -- to balance the capacity that you have

1 with your system right now in megawatts with --  
2 with your gas, 110.

3 A. Right.

4 Q. And I don't know if that's the right  
5 number to balance with 110, but if you did, then  
6 you would have another 10 megawatts of capacity  
7 next year.

8 A. That's exact right.

9 Q. So it would meet -- it would meet your  
10 goal.

11 A. 50 megawatts would give you --

12 Q. 10 additional?

13 A. -- 10 megawatts.

14 Q. But you wouldn't have had to have the  
15 investment of another -- and you already have your  
16 investment of your 110 megawatts of gas peaking  
17 already in place.

18 A. Mm-hmm.

19 Q. So why doesn't that become a lower -- I  
20 mean, a somewhat lower cost resource than always  
21 comparing it to building new, where you're talking  
22 about you have to build new wind plus new gas  
23 peaking if you wanted to add any wind that counted  
24 as capacity?

25 A. You're exactly right in that 50 megawatts

1 would give you 10, but that's, you know, two years'  
2 worth of capacity. Now you'd have to put another  
3 50 in, and so, you know, wind -- wind capacity does  
4 not count for much.

5 Q. But it counts for something?

6 A. It counts for something, that's exactly  
7 correct.

8 COMMISSIONER WEFALD: Thank you.

9 JUDGE WAHL: Commissioner Cramer.

10 COMMISSIONER CRAMER: Yes.

11 **FURTHER EXAMINATION**

12 **BY COMMISSIONER CRAMER:**

13 Q. So that I understand this, if -- maybe I  
14 don't. If you were to count the 110 megawatts of  
15 gas peaking units now toward baseload, would you  
16 then have to find another 110 megawatts somewhere  
17 else, too?

18 A. No, you would not. It's accumulative.  
19 Baseload --

20 Q. I understand.

21 A. On that peak, it's different.

22 Q. But would you have to find some new  
23 peaking?

24 A. You would have to look at the load  
25 profile, is what you have to look at, you know, a

1 daily and a yearly load profile, and that really  
2 kind of determines what you need for baseload as  
3 opposed to peaking. It's a load profile.

4 **FURTHER EXAMINATION**

5 **COMMISSIONER WEFALD:**

6 Q. Has MDU had to go out into the marketplace  
7 for capacity in the past to meet summer peak?

8 A. Yes, we have.

9 Q. How many years would you say in the last  
10 five have you had to do that?

11 A. We've had to go out in the market ever  
12 since the AVS contract expired.

13 Q. Did you have to do that even prior to that  
14 on occasion?

15 A. Yes, we have. On occasion we have had to  
16 do that.

17 COMMISSIONER WEFALD: Thank you.

18 JUDGE WAHL: Commissioner Clark.

19 **FURTHER EXAMINATION**

20 **BY COMMISSIONER CLARK:**

21 Q. This is probably not the right question  
22 for you, but if you know it, let me know. I think  
23 in Ms. Stomberg's testimony she indicated that at  
24 times the cost of going out into the market reached  
25 as high as a hundred megawatt -- a hundred dollars

1 per megawatt-hour or more. Do you know what the  
2 average cost of procuring power in the market --  
3 MISO market has been if you annualized it?

4 A. I do not have that. I do not have that.  
5 But, yes, I do know for a fact because I have been  
6 on the website where power has been more than a  
7 hundred dollars a megawatt-hour in the MISO system.

8 Q. Could that be provided just with a --

9 A. Sure.

10 Q. Okay. I understand what the peak is, but  
11 I would be interested in an average cost.

12 A. An average cost.

13 COMMISSIONER CLARK: Thanks.

14 MR. KUNTZ: Average cost of capacity we're  
15 talking or energy?

16 COMMISSIONER CLARK: Energy.

17 COMMISSIONER WEFALD: Oh, you want energy?

18 COMMISSIONER CLARK: Energy.

19 COMMISSIONER WEFALD: I want capacity, as  
20 well.

21 MR. KUNTZ: I guess we want both.

22 MS. STOMBERG: We don't buy capacity from  
23 the -- you mean in our contracts?

24 THE WITNESS: Yeah.

25 MR. KUNTZ: I'm not sure that the MISO

1 market is -- has got capacity.

2 THE WITNESS: There is no MISO capacity.

3 COMMISSIONER WEFALD: There's a billboard  
4 for capacity. We know about that.

5 COMMISSIONER CLARK: I can tell what you  
6 I'm interested in. In your testimony, Ms.  
7 Stomberg, you had referenced a hundred dollars a  
8 megawatt-hour from the MISO market as an example of  
9 as high as it's reached. I would be interested in  
10 the average. Thanks.

11 COMMISSIONER WEFALD: And I'm interested  
12 in -- like for this summer I think you had to  
13 purchase some capacity.

14 THE WITNESS: That's correct.

15 COMMISSIONER WEFALD: And so maybe you  
16 could share with us the price of that contract for  
17 capacity. It's confidential.

18 MS. STOMBERG: Yeah. We can provide that  
19 under our confidential.

20 COMMISSIONER WEFALD: Okay. Thank you.

21 **REDIRECT EXAMINATION**

22 **BY MR. KUNTZ:**

23 Q. Mr. Steen, I just want to make sure we're  
24 clear on this example, the hypothetical you used.  
25 Let's assume you've got a situation where your

1 capacity plus your 15 percent matches up with what  
2 you have installed generation. Okay?

3 A. Okay.

4 Q. So the next year you've got to add 5  
5 megawatts. Okay. You can either add 5 megawatts  
6 of Big Stone or you can add 25 megawatts of wind,  
7 as I understand, to meet that 5 megawatt -- to meet  
8 that capacity requirement. Would that be a fair  
9 comparison?

10 A. That's a fair comparison.

11 Q. One would be baseload, one would be  
12 intermittent, but to get 5 megawatts of capacity to  
13 meet your MAPP requirements, you would need 25  
14 megawatts of wind versus 5 megawatts of baseload?

15 A. 5 megawatts of baseload.

16 Q. And, ballpark, how would the cost of those  
17 two options compare?

18 A. Well, the cost of wind is about \$2,000 a  
19 kilowatt and the cost of Big Stone is about 2,500.

20 Q. And you'd need 25 of one and five of the  
21 other?

22 A. 25 of one and 5 of the other.

23 Q. And you'd still need transmission for 25  
24 for the wind and 5 for Big Stone?

25 A. That's correct.

1 Q. And do the capacity prices -- going into  
2 the market to buy capacity, do those prices vary  
3 depending upon what's -- the pool situation is with  
4 respect to being deficit or surplus at the time?

5 A. Yes. And as I testified earlier, we're  
6 into a capacity deficit market at this point, so  
7 the price that you have to pay for capacity today  
8 versus ten years ago is considerably more.

9 MR. KUNTZ: That's all I have. Thank you.

10 JUDGE WAHL: Mr. Breen, followup.

11 MR. BREEN: (Shakes head.)

12 JUDGE WAHL: Mr. Binek, followup.

13 MR. BINEK: No.

14 JUDGE WAHL: Thank you again, Mr. Steen.

15 THE WITNESS: Thank you.

16 COMMISSIONER WEFALD: Thank you.

17 JUDGE WAHL: Mr. Kuntz, anything further?

18 MR. KUNTZ: Nothing further for

19 Montana-Dakota.

20 JUDGE WAHL: All right. Mr. Breen, you  
21 have some pending matters, I think.

22 MR. BREEN: Yes, I do, sir. Gee, I'm so  
23 organized I forgot which file I put it in. While  
24 I'm obtaining these documents, there was testimony  
25 submitted by -- prefiled by Mark Trechock, which is

1 a four-sentence statement, which in essence says  
2 that he's a ratepayer and lives in North Dakota and  
3 a ratepayer of MDU, and the parties have agreed to  
4 accept that without the need of cross-examination,  
5 et cetera. The fact is not in dispute.

6 JUDGE WAHL: So you're moving its  
7 admission?

8 MR. BREEN: Yes.

9 JUDGE WAHL: Mr. Guerrero.

10 MR. GUERRERO: No objection.

11 JUDGE WAHL: And Mr. Binek.

12 MR. BINEK: No objection.

13 JUDGE WAHL: All right. Has that been  
14 marked as an exhibit? You've got it Intervenors'  
15 what, about --

16 MS. DANIELS: 8 is the next number.

17 JUDGE WAHL: Is it 8?

18 MR. BREEN: And, similarly, is the --

19 JUDGE WAHL: Just a minute. Intervenors'  
20 8 is received. All right, Mr. Breen.

21 MR. BREEN: Similarly, is the testimony of  
22 a Michael Drunsic, who was mentioned in David  
23 Schlissel's testimony. And his testimony, after he  
24 says who he is, consists of a page and a half, and  
25 all this testimony says is I got these inputs from

1 Mr. Schlissel, I put it into the computer model, I  
2 ran it, I printed them out and I gave them back.  
3 And the parties have agreed there's no need for  
4 cross-examination about this testimony and I ask  
5 that it be accepted.

6 JUDGE WAHL: All right. As Exhibit --  
7 Intervenors' Exhibit 9, the direct testimony of  
8 Michael Drunsic, will be received.

9 MR. BREEN: There may or may not be an  
10 agreement -- I'm not sure, we've had different  
11 conversations and certainly any party who reached  
12 an agreement yesterday is entitled to have a  
13 different opinion this morning. In the documents  
14 already filed with this Commission, in the motion  
15 in limine attached were -- or a memorandum of law  
16 in opposition to the motion in limine were attached  
17 the legislative histories of 49-02-23, known as the  
18 externality statute, and the legislative histories  
19 of 49-05-16, which is the prudency statute. I  
20 simply ask that the Court and the Commission simply  
21 accept those by judicial notice.

22 JUDGE WAHL: Mr. Guerrero.

23 MR. GUERRERO: Your Honor, I'm not sure  
24 exactly what he is trying to accomplish by  
25 suggesting that the Commission or the Court take

1       judicial notice of a statute that's obviously a  
2       public statute, including its legislative history.  
3       He's already filed arguments with respect to the  
4       legislative history in his previous papers, and we  
5       think that that's most likely sufficient for  
6       whatever relevance it is intended to be submitted  
7       for, so I guess we would object to the motion.

8                 JUDGE WAHL:   Mr. Binek.

9                 MR. BINEK:   I think it's unnecessary.  I  
10       don't particularly care, but I see no need for it.

11                MR. KUNTZ:   Mr. Wahl, I might point out  
12       the fact that legislative history is important if  
13       there's an ambiguity in a statute.  At this point  
14       no one has argued that there's any ambiguity in  
15       either of these statutes.  The hearing officer has  
16       already ruled.  I don't know that that's a problem  
17       with the Commission considering the legislative  
18       history if it determined there's an ambiguity.  If  
19       the Commission finds there's an ambiguity in either  
20       statute and they want to look to it and interpret  
21       it, I have no objection to it and I think that's  
22       their right.  But at this point I haven't heard  
23       that anybody has suggested there's an ambiguity in  
24       either of these two statutes.

25                JUDGE WAHL:   Make your record, Mr. Breen.

1           MR. BREEN: I'm not going to reargue these  
2 motions in favor and motions opposing about both of  
3 these statutes, but there's lengthy argument in the  
4 memoranda about ambiguities, interpretation and  
5 application of these statutes. And I'll say no  
6 more. It's been briefed at length. Simply for  
7 purposes of the complete record, I would claim the  
8 motion that you simply recognize it by judicial  
9 notice.

10           JUDGE WAHL: Yeah. Here's how I view it.  
11 Your response to the motion is there together with  
12 your exhibits. That's part of the record. The  
13 Commission is entitled to revisit that, plus the  
14 fact that the legislative history is here. The  
15 Commission -- I'm not even sure it's a question of  
16 administrative notice. It's a question of it's a  
17 resource. The Commission in the exercise of its  
18 authority can look into that, can ask its staff to  
19 address it, so let me just say that it's there. If  
20 the Commission wants to -- wants to use that --  
21 avail itself of that resource, if it directs its  
22 staff to do that, it can. I don't think it's  
23 necessary to formally -- and I think it's probably  
24 not useful to formally recognize that information  
25 as a matter of administrative notice.

1 MR. BREEN: It's an abundance of caution.

2 JUDGE WAHL: Well, you have your record,  
3 Mr. Breen. The motion is denied as unnecessary.  
4 But I assure you if the Commission takes an  
5 interest in it, it will look at it. Anything  
6 further, Mr. Breen?

7 MR. BREEN: There's one other issue. We  
8 do have one copy of the PowerPoint summary of David  
9 Schlissel and we could mark that and provide all  
10 the additional copies in the mail posthearing.

11 JUDGE WAHL: Sure, but that's already been  
12 directed.

13 MR. BREEN: Yes.

14 JUDGE WAHL: That is right, so you should  
15 proceed to do it.

16 MR. BREEN: Thank you.

17 JUDGE WAHL: Anything further?

18 MR. BREEN: We have nothing further.

19 JUDGE WAHL: Now, just to remind you, Mr.  
20 Breen -- I don't want to overlook anything -- are  
21 you going to renew your motion regarding the  
22 testimony of Ed Steadman or are you going to  
23 abandon it, because that's not part of the record?

24 MR. BREEN: We're satisfied that we've  
25 explored those areas through cross-examination. I

1 will not renew that motion about Ed Steadman.

2 JUDGE WAHL: So in fact you're abandoning  
3 it?

4 MR. BREEN: Yes.

5 JUDGE WAHL: All right. Anything further,  
6 Mr. Breen?

7 MR. BREEN: Nothing further.

8 JUDGE WAHL: Mr. Guerrero.

9 MR. GUERRERO: Thank you, Your Honor.  
10 Before I forget, since I did yesterday,  
11 Commissioner Clark had inquired about the Burns --  
12 on Tuesday about the Burns & McDonnell original  
13 siting study, and we did track down some Burns &  
14 McDonnell people that were responsible for that  
15 study. Unfortunately, they were not available  
16 either yesterday or today to field questions. We  
17 have a copy of the study. Mr. Rolfes has reviewed  
18 it. And to the extent that Commissioner Clark has  
19 any further questions, we'll do the best we can  
20 with Mr. Rolfes, but I did want to let Commissioner  
21 Clark and the Commission know that we tried, but  
22 they were not available.

23 JUDGE WAHL: Why doesn't the Commission  
24 think about that. I'll proceed with Mr. Binek, and  
25 then if that's something that the Commission wants

1 to inquire, we can look in that as part of Mr.  
2 Guerrero's rebuttal.

3 COMMISSIONER CLARK: Sounds good.

4 JUDGE WAHL: All right. Mr. Guerrero.

5 MR. GUERRERO: Before Mr. Binek, would it  
6 be possible to take just a five-minute break? I'm  
7 going to be doing the cross-examination of Mr.  
8 Deason.

9 JUDGE WAHL: All right. We may do that a  
10 bit early, Mr. Guerrero.

11 MR. GUERRERO: Thank you.

12 (Recess taken at 9:24 a.m. to 9:34 a.m.)

13 JUDGE WAHL: All right. Mr. Binek.

14 MR. BINEK: Before we begin with Mr.  
15 Deason, on Tuesday Commissioner Clark had brought  
16 up the testimony of Robert Sahr that was  
17 presented --

18 JUDGE WAHL: Mr. Binek, I'm sorry. Could  
19 I ask you to postpone that motion, please?

20 MR. BINEK: Sure.

21 JUDGE WAHL: And let's do that at the  
22 conclusion of Mr. Deason's testimony, if you will.

23 MR. BINEK: Sure. No problem.

24 JUDGE WAHL: Thank you.

25 MR. BINEK: At this time I will call Terry

1 Deason.

2 JUDGE WAHL: Mr. Deason, as you have heard  
3 me advise previous witnesses, your testimony is  
4 required to be under oath and I'm required by law  
5 to advise you regarding perjury before  
6 administering the oath. Perjury is a false  
7 statement of material fact which you do not believe  
8 to be true, in other words, generally speaking, a  
9 lie. In North Dakota perjury is Class C felony  
10 punishable by a fine up to \$5,000, imprisonment for  
11 a period of up to five years, or both. Will you  
12 raise your right hand, please, Mr. Deason.

13 (Witness sworn.)

14 JUDGE WAHL: Mr. Binek.

15 MR. BINEK: Thank you.

16 **TERRY DEASON,**

17 being first duly sworn, was examined and testified  
18 as follows:

19 **DIRECT EXAMINATION**

20 **BY MR. BINEK:**

21 Q. Please state your name for the record.

22 A. My name is Terry Deason.

23 Q. And what is your business address?

24 A. My business address is 301 South Bronough  
25 street, Suite 200, Tallahassee, Florida.

1 Q. And by whom are you employed?

2 A. I'm employed by the firm Radey Thomas Yon  
3 & Clark.

4 Q. And in what capacity are you employed by  
5 that firm?

6 A. I am employed as a special consultant,  
7 specializing in the fields of telecommunications,  
8 public utilities and water and wastewater  
9 utilities.

10 Q. What is your employment history?

11 A. Other than two years in the banking  
12 industry immediately following graduation, my  
13 entire professional career has been in various  
14 capacities in the field of public utility  
15 regulation. I have served in a consumer advocates  
16 office in the State of Florida, I have served as an  
17 assistant to a commissioner at the Florida Public  
18 Service Commission, and I've also served 16 years  
19 as a Commissioner on the Florida Public Service  
20 Commission. My last term on the Commission ended  
21 January 1, 2007.

22 Q. What is your educational background?

23 A. I have a bachelor of science degree with a  
24 major in accounting from Florida State University.  
25 I also have a master of accounting degree from

1 Florida State University.

2 Q. Have you submitted testimony previously in  
3 utility regulatory proceedings?

4 A. Yes, I have. It was at a time before I  
5 was appointed to the Public Service Commission,  
6 but, yes, I have testified in numerous proceedings  
7 before the Florida Public Service Commission.

8 Q. Was the direct testimony that has been  
9 marked as PSC Exhibit 1 prepared by you or at your  
10 direction?

11 A. Yes, it was.

12 Q. Are there any corrections that need to be  
13 made to your testimony?

14 A. I'm not aware of any at this time.

15 Q. If I were to ask you the questions today  
16 that are contained in your testimony, would your  
17 responses be the same as stated in your testimony?

18 A. Yes, they would.

19 MR. BINEK: At this time I would like to  
20 offer Exhibit PSC-1 into evidence.

21 JUDGE WAHL: Mr. Guerrero.

22 MR. GUERRERO: No objection.

23 JUDGE WAHL: Mr. Breen.

24 MR. BREEN: No objection.

25 JUDGE WAHL: Exhibit PSC-1 is received.

1 MR. GUERRERO: And that includes exhibits?

2 JUDGE WAHL: Together with the exhibits.

3 MR. GUERRERO: Thank you.

4 Q. (MR. BINEK CONTINUING) Mr. Deason, would  
5 you please give a brief summary of your testimony?

6 A. Yes, I will. In my testimony I summarize  
7 my understanding of the Big Stone II proposal and  
8 the process which led to the petitions for advance  
9 determination of prudence.

10 I present a summary of the site selection  
11 process and my analysis of that process. I also  
12 present a sensitivity analysis which supports the  
13 continued consideration of Coyote Station as a site  
14 for future additional generation. I present the  
15 results of my review of MDU's generation expansion  
16 plan and Otter Tail's original and revised analyses  
17 of baseload generation alternatives. I categorize  
18 the inputs used in these analyses into six  
19 categories, wind inputs, construction inputs,  
20 operating inputs, fuel inputs, financial inputs,  
21 and other assumptions.

22 I generally conclude that the inputs used  
23 are appropriate and in some cases are conservative.  
24 I identify three input areas with some ambiguities  
25 or potential inconsistencies that I invite MDU and

1 Otter Tail to address. The areas in question  
2 involve wind cost and associated capacity factors,  
3 capital cost escalations and natural gas price  
4 forecasts.

5 I also address the transmission  
6 requirements of Big Stone II and how the addition  
7 of Big Stone II would enhance the overall  
8 transmission system and enable greater west-to-east  
9 flows. I address the fuel needs of Big Stone II,  
10 including fuel deliverability.

11 I recommend a number of coal delivery  
12 management practices to enhance the efficiency and  
13 reliability of coal delivery. I also describe my  
14 review of the various agreements entered into by  
15 the co-owners which govern the development and  
16 operation of Big Stone II.

17 I conclude in my testimony by describing  
18 the uncertainties and risks associated with Big  
19 Stone II. I also describe the substantial  
20 strategic benefits of Big Stone II.

21 I conclude that Big Stone II should be  
22 approved subject to clarifications and conditions.  
23 The clarifications should address the previously  
24 identified cost inputs, the treatment of asset-  
25 backed sales and the impact of Big Stone II on

1 future generation sites in North Dakota.

2 The five conditions I recommend address  
3 reporting requirements, budgeting, coal delivery  
4 management, and two studies concerning railcars and  
5 coal inventory levels. This concludes my summary.

6 Q. Thank you. In your testimony you cite  
7 several inconsistencies between the testimony of  
8 Otter Tail and MDU witnesses. Are you satisfied  
9 with the explanations that have been provided by  
10 the witnesses?

11 A. I have reviewed the rebuttal testimony  
12 that has been filed both by MDU and by Otter Tail  
13 and, yes, I am satisfied with the -- with the  
14 response to the potential inconsistencies and  
15 ambiguities for the inputs which I identified in my  
16 direct testimony.

17 Q. You also made several recommendations.  
18 Are you satisfied with the responses made to those  
19 recommendations by Otter Tail and MDU witnesses?

20 A. Yes, I am.

21 MR. BINEK: Thank you. At this time I  
22 tender the witness for cross-examination.

23 JUDGE WAHL: Mr. Guerrero.

24 MR. GUERRERO: Thank you, Your Honor.

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**CROSS-EXAMINATION**

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**BY MR. GUERRERO:**

Q. Good morning, Mr. Deason.

A. Good morning.

Q. I also note in your -- or I note in your bio that you're a graduate of West Point; is that correct?

A. No, not a graduate. I attended one year at the academy. Both my bachelor of science degree and my master's degree were earned from Florida State.

Q. Thank you. How long were you on the -- is it the Public Utilities Commission?

A. Public Service Commission.

Q. Public Service Commission. How long were you on the Florida Public Service Commission?

A. I served four four-year terms, 16 years.

Q. Which utilities -- electric utilities does the Florida Public Service Commission regulate?

A. We -- I'm sorry. I keep using the term "we." After 16 years it's sometimes hard to not use that term. The Florida Public Service Commission regulates all of the investor-owned electric utilities in the State of Florida. The four largest of those are Florida Power & Light

1       Company; Progress Energy, which was formerly  
2       Florida Power Corporation; Tampa Electric Company;  
3       and Gulf Power Company, which is a subsidiary of  
4       the Southern Company. There's also one other small  
5       distribution only investor-owned utility in  
6       Florida, which is Florida Public Utilities.

7               The Commission also has  
8       various jurisdiction -- various powers of  
9       jurisdiction over the municipals' electric  
10      companies, electric systems in Florida and the  
11      rural electric cooperatives. We do not have  
12      ratemaking authority over those entities.

13             Q.     For municipals and cooperatives that would  
14      include -- some of those authorities would include  
15      siting for convenience and necessity sorts of  
16      questions?

17             A.     Yes, it would. All electric generation  
18      generating facilities above 75 megawatts that  
19      utilize a steam cycle in that generation process  
20      has to come forward under Florida's Power Plant  
21      Siting Act, and the first stage in that process is  
22      a need determination in front of the Florida Public  
23      Service Commission.

24             Q.     Thank you. Some of the utilities that you  
25      cited, FPL, FPC, Tampa, et cetera, are some of

1 those multistate investor-owned utilities; do you  
2 recall?

3 A. Gulf Power is a subsidiary of the Southern  
4 Company. The Southern Company also includes  
5 Alabama Power, Georgia Power, Mississippi Power,  
6 and, I believe, perhaps Savannah Electric, so to  
7 that extent it is multistate. The other utilities  
8 have their retail regulated businesses entirely  
9 within the State of Florida except for Progress,  
10 which has operations in the States of North  
11 Carolina and South Carolina.

12 Q. Thank you. With respect to Gulf, if you  
13 recall, do you know whether or not they did their  
14 planning on a systemwide basis, or did they try to  
15 do that on a Florida-only basis?

16 A. Gulf's planning is part of the Southern  
17 Company plan. They have a system of sharing  
18 reserves within the southern system, so they do  
19 their planning in concert with the Southern  
20 Company. The other investor-owned utilities, which  
21 we refer to as the peninsula Florida utilities,  
22 they do separate planning.

23 Q. Thank you. I take it in looking at your  
24 bio along with the exhibits attached, you have been  
25 involved in prudence decisions in the past in your

1 experience as a Commissioner?

2 A. Yes. That is correct.

3 Q. How many, just generally?

4 A. Probably in the neighborhood of 25, give  
5 or take a few.

6 Q. What kind of -- what were some of the big  
7 ones, if you recall?

8 A. Well, the largest ones probably would be  
9 the Hines Energy Center for Progress Energy. There  
10 were a number of projects by FPL, which were  
11 primarily gas-fired entities. Early in my stint on  
12 the Commission, Florida Power & Light had before  
13 the Commission a rather large coal-fired baseload  
14 generating proposal, which was part of a purchase  
15 power agreement. That was a large and contentious  
16 case. I think they're listed in an exhibit and, in  
17 all honesty, it's kind of difficult to go back and  
18 recall some of those.

19 One of the more interesting ones involved  
20 Tampa Electric Company, which was an IGCC facility,  
21 and I know that that project has been discussed  
22 here in this hearing earlier.

23 Q. Some of those decisions involved projects  
24 in the multimillion and possibly billion dollars?

25 A. Yes, that is correct.

1 Q. And do you consider yourself qualified as  
2 you sit here today to make recommendations or  
3 opinions with respect to prudence decisions?

4 A. Yes, I do.

5 Q. Have you -- do you have experience with  
6 respect to integrated resource planning?

7 A. Yes, I do.

8 Q. Could you describe that generally?

9 COMMISSIONER WEFALD: I have a question.  
10 What is the purpose of these -- all these questions  
11 about -- is it to establish that he is an expert or  
12 is -- why doesn't he just ask to challenge that  
13 like Mr. Breen did yesterday?

14 COMMISSIONER CLARK: I will certainly  
15 state on the record that I trust that Mr. Deason is  
16 an expert in these areas --

17 COMMISSIONER WEFALD: I do, too.

18 COMMISSIONER CLARK: -- served as a member  
19 of the board of directors of NARUC. So I don't  
20 know that we need to spend a lot time. We are  
21 three days in.

22 MR. GUERRERO: If I could comment, Your  
23 Honors. I think that it was just the opposite. I  
24 concur that Mr. Deason is an expert. I think I'm  
25 laying some foundation for some additional

1 questions that I think hopefully will tie it  
2 together. Certainly I am not intending to question  
3 the credibility or the qualifications of this  
4 witness.

5 COMMISSIONER CLARK: I get that sense.

6 COMMISSIONER CRAMER: I get that sense. I  
7 know where you're going.

8 MR. GUERRERO: I apologize. If I may.

9 JUDGE WAHL: You may.

10 Q. (MR. GUERRERO CONTINUING) Do you have  
11 experience with integrated resource planning?

12 A. Yes, I have experience. I have not  
13 personally prepared an integrated resource plan,  
14 but in my tenure on the Commission and as an  
15 adviser to a Commission prior to that, I have had  
16 the opportunity to review many integrated resource  
17 plans.

18 Q. And on page 4 of your testimony, Mr.  
19 Deason, you actually mentioned -- I think it's page  
20 4. In any event, you had the opportunity to review  
21 the resource plans of both Montana-Dakota and Otter  
22 Tail; is that a fair statement?

23 A. The integrated resource plans?

24 Q. Correct.

25 A. Yes, I did. I did that, though, in

1 consultation with Ms. Bendish on the staff of the  
2 Commission. She did most of the analytical and the  
3 research on that, and I had the opportunity to  
4 consult with her on that.

5 Q. Thank you. And would it be a fair  
6 statement to say that one of the -- in fact, you  
7 did a fairly nice summary of both of those resource  
8 plans as part of your papers.

9 A. To the credit of Ms. Bendish.

10 Q. She did a nice job. Would it be a fair  
11 statement or would you agree with the statement  
12 that part of the purpose of a resource plan is for  
13 utilities to identify a plan to a commission and in  
14 participation with the commission, the public to  
15 identify resource plans in advance so that when  
16 investment decisions are made, hopefully they're  
17 less contentious than they otherwise would or could  
18 be?

19 A. Well, I have not seen where integrated  
20 resource plans in and of themselves has reduced the  
21 contentiousness of these type of proceedings. But  
22 they are certainly a great aid in educating the  
23 public and for the understanding of the public, as  
24 well as decisionmakers. It is an excellent  
25 process.

1           If I might digress for just a minute, in  
2 Florida there's also a process used, which is  
3 called the ten-year site plan process. And as that  
4 name implies, every utility in that state is  
5 required to annually provide their ten-year site  
6 plan, so every year we look ten years into the  
7 future. To some extent that incorporates facets of  
8 integrated resource planning. And what it does is  
9 it puts not only the Public Service Commission, but  
10 the siting agencies within the State of Florida and  
11 the governor and the cabinet and other  
12 decisionmakers, all notice as to what the future  
13 looks like so that on a ten-year horizon there --  
14 how should I put it -- there are not surprises.  
15 This is not a hard and fast plan. It is basically  
16 a planning tool, and it does change as time  
17 changes, but that is what one would expect as loads  
18 change, as growths, economics change, as  
19 technologies change, you would expect a plan to  
20 change and to be adaptable to those changes.

21           Q. Thank you. Would you agree with me that  
22 at least in part utilities should be able to rely  
23 on resource plans that are filed with Public  
24 Service Commissions as they move forward in making  
25 investment decisions?

1           MR. BREEN:  Objection, relevancy.  This is  
2 going beyond his opinions that he offered in his  
3 brief summary.

4           JUDGE WAHL:  Overruled.

5           THE WITNESS:  Could you repeat the  
6 question?

7           Q.   (MR. GUERRERO CONTINUING)  Sure.  Would  
8 you generally agree that utilities that file  
9 integrated resource plans like the ones that you're  
10 familiar with should be generally able to rely on  
11 those plans as they move forward with their  
12 investment decisions?

13          A.   Well, I think that there needs to be some  
14 certainty in the investment process, but at the  
15 same time that does not relieve a utility of the  
16 ongoing obligation to pursue those plans in the  
17 most cost-effective and prudent manner possible and  
18 to continually monitor the economics and the  
19 technologies and the loads and refine those plans  
20 accordingly.

21          Q.   Thank you.  And would you agree that both  
22 Otter Tail -- let me ask you this.  Would you agree  
23 that Otter Tail, at least in your review of this  
24 case, has done exactly what you just said?

25          A.   I do not take any issue with the planning

1 process that has been engaged in by Otter Tail or  
2 for MDU, as well.

3 Q. And is your opinion as an ex-commissioner  
4 with 16 or maybe 30-plus years in regulatory  
5 experience, do you believe that the planning  
6 efforts of both Otter Tail and Montana-Dakota are  
7 reasonable?

8 A. Yes, I do.

9 Q. Let me ask you this as an ex-commissioner,  
10 too, Mr. Deason, and particularly given your  
11 experience with multistate utilities. Do you  
12 believe that it's -- that a prudence decision on  
13 utility investment should be based, and you could  
14 either say in part or in total, on the location of  
15 that investment?

16 A. Let me say that while I have experience  
17 with multistate utilities, it's limited, and to the  
18 extent that, for example, Gulf Power, they have no  
19 regulatory operations outside the State of Florida.  
20 Progress Energy of Florida, even though there are  
21 operations of that company in North and South  
22 Carolina, the Florida operations are confined to  
23 Florida and the ratemaking decisions and prudence  
24 decisions are for those operations within the State  
25 of Florida.

1           However, having clarified that, let me say  
2           that I believe that the role of a utility regulator  
3           is to look at the prudence of decisions, to look at  
4           the way a utility can most reliably and most  
5           cost-effectively provide service to its customers.  
6           If that means building a facility within the  
7           confines of its footprint or within the confines of  
8           the state or even outside of the state, so be it.  
9           I believe that the economic future of the citizens  
10          of a state are best served by the least-cost, most  
11          reliable source of generation regardless of where  
12          that source is located.

13                 We have encouraged -- the Florida  
14          Commission in the past has encouraged Florida  
15          utilities to look at generating sources outside of  
16          the State of Florida. And at one time Florida was  
17          so reliant upon oil as a generating fuel that the  
18          Commission actually implemented a process for  
19          utilities -- an incentive process for utilities to  
20          go outside of the State of Florida to import  
21          coal-fired generation into the state. That's an  
22          example where it was determined the least-cost  
23          source of generation and, therefore, the most  
24          reliable and least-cost to the customers would be  
25          from a source outside of the state. That was

1 limited because the import capability of the state  
2 is limited, but that was done and it was quite  
3 successful.

4 Q. Thank you. And it's your opinion, is it  
5 not, Mr. Deason, that both Otter Tail and  
6 Montana-Dakota have attempted to find a resource  
7 option that is most reliable and most cost  
8 effective for their customers?

9 A. Based upon my review, I would agree that  
10 both MDU and Otter Tail have engaged in this  
11 process with the goal of achieving the most  
12 reliable and the most cost-effective alternative.

13 MR. GUERRERO: Thank you, Mr. Deason. No  
14 further questions, Your Honor.

15 JUDGE WAHL: Mr. Breen.

16 **CROSS-EXAMINATION**

17 **BY MR. BREEN:**

18 Q. Sir, you've served as a Commissioner on  
19 the -- is it called the Florida Public Service  
20 Commission?

21 A. Yes, that is correct.

22 Q. Thank you. Is it true that earlier this  
23 month the Florida Public Service Commission voted  
24 unanimously to reject a proposal what would be at  
25 this time the largest coal power burning plant for

1 source of electric generation, a 1,960 megawatt  
2 plant?

3 MR. GUERRERO: And I'm going to object on  
4 the basis of relevancy.

5 JUDGE WAHL: Ordinarily, as counsel knows,  
6 an agency should gather up all the information that  
7 is available for their consideration, but, boy, I  
8 fail to see how this is relevant, Mr. Breen. Make  
9 your argument.

10 MR. BREEN: I'll claim that I do not get  
11 to rule on the objections.

12 JUDGE WAHL: No, but you get to argue  
13 them.

14 MR. BREEN: I'm sorry, sir, I didn't --  
15 you were speaking and --

16 JUDGE WAHL: How is it relevant? What  
17 is -- for what purpose is the evidence offered?

18 MR. BREEN: It goes to credibility of the  
19 witness. He didn't volunteer the information.  
20 He's a former member of the Commission. It goes to  
21 the legal issue of the problem with the standards  
22 and application of the law in different  
23 jurisdictions.

24 JUDGE WAHL: You know, not without  
25 foundation. You're going to have to lay some

1 foundation to show the relevancy, but I think  
2 another Public Service Commission's decision on  
3 another facility, without some showing that how it  
4 relates to the decision this Commission has to make  
5 is irrelevant.

6 MR. BREEN: I'll move on. Ms. La Seur  
7 would like to respond to that, if she may.

8 JUDGE WAHL: There's a problem with that,  
9 too, as you know, one counsel per witness.

10 MR. BREEN: We agree, Your Honor. We  
11 agree. May I move on?

12 JUDGE WAHL: Yes.

13 Q. (MR. BREEN CONTINUING) You've accepted  
14 the busbar cost values on page -- I'll help you,  
15 sir, with the question. Turn to page 5. Pardon  
16 me. Page 13. It would be much more helpful if I  
17 gave you page 13, sir.

18 You've referred to the busbar cost values  
19 of the Big Stone II project which, you seem to  
20 concur, had a busbar cost value of 69.62.

21 A. Yes, I see that.

22 Q. Is that kilowatt, megawatt? It's  
23 megawatt; correct?

24 A. Yes, it is megawatt.

25 Q. Okay. And you've referred to the busbar

1 value of the CCGT gas turbine plus wind as 80.78.  
2 That's a busbar cost per megawatt; is that correct?

3 A. That is correct.

4 Q. Okay. Now, in coming to that value we  
5 accept forecast of certain prices, coal, natural  
6 gas, wind, capital, increased capital costs,  
7 financing of those costs. There's a number of  
8 those factors that are variable and we accept a  
9 certain forecast value to put into that busbar  
10 cost; is that correct?

11 A. Yes, that is part of the busbar cost  
12 analysis.

13 Q. And the difference of these values is  
14 \$11 -- pardon me -- \$11.16; is that correct?

15 A. Yes.

16 Q. Now, in the analysis submitted to you in  
17 your analysis did not conclude the continuation of  
18 the wind production tax credit; is that correct?

19 A. It is my understanding that it did not  
20 assume the continuation, but there was in fact a  
21 sensitivity run with inclusion of the production  
22 tax credit.

23 Q. And your review of this difference between  
24 these two busbar costs also did not consider the  
25 issue of any prospective carbon dioxide

1 environmental cost value?

2 A. These particular numbers do not reflect  
3 that, but there was a sensitivity run with the  
4 inclusion of CO2 costs.

5 Q. And if we're to return to this proceeding  
6 under the prudence statute, I think that we have to  
7 wait a year or the statute says some period of time  
8 in the future the parties potentially could return  
9 to review if this proceeding is -- if this decision  
10 is still reasonably prudent. Do you agree that the  
11 completion date of this plant is forecasted to be  
12 in 2012?

13 A. That is my understanding, yes.

14 Q. And would you agree that if in fact prior  
15 to 2012, prior to the completion of this plant,  
16 hypothetically, if there is some carbon CO2  
17 environmental value now mandated, wouldn't that  
18 change the difference of these busbar costs  
19 differences before the completion of this plant?

20 MR. GUERRERO: I guess I'm going to  
21 object. I don't understand the question. Mandated  
22 by who, in what capacity, what fashion?

23 MR. BREEN: The issue is was whether the  
24 witness understood the question.

25 JUDGE WAHL: It is, Mr. Guerrero, frankly.

1 MR. GUERRERO: I would object on the basis  
2 of vague, but obviously --

3 JUDGE WAHL: Let's see whether the witness  
4 can answer the question.

5 THE WITNESS: Could you repeat the  
6 question, please?

7 MR. BREEN: Sure.

8 Q. (MR. BREEN CONTINUING) Do you agree under  
9 the prudency statute that we have here in North  
10 Dakota the parties can come -- return a year from  
11 now or two years from now or three years from now  
12 to see if it's still reasonably prudent to complete  
13 the Big Stone II project?

14 MR. KUNTZ: I'm going to object to that on  
15 the basis it calls for a legal conclusion under our  
16 statutes, and in fact I think it's an incorrect  
17 statement. The statute, as I recall, requires  
18 periodic filing updates and that's --

19 JUDGE WAHL: Yeah.

20 MR. BREEN: I'll withdraw the question to  
21 get to the brief raising of the question that  
22 brought us here in the first place.

23 Q. (MR. BREEN CONTINUING) Do you agree, sir,  
24 that if sometime before the completion of the Big  
25 Stone II Plant in 2012 there are new carbon dioxide

1 environmental costs and values, that the difference  
2 between those two busbar costs will change?

3 MR. GUERRERO: I'm going to renew the  
4 objection. What carbon cost values? I think it's  
5 an incomplete answer -- or an incomplete question  
6 and it's vague.

7 MR. BREEN: It's.

8 MR. GUERRERO: It's prejudicial and it's  
9 misleading.

10 MR. BREEN: It may be prejudicial, but --

11 JUDGE WAHL: Let me hear the question,  
12 please. State the question, please, Mr. Breen.

13 Q. (MR. BREEN CONTINUING) Do you agree, sir,  
14 that if prior to the completion of this Big Stone  
15 II Plant projected in 2012 that hypothetically  
16 carbon dioxide cost as an environmental cost and  
17 value are required, that that will change this  
18 difference between these two busbar costs?

19 JUDGE WAHL: All right.

20 MR. BREEN: It's a hypothetical question.  
21 I claim it.

22 JUDGE WAHL: Mr. Guerrero.

23 MR. GUERRERO: I'm going to renew the  
24 objection.

25 JUDGE WAHL: On what grounds?

1           MR. GUERRERO: Well, it's vague. We don't  
2 know what environmental cost he's referring to, and  
3 if the environmental cost is a hundred dollars,  
4 it's going to make more of a difference than if  
5 it's 50 cents. So I think the question is  
6 misleading to throw out a question like that for  
7 this witness to say that the \$11 delta is going to  
8 change seems to me to be very vague and misleading,  
9 so I would renew the objection.

10           JUDGE WAHL: Let's let him answer. He's  
11 an expert, the Commissions and their staff are  
12 experts. Proceed. Overruled.

13           THE WITNESS: I think the first point to  
14 make is that in a busbar cost analysis there are  
15 many assumptions that have to be made. It's just a  
16 necessary part of the process. I believe that the  
17 -- and I described in my testimony in my review of  
18 the inputs that I generally believe that those  
19 inputs are appropriate. There were a few that I  
20 took issue with and those have been clarified.

21           What we do know is that the costs,  
22 themselves, are going to change with time and that  
23 the differential between the various technologies  
24 will change with time, and that's why I indicated  
25 in response to an earlier question I think it is

1 the responsibility of a prudently run utility to  
2 constantly monitor these situations. Whether there  
3 is a differential that arises to the extent that it  
4 brings into question a particular project, that's  
5 an entirely different matter and it would have to  
6 be quite substantial. Whether CO2 would rise to  
7 that level, I can't sit here today and tell you  
8 that it would. I don't believe anyone can. It is  
9 a contingency that is out there. In fact, there  
10 was a sensitivity run recognizing it as a  
11 contingency. Also, I think it's difficult to  
12 identify one input in isolation and hypothesize as  
13 to what direction it may go. We know that all  
14 things are going to change. And it could be --  
15 very well could be that if there is to be CO2  
16 regulation, that that's going to have impacts on  
17 the various other inputs, as well. As an example,  
18 if there is to be CO2 regulation, one would assume,  
19 and I think it would be very probable, that there  
20 would be impacts on the price of natural gas. We  
21 know that the price of natural gas is a very key  
22 input component. So that could also impact the  
23 various relationships of the technologies in the  
24 busbar cost analysis.

25 So to answer your question succinctly,

1 yes, CO2 could have an impact, but what direction  
2 and the final differential between the  
3 technologies, I don't think anyone here can answer  
4 that at this point.

5 Q. Sir, are you aware of any other PSCs that  
6 have cited CO2 costs in rejecting coal-fired power  
7 plants?

8 MR. GUERRERO: I guess I will object again  
9 on the basis of relevancy.

10 JUDGE WAHL: Overruled.

11 THE WITNESS: I'm not aware of any utility  
12 that has rejected a coal-fired power plant citing  
13 only the potential for CO2 regulation. I'm aware  
14 of some cases where it has been an issue and it did  
15 receive consideration.

16 MR. BREEN: I have no other questions at  
17 this time.

18 JUDGE WAHL: Questions from the  
19 Commission.

20 **EXAMINATION**

21 **BY COMMISSIONER WEFALD:**

22 Q. Can you tell me where I would find the  
23 information from the sensitivity study that was run  
24 that was referred to in lines 12 through 14 on page  
25 13 of your testimony?

1           A.     Yes.   That is in the revised busbar cost  
2 analysis that was provided by Otter Tail, and if  
3 you need a specific reference, if you excuse me, I  
4 can go down and retrieve a notebook and perhaps  
5 find that.

6           COMMISSIONER WEFALD:   Thank you.

7           JUDGE WAHL:   You may.

8           MR. GUERRERO:   If it pleases the Court,  
9 it's Exhibit 311 -- OTP/MDU-311, if that speeds  
10 things up, which is in tab 10 in the trial  
11 notebooks.

12           THE WITNESS:   Commissioner, as I recall,  
13 it was towards the end of the revised busbar cost  
14 analysis.  I'm looking at page 8, there's a section  
15 entitled 1.8, which is summary of carbon cost  
16 scenarios.  I believe there's some information  
17 there.  And as far as the wind production credit,  
18 that escapes me at the moment, but I recall that it  
19 was part of the revised busbar cost analysis, as  
20 well.  I don't mean to take too much of the  
21 Commission's time.

22           COMMISSIONER WEFALD:   That's just fine.

23           THE WITNESS:   I can continue to look for  
24 it.

25           Q.     (COMMISSIONER WEFALD CONTINUING)   That's



1 back to an answer to Mr. Breen, you said -- you  
2 referred to -- I don't know if you said it was  
3 unfair, but we shouldn't consider in isolation any  
4 one input, understanding it's a dynamic process and  
5 all that. But isn't it fair in today's climate --  
6 is it fair to give greater consideration to the  
7 likelihood of CO2 costs in the future as an  
8 isolated input that needs perhaps a little greater  
9 consideration than maybe others?

10 A. I agree it has the potential to have a  
11 significant impact on the cost-effectiveness of  
12 coal-fired generation, but, as I indicated, I think  
13 that that is going to have impacts on other inputs,  
14 as well, and obviously the price of natural gas, I  
15 think there's going to be some direct linkage  
16 there, and to what extent and what impact, it's  
17 going to be difficult to say, but I think that  
18 there will be.

19 Q. Could you elaborate a little bit on your  
20 -- on the likelihood of a 48-month construction  
21 period?

22 A. Yes. As I indicated in my testimony, I  
23 think that that is an optimistic schedule;  
24 achievable, yes. One of the key factors is  
25 permitting and how that impacts the construction

1 process. I just thought it was important to  
2 indicate that with a high capital cost project such  
3 as Big Stone II, delays are going to increase costs  
4 through normal escalations and as well as increased  
5 carrying costs in the form of AFUCD.

6 Q. Now, I'm just going to ask a couple of  
7 basic questions to lay foundation for previous  
8 questions, as weird as that seems. Would you agree  
9 that Florida and North Dakota are very different  
10 states?

11 A. Yes, I would agree.

12 Q. Would you agree that they have very  
13 different natural resources and industries?

14 A. Yes, I would agree.

15 Q. Would it seem peculiar for the Florida  
16 tourism director to encourage Floridians to spend  
17 their tourism export dollars in another state? You  
18 don't have to answer that.

19 COMMISSIONER CRAMER: I have nothing else.

20 JUDGE WAHL: Commissioner Clark.

21 **EXAMINATION**

22 **BY COMMISSIONER CLARK:**

23 Q. I do have just a few questions. On page  
24 10 of your initial testimony, and it's not just on  
25 page 10, but there's a series of questions related

1 to the initial Burns & McDonnell study that set the  
2 planning on the path of sort of being directed  
3 towards Big Stone II, and you looked into a number  
4 of the weighting factors that were on there that  
5 Burns & McDonnell took into consideration. Is  
6 there at least a concern that you think the  
7 Commission should have or at least it's worthy of  
8 exploring that perhaps very early decisions in the  
9 process, like how individual items were weighted,  
10 for example, fuel cost and deliverability versus  
11 access to water or things like that, that they  
12 could set into motion a series of events where it  
13 almost becomes a self-fulfilling prophecy that Big  
14 Stone II becomes the lowest-cost alternative  
15 resource because that's the one that then gets  
16 studied the most and any further questions the  
17 Commission may ask, the response is, well, early on  
18 we excluded these other three sites because of  
19 this. Is that a legitimate worry that the  
20 Commission should explore?

21 A. Yes, I would agree that it is. And in  
22 fact when I began my initial review of the case, I  
23 did not even have access to that original study.  
24 It was only on behalf -- on the efforts of Mr. Mike  
25 Diller that he obtained that and I began my review

1 of it. It was almost as if with this filing it was  
2 already just a predetermined -- it was already  
3 predetermined and it was not something that was  
4 going to be reviewed. In consultation with Mr.  
5 Diller and based upon my review, we both agreed  
6 that it was something that merited the Commission's  
7 attention in your review, and so we thought it was  
8 appropriate to bring into the testimony. And, of  
9 course, the review indicated that there were some  
10 decisions made in that siting process which were  
11 perhaps -- perhaps indicated that Coyote had more  
12 deficiencies than it really merited. In fact, some  
13 of the deficiencies actually could have been  
14 determined to be strengths of that particular site.

15 Now, I do not want to underestimate the  
16 impacts of some of the serious detriments of that  
17 site, being transmission constraints, extremely  
18 serious, as well as the potential impacts on -- I  
19 believe it's areas of significant deterioration.  
20 I'm not exactly sure of the environmental  
21 terminology. I think it's PSDs. Certainly, that  
22 is a very serious concern, and that concern exists  
23 more so for the Coyote site than the other sites.  
24 But also indicated in my testimony that those  
25 concerns can change with time depending on changes

1 in technologies, and emissions at other sources can  
2 have impacts on that, and so I just felt that it  
3 was important to reiterate that Coyote should stay  
4 as a viable alternative for future considerations.

5 And to more precisely answer your  
6 question, I think that the process would be  
7 improved to have a more continuous reporting and  
8 monitoring of potential sites. I know that in  
9 Florida there is a ten-year siting process where  
10 plans are presented. Those plans are not concrete  
11 and they do change, but at least it puts everyone  
12 on notice, including the permitting -- siting  
13 permitting agencies from an environmental  
14 standpoint on notice as to what people believe the  
15 long-term picture to be.

16 Q. You'd agree that at a basic level raiiling  
17 in coal and transmitting electricity via  
18 transmission or both basically just ways of getting  
19 energy to market; right?

20 A. Yeah, there are various ways to get energy  
21 to markets, and there are advantages and  
22 disadvantages with each and they certainly have to  
23 be reviewed.

24 Q. And I also note that in your testimony on  
25 the bottom of page 10 that some fairly minor

1       tweaking, it sounds like, in the weight given to  
2       different factors, like fuel delivery, competition  
3       and a few other things actually brought Coyote and  
4       Big Stone fairly close together, didn't it?

5           A.     Yes, they did.  And there were some  
6       assumptions made to show that, and, of course, one  
7       of the assumptions made that in the particular  
8       categories that I took issue with, I took Coyote  
9       Station from the lowest score to the -- well, it's  
10      actually the highest score, which was the least  
11      preferable score, to the most preferable score, and  
12      that someone probably could take issue with that.  
13      I just was trying to show it in terms of what  
14      sensitivities existed within this study and that  
15      just changing a few of the inputs could have a  
16      material impact on the relative rankings of the  
17      various sites.

18           Q.     Sure.  I think I recall reading somewhere,  
19      and I don't remember if it was in your testimony,  
20      that water as a weighting factor -- access to water  
21      was given a 20 percent.

22           A.     I believe it had an overall 20 percent  
23      weighting.

24           Q.     And as I gather from your testimony on  
25      page 8, fuel delivery competition was given a

1 weighting of 6.67 percent. Does that seem  
2 proportionate? Water is obviously important to  
3 generation, but no more important than access to  
4 cheap fuel.

5 A. First, let me in the effort of full  
6 disclosure here, that 6.67 was a component of a  
7 larger overall component when it came to fuel. And  
8 I believe fuel maybe had a 15 percent overall  
9 rating, maybe it was 20 -- I don't recall, but the  
10 fuel deliverability was a subcomponent of the  
11 overall fuel component. But I agree the fuel  
12 deliverability from an overall standpoint of having  
13 a weighting of only 6.67 seemed to be quite small.  
14 And I did reference another case where the issue of  
15 fuel deliverability and competition for that fuel  
16 deliverability was an important component and  
17 consideration, and I tried to present that from --  
18 just illustrative of how other jurisdictions have  
19 given greater weight to that consideration.

20 Q. Sure. The State of Florida, which you're  
21 most familiar with, does it use a fuel clause  
22 adjustment process in setting electric rates?

23 A. Yes, it does.

24 Q. So you're familiar with that pass-through-  
25 type mechanism?

1           A.     Yes.

2           Q.     Could you speak a little bit about the  
3 relative strengths and weaknesses of using the fuel  
4 clause adjustment?  What are the potential impacts  
5 on consumers when a certain component is simply  
6 flowed through on a dollar-for-dollar basis?

7           A.     Yes, I have quite a bit of experience with  
8 that, and having served on the Florida Commission  
9 at the post-Katrina time, I had firsthand  
10 experiences on how fluctuating fuel costs, in this  
11 case natural gas, could have.  In fact, in Florida  
12 post-Katrina, the increase in fuel adjustment  
13 factors or cost to customers increased about 1.5  
14 billion dollars, enough to pay for a rather  
15 substantial baseload coal facility.

16                     So the fuel component is certainly  
17 important, and with rising fuel costs generally,  
18 fuel adjustment components on customers' billings  
19 are growing and growing and they're actually  
20 surpassing the base rate component on bills.  So it  
21 is important.

22                     I think the Commission probably should  
23 take notice of the fact that this particular  
24 project that is being brought in front of you goes  
25 contrary to natural inclinations, I think, by some

1 utilities and that being this. With fuel  
2 adjustment clauses I think some utilities -- and to  
3 go nameless -- have a tendency to look to the least  
4 risky, the least-effort alternative, and that is to  
5 build generating facilities which are low capital  
6 costs and high fuel costs. Utilities that take the  
7 effort to bring forth a baseload facility which is  
8 high capital cost and high risk both to the  
9 investors as well as the customers, but with the  
10 potential that is going to significantly reduce  
11 overall fuel costs and variabilities in those fuel  
12 costs I think is commendable, realizing that the  
13 utility -- those lower fuel costs, they're not  
14 going to participate in savings. Those are going  
15 to be passed on 100 percent to customers.

16 Now, there is the potential for some  
17 benefit in what I refer to as off-system sales, I  
18 think referred to here as asset-backed sales.  
19 There's some incentive for utilities to engage in  
20 that activity, and that is primarily driven by the  
21 fact that it is a low fuel cost option, so there is  
22 some incentive there for utilities, but generally  
23 by large and large with a hundred percent  
24 flow-through of fuel, that actually gives the wrong  
25 incentive for utilities to go forward and pursue

1 the lower-cost, higher-risk generating  
2 alternatives.

3 Q. Although expanding rate base can have  
4 beneficial impacts on utilities, as well, can't it?

5 A. It can. It can increase, and that does --  
6 that does increase the earnings, but if you make  
7 the assumption that the regulatory bodies are only  
8 going to allow a return on equity which is the true  
9 cost of return on equity, they will earn on that,  
10 but they also could take those funds and invest  
11 them elsewhere conceivably, perhaps in some of  
12 their nonutility operations, and earn at least that  
13 much or more.

14 Q. Would the worst of all worlds be high  
15 capital cost, high fuel cost?

16 A. That would be a bad situation, yes.

17 Q. And then one final question on fuel  
18 deliverability, getting back to your experience as  
19 a former commissioner. Do you happen to recall a  
20 discussion at the national level through the  
21 National Association of Regulatory Utility  
22 Commissioners when you served on the board of  
23 directors related to regulation of rail carriers  
24 and concerns that state commissioners had about the  
25 regulatory process available to shippers, the

1 impact on customers, the regulatory process  
2 available at the federal government level and the  
3 impact that potentially has on consumers?

4 A. I do recall that discussion and, as I  
5 recall, there was a resolution, I believe, that was  
6 presented to the board of directors at NARUC  
7 addressing that. In all honesty, though, it was  
8 not a high-profile issue for Florida, but as a  
9 member of the board of directors I tried to educate  
10 myself on it and to cast an educated vote on that  
11 particular resolution.

12 Florida, given it's -- we have some  
13 advantages and disadvantages with our geography and  
14 our location and that sort of thing, but one of the  
15 advantages we do have is the potential for water-  
16 borne transportation of bulk commodities like coal  
17 as a factor -- as competition to rail  
18 transportation. So the rail issues that were so  
19 striking and were the subject of that particular  
20 resolution, we had not actually been directly  
21 impacted by that, but I think I am aware of the  
22 issue, yes.

23 Q. Generally speaking, would you say that the  
24 sense of the resolution is that state utility  
25 regulators across the country generally have a

1 fairly dim view of the regulatory options that are  
2 currently available through the STB and the relief  
3 that's been granted by Congress thus far?

4 A. I think the resolution says that, and I  
5 also had the opportunity to review various pieces  
6 of testimony I think that were filed and presented  
7 in front of Congress and that message came through  
8 quite clearly.

9 COMMISSIONER CLARK: Thank you. That's  
10 all I have.

11 JUDGE WAHL: Commissioner Cramer.

12 **FURTHER EXAMINATION**

13 **BY COMMISSIONER CRAMER:**

14 Q. I might just follow up on that same  
15 conversation then, just asking for your  
16 impressions -- I guess I had a more specific  
17 question, but I think it's been answered -- but  
18 your impressions after sitting here for two-plus  
19 days, have they been changed at all or enhanced,  
20 whatever feeling you had, because you've done a  
21 nice job of articulating in general the problems of  
22 captivity in railroads and you did a nice job in  
23 your testimony. But having sat through this and  
24 listening to our particular railroad -- a  
25 representative of the railroad here, has that

1 sensitivity been heightened any or changed any, or  
2 is it pretty much what you expected?

3 A. Commissioners, pretty much what I  
4 expected, but I would like to make this  
5 observation. We had a previous discussion about  
6 Coyote Station and its -- the fact that there were  
7 more advantageous ways of delivering fuel to that  
8 particular location. In fact, I believe it's -- is  
9 it considered a mine mouth source, I believe? I  
10 believe that if this project goes forward, I think  
11 there would be a duty upon the co-owners -- and I  
12 believe it's probably something they would do,  
13 anyway, but it may need some reinforcement from the  
14 Commission, if this project goes forward, I think  
15 that the co-owners will be in a stronger  
16 negotiating position with the railroad given that  
17 there is a project that is taking shape and has  
18 necessary approvals to go forward to engage in some  
19 negotiations with the railroad. And the fact that  
20 there is a potential alternative sometime, be it in  
21 the future, for Coyote Station or other sources  
22 that would have a more advantageous fuel  
23 deliverability option, then I think that that needs  
24 to be used, as well. Now, I have to be honest, I  
25 have never in my career negotiated with a railroad,

1 and I understand that that can be --

2 COMMISSIONER CLARK: It's a relative term.

3 THE WITNESS: -- a very difficult  
4 undertaking, but I think that it is something that  
5 should be pursued if this project goes forward.

6 **FURTHER EXAMINATION**

7 **COMMISSIONER CLARK:**

8 Q. I do have one follow-up question along  
9 those lines, because my impression was that perhaps  
10 some of the leverage with the railroad goes away  
11 once -- should the Commission grant authority to or  
12 give its blessing to the prudence of this project  
13 because at that point it would seem as though the  
14 utilities are fairly well locked into Big Stone II.  
15 It would be at that point, I think, rather shocking  
16 to spend a lot of money in the reverse course and  
17 pull up stakes. Wouldn't it be just the opposite,  
18 that perhaps there's great leverage as long as this  
19 proceeding is open, as long as there is some  
20 question to whether -- as to what that fuel, you  
21 know, cost component will actually be, but once the  
22 blessing is granted, we know where the site is  
23 going to be located, we know where they're going to  
24 be focusing in on, we know what the railroad is  
25 that will be serving and we know where the coal

1 will be brought from. At that point doesn't the  
2 railroad have extreme negotiating position?

3 A. I agree, and there is that dynamic, and I  
4 guess what I was referring to is the fact that, and  
5 it's evident in this record, this is a long-term  
6 project with a long life, and I would anticipate  
7 that the railroad would want to be serving in the  
8 long term, and who knows what can happen in the  
9 long term of this particular project. We're  
10 talking 40-plus years. I believe that there are --  
11 there are changes in technology which can take  
12 place in the future, just overall changes in  
13 generating mix and things of that nature which can  
14 have the impact -- while the project is there and  
15 the capital dollars are sunk, that is true, that  
16 doesn't mean that particular project has to in the  
17 long term continue to burn that fuel, and it's  
18 particularly costly, but at some point there's  
19 going to be a cross-over point to where if the  
20 price of Powder River Basin coal becomes too  
21 expensive and the transportation component of that  
22 becomes too expensive, there can be boiler  
23 modifications made to existing facilities and there  
24 can be changes.

25 The fact that there's going to be a wet

1 scrubber put on this facility both for Big Stone I  
2 and Big Stone II, that may increase some fuel  
3 flexibility, as well. The price of natural gas is  
4 going to enter into that equation. We really don't  
5 know what's going to take place in that.

6 I think one of the other things that coal  
7 companies in general and railroads need to consider  
8 is that nuclear is going to have a rebirth in this  
9 country, and the fact that there may be CO2  
10 regulation may enhance nuclear. The last I  
11 understand, other than rarely on occasion maybe  
12 transporting some spent fuel to Yucca Mountain if  
13 it ever becomes a reality, railroads are not going  
14 to be involved in the delivery of uranium to --  
15 enriched uranium to nuclear facilities.

16 So the railroads, themselves, even though  
17 they have been characterized as an unregulated  
18 monopoly, and I don't take issue with that  
19 characterization, they, too, have to realize that  
20 there are constraints and that if prices get out of  
21 line, there are going to be other -- people are  
22 going to -- and as they prudently should, are going  
23 to look at other alternatives. So there are some  
24 constraints on railroads. They might not be great,  
25 but there are some constraints.

1 Q. And the price point could be a lot higher  
2 than it is right now, I mean, when you talked about  
3 where those lines crossed?

4 A. It could be. And that is one of the --  
5 and I identified this in my testimony -- it is one  
6 of the risk factors of going forward with a high  
7 capital cost project like Big Stone II, and one of  
8 the most significant risk factors is the price of  
9 fuel and the relative prices of fuel compared to  
10 other alternatives.

11 COMMISSIONER CLARK: Thank you.

12 JUDGE WAHL: Commissioner Wefald.

13 COMMISSIONER WEFALD: I have no followup.

14 JUDGE WAHL: Oh, I'm sorry.

15 COMMISSIONER CLARK: Thank you. Very good  
16 questions, very good answers.

17 JUDGE WAHL: Any other questions from the  
18 Commission? Mr. Binek, followup?

19 MR. BINEK: I have no follow-up questions.

20 JUDGE WAHL: Mr. Guerrero, followup?

21 MR. GUERRERO: No. I do want to thank Mr.  
22 Deason, and certainly if there was any implication  
23 that I was trying to question your credibility,  
24 hopefully, no offense taken.

25 JUDGE WAHL: Mr. Breen?

1 MR. BREEN: I have no questions.

2 JUDGE WAHL: All right. Thank you.

3 THE WITNESS: May I just make one comment,  
4 please, sir? I just want to express my  
5 appreciation to the staff of the Commission and  
6 their assistance that they provided to me in  
7 putting forth doing this review and putting forth  
8 the testimony. And I also want to express some  
9 appreciation to Otter Tail for the fact that they  
10 allowed myself and Mr. Diller to come to their  
11 facilities and harass their people for an entire  
12 week. They were very cooperative and forthcoming  
13 with information and that was very helpful, and I  
14 appreciate it.

15 JUDGE WAHL: I'm sure it's reciprocated.  
16 Thank you very much. Mr. Binek.

17 MR. BINEK: Thank you. I have no further  
18 witnesses.

19 JUDGE WAHL: No, I understand that.

20 COMMISSIONER CRAMER: We have a motion.

21 MR. BINEK: We do have the issue of the --

22 JUDGE WAHL: Yes. Go ahead. Proceed with  
23 your motion, please, now that I've had a chance to  
24 look at the book.

25 MR. BINEK: Thank you, Your Honor. At

1 this time I request that the Commission take  
2 administrative notice of the testimony presented by  
3 Robert Sahr on behalf of the National Association  
4 of Regulatory Utility Commissioners --

5 JUDGE WAHL: Mr. Guerrero. I'm sorry.

6 MR. BINEK: -- to the United States Senate  
7 Committee on Energy and Natural Resources on May  
8 25, 2006. This is the testimony that Commissioner  
9 Clark referred to on Tuesday and is also the  
10 testimony that he was referring to in his questions  
11 today -- his questions to Mr. Deason.

12 JUDGE WAHL: Mr. Guerrero.

13 MR. GUERRERO: I believe Mr. Kuntz is  
14 going to handle this one, Your Honor.

15 JUDGE WAHL: Mr. Kuntz.

16 MR. KUNTZ: Thank you, Your Honor. When  
17 this was initially brought up, I raised the  
18 question as to the purpose for which it was being  
19 offered. I don't think testimony in itself is the  
20 proper subject of administrative notice. This is  
21 testimony of a person who is not here subject to  
22 cross-examination. There are pieces obviously of  
23 this testimony that I don't have a problem with,  
24 but there are other pieces that are kind of  
25 conclusionary statements dealing with other parts

1 of the country, other railroads, that, you know,  
2 could be taken out of context, you know, and  
3 certainly cannot be used, I believe, to support  
4 findings of fact in this proceeding without the  
5 benefit of cross-examination.

6 On the other hand, if the purpose is to  
7 offer, for example, the NARUC resolution attached  
8 to it, I don't have a problem with that resolution  
9 being offered. My problem is with the testimony,  
10 itself. You know, frankly, there's inflammatory  
11 statements in here. They're meant to be  
12 inflammatory. I mean, that's what they were  
13 offered for, but I don't think that they're  
14 appropriate testimony that someone again could use  
15 to support a finding of fact in this proceeding  
16 with -- you know, that could be taken out of  
17 context without the benefit of cross-examination.

18 I would point out we have had extensive  
19 testimony about the rail situation at Big Stone,  
20 which is relevant -- and admittedly so, relevant to  
21 this particular proceeding. We've offered to bring  
22 in or will be bringing in additional late-filed  
23 information, I believe, that was requested on that  
24 subject, so I think it's not like we don't have a  
25 record here on that particular issue that this

1        somehow is necessary to make a record for this  
2        proceeding. We've got specific evidence on the  
3        specific route, the specific railroad and the  
4        specific plant that the Commission can use in  
5        weighing its decision without relying on this more  
6        generalized information contained in this  
7        statement.

8                JUDGE WAHL: Mr. Breen.

9                MR. BREEN: I'll join in Mr. Kuntz's  
10       objection.

11               JUDGE WAHL: Mr. Binek, as you well know,  
12       I believe that the function of an administrative  
13       hearing is to gather in all of the evidence even  
14       without great regard for relevancy for the agency  
15       to consider and to process, but, Commissioner, I  
16       thought I might be able to find an exception under  
17       Rule 803, which is why I asked Mr. Binek to give me  
18       a chance to look at the book, and I regret, Mr.  
19       Binek, with all due respect, Mr. Kuntz, that it  
20       really doesn't -- it's hearsay, that's the problem,  
21       and even if it were sworn testimony, and we don't  
22       have any evidence of that -- it may have been  
23       sworn, it may not have been, but then we still lack  
24       cross-examination. That's the problem. And I  
25       don't find an exception in the rule as -- for

1 hearsay. It doesn't -- generally you can't take  
2 administrative notice of testimony. So the motion  
3 is denied.

4 COMMISSIONER CLARK: Let me ask, I was  
5 going to also offer for administrative notice the  
6 testimony of the Electric Edison Institute, which  
7 both of the companies are members of, before that  
8 same U.S. Senate Committee. Would the same apply  
9 to that, or is EEI's -- is Otter Tail and MDU's  
10 testimony before the U.S. Senate Committee also not  
11 valid?

12 JUDGE WAHL: No. The only way it would --  
13 the only way we can get that kind of information in  
14 absent a stipulation is as a public record or a  
15 report. And I'm willing to reach out, but I just  
16 can't reach far enough to --

17 COMMISSIONER CLARK: U.S. Senate testimony  
18 is not a public record?

19 JUDGE WAHL: It's a public record, but  
20 it's still -- as a public record, it doesn't meet  
21 the further requirements of the rule, per se.

22 COMMISSIONER CLARK: And the further  
23 requirements are?

24 JUDGE WAHL: Well, the further  
25 requirements are that it -- first of all, that it's

1 the activities of an office or an agency, and it's  
2 not. That is, I even thought that -- my thought  
3 was that Mr. Sahr's testimony would relate to the  
4 activities of his office, but that really -- it  
5 isn't what the rule contemplates. It contemplates  
6 a report by an agency. That would come in. That's  
7 not what this is.

8 COMMISSIONER CLARK: The chair of the  
9 South Dakota Commission talking about a South  
10 Dakota project before a United States Senate  
11 Committee on behalf of a quasi governmental agency  
12 doesn't qualify as --

13 JUDGE WAHL: As a report?

14 COMMISSIONER CLARK: -- as a report, a  
15 public report?

16 JUDGE WAHL: No. Not of the activities of  
17 the office or the agency. The second -- the second  
18 exception is that it's matters observed pursuant to  
19 duty imposed by law as to which matters there was a  
20 duty to report. And I get all the way there until  
21 I get to the duty to report, and I really can't --  
22 I would like to make it work, I truly would, but I  
23 -- I can't. I'm sorry.

24 COMMISSIONER CLARK: That doesn't change  
25 the fact that the person testifying was reporting

1 on actual testimony received by the South Dakota  
2 Public Utilities Commission in the course of its  
3 duties? If you turn to the testimony, he does  
4 refer to --

5 JUDGE WAHL: Does he? Does he clearly --  
6 does he say that?

7 COMMISSIONER CLARK: Absolutely. I would  
8 refer you to page 7 of his testimony, about the  
9 middle of the middle paragraph, Representatives of  
10 these energy suppliers recently participated in a  
11 forum hosted by the South Dakota Public Utilities  
12 Commission to describe the scope of the problem.  
13 At this forum, my fellow commissioners heard, in  
14 staggering detail, how these electric producers, so  
15 on and so forth.

16 JUDGE WAHL: You know, I'm sorry,  
17 Commissioner. I would like to do this, but really  
18 in good conscience, it really doesn't -- it really  
19 doesn't fit the rule, and that's the only way it's  
20 going to -- that's the only way it's going to come  
21 in as an exception under Rule 803(8). The motion  
22 is denied.

23 COMMISSIONER CLARK: I would ask Mr. Binek  
24 to then move the NARUC resolution attached to it,  
25 which Mr. Kuntz indicated that he did not have a

1 problem with.

2 MR. BINEK: That is correct, Mr. Kuntz did  
3 not have a problem with that, and I would make that  
4 motion.

5 JUDGE WAHL: Mr. Kuntz.

6 MR. KUNTZ: And Montana-Dakota would not  
7 object from the fact that this is -- the resolution  
8 was introduced or made by NARUC on this particular  
9 subject for whatever that's worth. I can't speak  
10 for Otter Tail on this.

11 JUDGE WAHL: I understand that.

12 MR. GUERRERO: No objection.

13 JUDGE WAHL: Mr. Breen.

14 MR. BREEN: I have no objection.

15 JUDGE WAHL: All right. I am marking a  
16 copy as PSC-2, I'm thinking --

17 MR. BINEK: Right.

18 JUDGE WAHL: -- which is a resolution  
19 urging legal and regulatory reform to improve  
20 railroad shipper rates and quality of service  
21 adopted by the National Association of Regulatory  
22 Utility Commissioners board of directors, February  
23 15th, 2006, which will be received.

24 COMMISSIONER CRAMER: Okay. I have a  
25 question then.

1 JUDGE WAHL: Commissioner Cramer.

2 COMMISSIONER CRAMER: I have a question  
3 about the rules of -- Administrative Rules and the  
4 role of the ALJ as the referee of the proceeding.  
5 What options does the body, in this case the  
6 Commission, have if we would like to have something  
7 entered or made notice of? Do we have any -- do we  
8 have any options on our own --

9 JUDGE WAHL: Yes.

10 COMMISSIONER CRAMER: -- beyond your --

11 JUDGE WAHL: You -- ultimately you can  
12 overrule me.

13 COMMISSIONER CRAMER: That's what I was  
14 looking for.

15 JUDGE WAHL: Usually that's done by a  
16 motion; that is, you can appeal -- under your own  
17 rules, as a matter of fact, you can -- my decision  
18 can be appealed to the Commission. Ultimately it's  
19 the agency that has the authority. I'm only the  
20 agency's hearing officer for this kind of  
21 proceeding. So you have that. But I also must  
22 tell you, as Mr. Binek will tell you, that you're  
23 still bound by the Rules of Evidence, so that's a  
24 bit of a problem for you.

25 COMMISSIONER WEFALD: And we would handle

1 that in a different forum. I think we would not --  
2 we would consult with our advisers and then --

3 COMMISSIONER CLARK: Well, let me ask, can  
4 a motion -- can that motion -- does it have to be  
5 made at a public hearing such as this or after we  
6 study the rules on our own and come to an  
7 independent conclusion, which I would want to study  
8 them.

9 COMMISSIONER CRAMER: Right.

10 COMMISSIONER CLARK: At what point is that  
11 proper?

12 MS. JEFFCOAT-SACCO: Either. I think it  
13 could be done at either. We've had Commission  
14 motions at hearings before and we could do it at a  
15 meeting. Either.

16 COMMISSIONER CLARK: Okay. Thank you.

17 COMMISSIONER WEFALD: We have time.

18 COMMISSIONER CLARK: Thanks.

19 COMMISSIONER CRAMER: Thank you.

20 JUDGE WAHL: You're welcome. All right.  
21 Where are we? Why don't we take a brief recess and  
22 then, Mr. Guerrero, where are you with rebuttal?  
23 How long?

24 MR. GUERRERO: Fifteen minutes.

25 JUDGE WAHL: Oh, really?

1 MR. GUERRERO: Yeah.

2 JUDGE WAHL: Well, then we should -- let's  
3 recess for about five minutes and then we'll  
4 proceed and perhaps finish up.

5 (Recess taken at 10:45 a.m. to 10:54 a.m.)

6 JUDGE WAHL: We are back on the record.  
7 Rebuttal, Mr. Guerrero.

8 MR. GUERRERO: Thank you, Your Honor. On  
9 behalf of the applicants we call back to the stand  
10 for rebuttal purposes Mr. Ward Uggerud.

11 JUDGE WAHL: Mr. Uggerud, you understand,  
12 of course, that your testimony remains under oath  
13 and subject to the penalties of perjury?

14 THE WITNESS: Yes, I do.

15 JUDGE WAHL: Mr. Guerrero.

16 MR. GUERRERO: Thank you, Your Honor.

17 **WARD UGGERUD,**

18 having been previously duly sworn, was examined and  
19 testified as follows:

20 **REDIRECT EXAMINATION**

21 **BY MR. GUERRERO:**

22 Q. Mr. Uggerud, I'm showing you what's been  
23 marked as OTP/MDU Exhibit 323. I'm going to pass  
24 some of these out right now. And I'm showing you  
25 -- do you have that document, Mr. Uggerud?

1           A.    Yes, I do.

2           Q.    And it is, it appears -- what's on its  
3 caption, it's an applicants' response to a second  
4 data request of Public Service Commission staff,  
5 the public version.

6           A.    Yes, that is correct.

7           Q.    Have you seen this document before?

8           A.    Yes, I have.

9           Q.    Okay.  Could you turn to the second page,  
10 which is actually page 4 of the overall document,  
11 but I've redacted some of the pages for efficiency  
12 purposes, and that appears to be question number 3.

13          A.    Yes, that is correct.

14          Q.    And the next page, which appears to be  
15 page 8, is question number 7 from the North Dakota  
16 Public Service Commission staff?

17          A.    Yes, that is correct.

18          Q.    And these are questions, as you understand  
19 it, that the Public Service Commission staff posed  
20 to the applicants prior to us coming here over the  
21 last couple of days?

22          A.    Yes, that is correct.

23          Q.    And as was their right to do.

24          A.    Yes.

25          Q.    And back on page 4, which is question

1 number 3, it asked that the applicants provide a  
2 historical summary of the type, sources and costs  
3 of coal used at Big Stone I. And then, Contract  
4 this historical use of coal at Big Stone I to the  
5 anticipated fuel needs of BS II. Did I read that  
6 correctly?

7 A. That's right.

8 Q. And there's a couple of arrows that I've  
9 marked on the document from 2002, from 2006. Do  
10 you see that?

11 A. Yes, I do.

12 Q. Could you explain to the Commission what  
13 that is?

14 A. Yes, I can. The 2002 time frame at Big  
15 Stone marks the transition from taking coal  
16 deliveries at Big Stone under a contract with the  
17 Burlington Northern to a tariff movement by the  
18 Burlington Northern. So that period of rates from  
19 the period 2002 to 2006 is an accurate depiction of  
20 the actual experience that we have seen with regard  
21 to delivered fuel prices to Big Stone. I would  
22 point out that the prices that you see there are  
23 total delivered fuel prices, which include the cost  
24 of coal, the cost of freight, the cost of train  
25 lease, and the cost of maintenance on the railcar

1 fleet, so it's representative of the total all-in  
2 delivered fuel price to Big Stone during the period  
3 of time when we have been operating under a tariff.

4 Q. Thank you, Mr. Uggerud. And 2002, 2006,  
5 2002 it appears that the price per ton or the  
6 dollar per ton was 22.478, 2006 was 25.882. Do you  
7 see that?

8 A. Yes, I do.

9 Q. It's not calculated on this document, but  
10 have you had an opportunity to calculate the cost  
11 increase?

12 A. Yes, I have.

13 Q. Could you share that with this Commission?

14 A. That's approximately a 14 percent rate  
15 increase over that period of time.

16 Q. Thank you, Mr. Uggerud. Then I'm going to  
17 jump over to the next page and, again, there's a  
18 couple of arrows that I've indicated on the  
19 document, and that's question 7, and that question  
20 says, Compare the cost of coal, including  
21 transportation, incurred for Coyote Station with  
22 the projected cost of coal, including  
23 transportation for Big Stone II. Did I read that  
24 correctly?

25 A. Yes.

1 Q. Now, again, these are questions that the  
2 staff posed to Otter Tail and Montana-Dakota?

3 A. That's correct.

4 Q. And could you do the same explanation on  
5 this document?

6 A. Yes, I can. The price of fuel during that  
7 same reference period delivered to the Coyote  
8 Station from a mine mouth coal resource has  
9 increased by 38 percent.

10 Q. And those are from what years?

11 A. 2002, 2006, the same reference period as  
12 the period at Big Stone covered by the tariff for  
13 the BN.

14 Q. And what was the calculation on the Big  
15 Stone I?

16 A. 14 percent for Big Stone, 38 percent for  
17 Coyote.

18 Q. Thank you. Were you here when Mr.  
19 Brautovich from the BNSF was testifying?

20 A. Yes, I was.

21 Q. Do you recall a comment that he made  
22 regarding an 11 percent increase in cost of  
23 freight?

24 A. I heard him make the 11 percent. It was  
25 my understanding that he was referencing that in a

1 more general way. I don't think that he referenced  
2 that to the Big Stone tariff.

3 Q. Okay. What -- do you recall what years he  
4 had referenced that 11 percent?

5 A. I think that he -- I don't recall exactly,  
6 but as I remember it, I thought that he was  
7 referencing the year 2006, and I think that it was  
8 in response to, I think it was, Commissioner  
9 Clark's question with regard to the 600-million-  
10 dollar capital improvement projects in the Powder  
11 River and there was some questions as to what  
12 impacts that might have on rates, and that's when I  
13 think I recall the general discussion.

14 Q. Okay. Thank you. And has there been an  
15 11 percent cost of increase in the 2005-2006 time  
16 frame for Big Stone?

17 A. No. No, there has not. In fact, I was  
18 able to retrieve, and it's broken out from that  
19 information you see in response to question 3 on  
20 page 4 of that exhibit, but I was subsequently able  
21 to check as to the actual tariff rates for Big  
22 Stone for the period 2005, 2006 and 2007, and the  
23 actual tariff component of the freight rate at Big  
24 Stone for the year 2005 was \$17.08 per ton. In  
25 2006 the actual tariff rate was \$17.00 per ton.

1 And in 2007, year to date, the actual tariff rate  
2 has been \$16.97 per ton. So there has not been an  
3 increase in the tariff rate at Big Stone over the  
4 period referenced. In fact, there has been a  
5 slight decline in the actual tariff rate.

6 Q. That doesn't mean there can't be an  
7 increase?

8 A. That doesn't mean that there can't be an  
9 increase.

10 Q. Mr. Uggerud, you were the first person to  
11 take the stand on Tuesday, and so much of what  
12 we've heard regarding the very real concerns on the  
13 part of the Commission with respect to the rail  
14 issues, have you heard those comments throughout  
15 the course of this hearing?

16 A. Yes, I have.

17 Q. Is there anything from your perspective as  
18 the senior vice president at Otter Tail and the  
19 project manager of Big Stone Unit I and the  
20 proposed project manager for Big Stone Unit II --  
21 is there anything additional you would like to add  
22 to that issue?

23 A. Well, I would like, you know, the  
24 Commission to know that certainly one of the  
25 responsibilities that we have, and that was why I

1 articulated at the beginning of my testimony that  
2 my job is to provide electricity as reliably and  
3 economically as possible. And with that  
4 responsibility comes the responsibility to be  
5 engaged in those activities relative to the  
6 administration of our fuel and our freight  
7 contracts and all other aspects of the supply  
8 business, and so a lot of my personal time is  
9 consumed in doing those things that help Otter Tail  
10 and Montana-Dakota Utilities and Northwestern and  
11 the other utilities that will be participating in  
12 the Big Stone II project to achieve optimal prices  
13 with regard to fuel and freight deliveries, and  
14 it's an ongoing activity and there is a lot that  
15 has happened over the years, and, you know, it's  
16 probably unfortunate, but in the reporting of the  
17 things that we're actually participating in, some  
18 of those things may appear to involve contention  
19 and differences of some degree of magnitude with  
20 the Burlington Northern, but, again, that's our job  
21 and that's their job. I hope that the numbers that  
22 we have just been able to offer up this morning  
23 would be indicative of the fact that we do pay some  
24 attention to fuel and freight deliveries, and I  
25 think that we have had some success in managing

1 those costs with regard to the Burlington Northern.

2 I think I had indicated in my testimony  
3 that we're not without option at Big Stone.

4 Certainly, currently we're captive to the  
5 Burlington Northern. They are currently our only  
6 option, but there is not a situation where we're  
7 without options at Big Stone. It was mentioned by  
8 Mr. Deason in his testimony that once we reach the  
9 point where we have a finalized project, and that  
10 doesn't come until slightly later in this  
11 project -- we have not reached financial close yet,  
12 there are still a number of things that are under  
13 review. Included in the review process is this  
14 hearing here. Included in the review process is  
15 the review by the Minnesota Public Utilities  
16 Commission with regard to the certificate of need  
17 for the transmission outlet facilities. But at  
18 some point we anticipate that the approvals and the  
19 permits will be in place and at which time we still  
20 will have an activity that we're engaged in to  
21 arrange for the financing. And it's not until  
22 we've actually reached financial close and have put  
23 the money in the bank to begin the construction  
24 that the project is a final one. And so there is a  
25 period of time, I believe, where we'll have an

1 opportunity to negotiate with the Burlington  
2 Northern for a contract for deliveries to Big Stone  
3 I and Big Stone II, if in fact that's what we wish  
4 to do. As we contemplate whether or not we wish to  
5 enter into a contract with the Burlington Northern  
6 for delivery to Big Stone I and II, we would weigh  
7 that option against the option of making another  
8 attempt to challenge the rate in front of the  
9 Surface Transportation Board. As I indicated, the  
10 process of challenging a rate involves building a  
11 hypothetical railroad, and when we challenged the  
12 rate for Big Stone I, the hypothetical railroad  
13 included only the coal deliveries to unit 1. With  
14 a second unit at the site and more than double the  
15 coal deliveries to the site, a hypothetical  
16 railroad will have significantly more fuel being  
17 delivered to share the costs, so it could be that  
18 the determination by the partnership would indicate  
19 that we might have an opportunity to submit another  
20 challenge.

21 Q. Mr. Uggerud, how long have you been  
22 responsible for the management -- overall  
23 management of the Big Stone Unit I?

24 A. I became an officer of the company in  
25 1988.

1 Q. And Big Stone Unit I became under your  
2 jurisdiction at that point?

3 A. At that time.

4 Q. And do you believe you have a grasp of the  
5 issues -- the full panoply of issues in dealing  
6 with freight and rail issues to the Big Stone Unit  
7 I?

8 A. Yes, and I have had extensive exposure on  
9 a national basis to issues of fuel and freight, as  
10 well.

11 Q. And given your experience, you still  
12 believe making a commitment for coal deliveries to  
13 the Big Stone site to be prudent?

14 A. Yes, I do.

15 MR. GUERRERO: Your Honor, I'm going to  
16 offer OTP/MDU-323.

17 JUDGE WAHL: Mr. Breen.

18 MR. BREEN: Is that the document?

19 MS. LA SEUR: Good morning, Mr. Uggerud.  
20 Do you happen to have a --

21 MR. GUERRERO: Wait a minute.

22 MS. LA SEUR: I'm sorry.

23 JUDGE WAHL: The motion to offer the  
24 exhibit is what's pending.

25 MS. LA SEUR: Oh, yes, that's correct. No

1 objection.

2 JUDGE WAHL: Mr. Binek.

3 MR. BINEK: I have no objection.

4 JUDGE WAHL: OTP/MDU-323 is received.

5 MR. GUERRERO: And I have a few other  
6 questions. Thank you.

7 Q. (MR. GUERRERO CONTINUING) Mr. Uggerud,  
8 during the course of this testimony, primarily  
9 after you took the stand, there's been some  
10 discussion regarding demand side management and  
11 energy conservation. Have you been present  
12 throughout that discussion?

13 A. Yes, I have.

14 Q. And, again, I would ask you, do you have  
15 any further comment on behalf of Otter Tail Power  
16 Company and also as the proposed project manager of  
17 Big Stone Unit II to offer this Commission on that  
18 issue?

19 A. Well, certainly on behalf of Otter Tail  
20 Power Company, I would offer myself and Otter Tail  
21 as available to work with the Commission closely,  
22 in fact, in the exploration and the development of  
23 demand side and conservation programs. Otter Tail  
24 has had a long history in working on demand side  
25 management programs. We've had direct load control

1 throughout the entire history of our company.

2 I might also just mention for purposes of  
3 background that I've spent a fair portion of my  
4 time actually on a personal basis developing demand  
5 side technologies. In fact, I hold both U.S. and  
6 international patents with the development of  
7 demand side technologies. And one of the things  
8 that's become apparent to me over the years is that  
9 one of the limitations with regard to the  
10 penetration of demand side technologies is really  
11 the integration of rates and tariffs relative to  
12 participation in certain programs, and, in fact, as  
13 I was working on the technologies that we  
14 developed, that was one of the most limiting  
15 factors. So it really does take, I think, a  
16 collaboration between not only utilities and  
17 regulatory commissions, but I think it requires  
18 changes in paradigms. It may require quite a bit,  
19 in fact, in order to achieve the kind of  
20 penetration that we have.

21 The other thing that I would offer is as  
22 we worked on the development of those technologies,  
23 that one of the observations that we had was that  
24 truly effective demand side participation has, as a  
25 result of that, a fairly significant potential

1 impact on the system and that is that the effective  
2 programs tend to limit consumptions during times of  
3 high and volatile prices and move consumption to  
4 periods of low and steady prices. And one of the  
5 things we observed was the impact that that has is  
6 not an insignificant one in terms of the shifting  
7 from peaking and intermittent-type resources to  
8 low-cost and steady, dependable baseload resources.  
9 Only a relatively modest change in overall system  
10 load factor from 60 to 62 percent can have quite a  
11 dramatic effect on the overall mix of resources  
12 that one would install on a system.

13 So my point is simply that effective  
14 demand side management programs, while they may  
15 reduce the amount of installed capacity that a  
16 utility might have to have on their system might  
17 actually increase the amount of baseload capacity  
18 that would be desirable for a utility to install.

19 Q. Mr. Uggerud, I take it that this  
20 Commission has your commitment and Otter Tail  
21 Power's commitment --

22 A. Absolutely.

23 Q. -- to work --

24 A. Absolutely.

25 Q. There was a question -- I think it might

1 have been this morning even -- regarding the  
2 average cost of the MISO market on energy. MISO is  
3 an energy market. Do you recall that?

4 A. Yes, I do.

5 Q. Do you have any knowledge about the prices  
6 that we're seeing historically and currently in the  
7 MISO market?

8 A. Yes, I do. And, in fact, in addition to  
9 supervising the supply side of the company, I also  
10 supervise the group of people that is involved in  
11 purchasing and selling electricity in a wholesale  
12 market. And one of the things that was apparent to  
13 me as we just observed on a daily basis the market  
14 this year, is that we were seeing fairly high  
15 prices both on peak and off peak in the MISO  
16 market. And I happened to do some investigation of  
17 those prices at the time that we were observing  
18 them and I called back this morning to confirm that  
19 my recollection of those was right.

20 In January and February for all of the  
21 hours in those two months in 2002, the average  
22 price was about \$20 per megawatt-hour of energy.  
23 By this year for that same time period, the average  
24 price for all of the hours had approached \$80 per  
25 megawatt-hour. That's a function purely and simply

1 of the impact on prices as the pool is becoming  
2 less surplus and moving toward deficiencies.

3 I believe that on paper we're still  
4 carrying some reserves, but the quality of those  
5 reserves is declining, and as our dependence on  
6 providing energy from the intermediate and peaking  
7 resources becomes greater as the reserves continue  
8 to decline, I anticipate that there will be further  
9 upward pressure on wholesale market prices.

10 MR. GUERRERO: Thank you, Mr. Uggerud. We  
11 do recognize that that still is a requirement for a  
12 late-filed exhibit, but I wanted to supplement the  
13 record. No further questions of Mr. Uggerud.  
14 Thank you.

15 JUDGE WAHL: Ms. La Seur.

16 **REXCROSS-EXAMINATION**

17 **BY MS. LA SEUR:**

18 Q. Yes. I'd just like to look again at some  
19 of the numbers and percentage increases that were  
20 referred to in the recently offered exhibit. Let's  
21 see. Your percentage increase from '02 to '06 for  
22 Big Stone I in dollars per million Btu was?

23 A. I believe that that calculation was 14  
24 percent.

25 Q. I get 13.9, but, yeah, I think you're

1 right there. And then for Coyote from '02 to '06,  
2 we're in the general neighborhood of 27 percent; is  
3 that about right?

4 A. It's 37.6.

5 Q. 37.6. And that's --

6 A. I called it 38.

7 Q. 38. Okay. So this is -- I assume your  
8 math is just subtracting the --

9 A. Yes.

10 Q. -- '02 number from the '06 number and  
11 dividing by the '02 number?

12 A. Right.

13 Q. If you calculate that same increase  
14 starting in '96, going back ten years, what kind of  
15 increase do you get at Coyote?

16 A. Without an interesting observation, the  
17 number would be irrelevant. Let me point out, I  
18 picked the number from '02 to '06 because that  
19 represented the period of time during which we've  
20 been taking deliveries at Big Stone under a tariff,  
21 and the concern had been what was the result of the  
22 experience that we had with freight deliveries from  
23 the Burlington Northern when we were subject to  
24 their pricing authority, and so the reference '02  
25 to '06 was to draw that comparability.

1           You make an interesting observation with  
2 regard to Coyote, but there's probably a piece of  
3 information that would be useful to you. I think  
4 the Commission is aware of it. Some of the  
5 historical prices at Coyote represent a situation  
6 where they represent actual delivered prices of  
7 coal received at Coyote, and those were not the  
8 actual contract prices.

9           We had a previous dispute with the coal  
10 supplier for the mine mouth facility at Coyote. We  
11 were concerned that the contract was calculating a  
12 price of coal that was different than the price of  
13 coal that the mine was charging us, and we were  
14 concerned that we were at risk that the supplier  
15 could always return to the contract price of coal,  
16 which was a higher number. And so at some point,  
17 and I can't remember, I think it was in the 1998-  
18 1999 time frame, we actually had an arbitration  
19 proceeding with regard to the fuel supplier to the  
20 Coyote plant, had a successful outcome in that  
21 arbitration. The arbitration panel ordered a  
22 reduction in the price of coal and a modification  
23 in the contract.

24           So my only caution in that is historical  
25 prices at Coyote are kind of a -- it's kind of hard

1 to tell what you're looking at because in some  
2 cases it was what the delivered price was, but it  
3 was not the same as the contract price, and our  
4 concern was that we were liable for a potential  
5 reversion back to the contract price and the  
6 contract price was higher and it was held by an  
7 arbitration panel to be unreasonable. So what you  
8 see historically at Coyote requires a fair degree  
9 of elaboration. Did I confuse you?

10 Q. Probably. Now, help me out here. I'm  
11 subtracting .717, the '02 cost, from .988, the '06  
12 cost.

13 A. In which table?

14 Q. This is back in the Coyote table. So I  
15 take .988 minus .717, I get .271, and then, let's  
16 see, we are dividing that by the .717. Okay. I  
17 get your 38 percent. If I go back and do the same  
18 thing with '96 to 2006, I get around 21.9 percent.  
19 Does that sound right to you?

20 A. And, again, I explained that the choice of  
21 2002 to 2006 was to provide some evidence with  
22 regard to what we have experienced from the BN  
23 during that period of time when they had pricing  
24 authority over us. The period prior to 2002 was  
25 pricing under a contract that had been signed

1 between the Burlington Northern and the Big Stone  
2 partners, and the details of that contract were --  
3 that was confidential information and the pricing  
4 parameters of that were a part of the contract.  
5 But the period from 2002 to 2006 is a good  
6 indication of what the Burlington Northern was able  
7 to do based on their pricing authority that they  
8 had independently.

9 Q. Would you agree that we don't have a lot  
10 of certainty about how those prices will be  
11 controlled in the future?

12 A. Oh, and I hope that I made it clear that  
13 that's one of the big responsibilities that we have  
14 in operating the power plant is to be engaged  
15 diligently in working with both fuel and freight  
16 suppliers. My point was to just try and relieve  
17 some concerns that I was hearing expressed with  
18 regard to the Burlington Northern's potential  
19 treatment of electric rate customers, and I hope  
20 that the evidence suggests that we have done a  
21 somewhat reasonable job in trying to moderate that  
22 and that I don't think that North Dakota customers  
23 have necessarily been gouged by the pricing  
24 activities of the BN, but that has taken a lot of  
25 work on our part, and I would want to point out,

1 too, that it's not Otter Tail alone, it's Otter  
2 Tail and MDU and the other plant partners that have  
3 been involved in that. But, you know, it's a  
4 complex relationship that exists between a coal  
5 plant and its fuel and freight suppliers.

6 Q. Then looking at the Big Stone I numbers --  
7 I think this is back on page 4 -- from '96 to 2006,  
8 what kind of a price increase have you seen?

9 A. Well, that's higher, and, of course, you  
10 know, you have to keep in mind that in 2002 we went  
11 from a contract to a tariff. The reason for that  
12 is in order to challenge the rate, you can't  
13 challenge a contract rate. So we had to ask the  
14 Burlington Northern for a tariff and the numbers  
15 that you see are what we got for the tariff, then  
16 we challenged that tariff rate, and that challenge  
17 of that tariff rate has been the subject of a fair  
18 amount of discussion here.

19 MR. GUERRERO: Do you want him to  
20 calculate -- do the math on it?

21 Q. (MS. LA SEUR CONTINUING) If you wouldn't  
22 mind, I would be interested -- just have you  
23 confirm my very fast math.

24 A. That's 53.6 percent from 1996 to 2006.

25 Q. And then starting over on the Big Stone II

1 projections on the bottom of page 8, we go 2010 to  
2 2020, looking out ten years, what kind of increase  
3 -- percentage increase is projected there?

4 A. I'm assuming, without making that  
5 calculation, that that's either the 2 and a half or  
6 2.9 percent per year. I don't know, but, yes, the  
7 compounding effect of that will be significant. If  
8 you want me to make the calculation, I certainly  
9 will.

10 Q. So it's about 2 and a half percent?

11 A. I think it's a uniform escalation rate  
12 that you see there carried out over a long period  
13 of time.

14 Q. So what, 2 to 2 and a half percent would  
15 be expecting 20 to 33 percent?

16 A. It doesn't appear to me to be anything  
17 other than the compounding effect over a long  
18 period of time of a relatively uniform price  
19 escalation, and I did not prepare this. I believe  
20 this was prepared for us by an outside consultant,  
21 and so I hesitate to do anything more than just  
22 observe the numbers as you see them, but it appears  
23 that it's a uniform escalation over a long period  
24 of time.

25 Q. And what percentage increase do you get up

1 to 2020?

2 A. Well -- and, again, I'm not -- I thought  
3 that it would be exactly to the decimal point year  
4 by year, but it doesn't appear to be, and that's  
5 why I say this was prepared for us by, I believe,  
6 L.E. Peabody. I did not prepare this table myself.  
7 You know, we, I think, had indicated that 2.9  
8 percent, if I'm not mistaken, and that appears like  
9 that might be the number, but it's not exactly  
10 uniform year by year, so when we testified to an  
11 escalation rate over a period of time, I don't know  
12 if that number that we testified to was an  
13 aggregate number over a longer period of time as  
14 opposed to each and every year during that period  
15 of time.

16 Q. And what percentage do you get from 2010  
17 to 2020 on these numbers?

18 A. In aggregate?

19 Q. Subtracting the 2020 number for dollars  
20 per million Btu -- well, subtracting the 2010  
21 number, 1.706, from the 2020 number, 2.267, and  
22 then dividing that by 1.706.

23 MR. GUERRERO: Can I make a recommendation  
24 and just ask counsel to do the calculation and ask  
25 Mr. Uggerud if he thinks that's correct since I

1 think she's already done it?

2 JUDGE WAHL: Have you done it?

3 MS. LA SEUR: I have done it, but I'm the  
4 first to admit I'm no mathematician.

5 THE WITNESS: Well, I get a 53 percent  
6 change in price over that period of time, but,  
7 again, that's a -- you know, you're escalating  
8 prices and compounding escalation. And so what  
9 the -- what the average annual increase in that is  
10 a little bit more complicated than taking the  
11 aggregate number and dividing it by the 15 years.  
12 I keep a four-function calculator in my pocket, but  
13 that's a little bit more complex calculation.

14 Q. (MS. LA SEUR CONTINUING) So your number  
15 is 53 percent?

16 A. Well, if I take 43.882 and divide it by  
17 28.668, that's 53 percent over 15 years.

18 COMMISSIONER WEFALD: Where do you get the  
19 43 number?

20 MS. LA SEUR: I was asking about ten  
21 years.

22 THE WITNESS: Over 16 years?

23 MS. LA SEUR: No. Ten. 2010 to 2020.

24 THE WITNESS: Oh, I'm sorry. I took 2010  
25 to 2025. I just looked at the first entry and the

1 last entry. I didn't hear the question. I was  
2 focused on the numbers. I can do the 2020.

3 MR. GUERRERO: Your Honor, have we beat  
4 this horse?

5 JUDGE WAHL: Ms. La Seur.

6 MS. LA SEUR: I'm going to do this one  
7 last time. I don't want to embarrass myself in  
8 public with my mathematical skills. I get 32.8  
9 percent.

10 THE WITNESS: 32.8 percent if you use that  
11 ten-year period.

12 MS. LA SEUR: Over ten years. Yeah. So  
13 32.8 percent over the ten years, and then if you go  
14 up to 25 -- 2025, I would agree you get to --

15 THE WITNESS: 53 percent.

16 MS. LA SEUR: 53 percent. Yeah. That's  
17 all I have.

18 THE WITNESS: And what the average annual  
19 rate of escalation I don't know is because that  
20 becomes a compound escalation number.

21 MS. LA SEUR: Thank you. Nothing further.

22 JUDGE WAHL: Mr. Binek.

23 MR. BINEK: I have no questions.

24 JUDGE WAHL: Questions from the  
25 Commission. Commissioner Wefald.

**FURTHER EXAMINATION****BY COMMISSIONER WEFALD:**

1  
2  
3 Q. I have just a couple. The first one is, I  
4 heard you say we have not been gouged by prices by  
5 BNSF in the last -- over the last several years.  
6 Then why did you pursue a rate case? I mean, it  
7 just seems to me in converse that you could say  
8 this. You've told us why you pursued the rate  
9 case. We all know you did. Why would you make a  
10 statement like that when --

11 A. Gouging --

12 Q. -- you've just been involved with a rate  
13 case?

14 A. Gouging is a relative term, I suppose. We  
15 made a decision when we filed the appeal that we  
16 thought that the rates were too high. There's a  
17 procedure involving coal rate guidelines that prior  
18 to the filing of our case we thought was a fairly  
19 mathematical and routine way of comparing your  
20 contract price with that that you could be awarded  
21 if you went in for a rate determination similar to  
22 what an electric utility does in a rate case.

23 Q. So are you making the distinction to the  
24 Commission that you went in because rates were too  
25 high, but rates -- but you were not gouged by

1 rates?

2 A. Right. We -- we -- you know, as part of  
3 diligence to our customers, there is a procedure  
4 called coal rate guidelines where a complaining  
5 shipper can go through a process for a rate review.  
6 That's not unlike a rate case for an electric  
7 utility. We took a look at what the mathematical  
8 results would be of applying coal rate guidelines,  
9 and it was our determination based on that review  
10 that our contract price with the Burlington  
11 Northern was higher than it should be if we were to  
12 seek such a rate case.

13 Q. Okay. Thank you.

14 A. And so we were looking for the opportunity  
15 to even further reduce our rates to our customers.  
16 And, unfortunately --

17 Q. They must have felt, too, that they  
18 were -- that you were not being gouged -- the STB;  
19 right?

20 A. It might be more complex than that,  
21 actually, but that was the result of their  
22 determination, yes.

23 Q. How or -- how or would the company's  
24 participation in the Big Stone II project change if  
25 the Commission determined it would be prudent to

1 allow Otter Tail Power to purchase, let's say, 90  
2 megawatts of energy and capacity from Big Stone II  
3 and with the recommendation of -- with the  
4 recommendation that the remainder of the load  
5 requirement be met through demand side management  
6 and/or renewables?

7 A. Well, I -- let me suggest what the most  
8 complicating factor would be. The most  
9 complicating factor would likely be the application  
10 for the transmission interconnection in Minnesota.  
11 There's no doubt but what if the change in size of  
12 the unit from a 630 megawatt nominal plant to a 585  
13 megawatt plant if the North Dakota Commission were  
14 to deem a lesser appropriate share from Otter Tail  
15 and MDU, from an engineering standpoint that could  
16 probably be accommodated yet at the stage that  
17 we're in on the project.

18 My concern, to be honest, is that the  
19 Minnesota Commission has given indication that they  
20 might deem that any change in regard to the project  
21 would result in the need for the applicants to come  
22 in with a revised certificate of need application  
23 for the transmission facilities.

24 I can sit before you and tell you that, in  
25 my opinion, the Minnesota Public Service Commission

1 is being unreasonable with regard to their  
2 perceived authority over the project in South  
3 Dakota.

4 I believe that the transmission is a  
5 federal requirement under the National Energy  
6 Policy Act that anybody anywhere could build a  
7 generating plant and that there's an obligation for  
8 the transmission provider to provide the  
9 interconnection.

10 Minnesota has taken the opinion that  
11 there's an inextricable link between the power  
12 plant and their authorities over the transmission.  
13 So my concern, to be honest and candid, is that any  
14 modification of the megawatt participation level by  
15 any of the parties could result in a requirement  
16 that we refile the entire transmission application.  
17 The delays associated with that, I think, would  
18 result in a risk of a cancellation of the project.

19 We filed the transmission interconnection  
20 over a year and a half ago. We were initially  
21 expecting a determination on that in August of  
22 2006. We're sitting here in the end of June in  
23 2007 and still do not have the report out of the  
24 administrative law judge, let alone a deliberation  
25 by the Commission. When we'll get the certificate

1 of need for the transmission, I don't know.

2 But the whole issue of transmission is the  
3 most complicating factor, whether it be Big Stone  
4 II, whether it be a wind project, whether it be  
5 another North Dakota coal-fired power plant. We've  
6 got some relatively serious issues with regard to  
7 how you do integrated system planning in this  
8 country until we sort out what the new rules of  
9 transmission relative to generation are. The  
10 National Energy Policy Act provided for, as a  
11 policy, that we would try and create a system where  
12 all generators would have equal access to the  
13 transmission, but the rules under which that  
14 transmission is being developed are in a state of  
15 flux and in a state of development right now, and  
16 it is the most complicating factor for the  
17 development of any generation project.

18 Q. Thank you. Wouldn't -- what's your  
19 thought on this, if the Commission did that and  
20 scaled back the size of the plant, though, wouldn't  
21 that allow more room for wind development or  
22 renewables or other sources along that transmission  
23 line?

24 A. Well, as a matter of degree, if you scaled  
25 back the plant with the intention that there would

1 be more wind available on the transmission that's  
2 still going to be built, that you might have the  
3 consequence of scaling back the plant to the point  
4 where you don't do the transmission, and then the  
5 whole transmission plan that was proposed for the  
6 plant was there to enable the increased wind. In  
7 fact, the partners got together and made decisions.  
8 Every one of us has an interest in the economic  
9 vitality of the communities we serve, and in every  
10 community that we serve, we see an interest on the  
11 part of local people to be engaged in the  
12 development of various things that bring economic  
13 opportunity to those communities. We see an  
14 interest in ethanol plants, we see an interest in  
15 biodiesel plants, we see an interest in the  
16 development of wind plants, and everywhere that we  
17 have been in discussion with potential wind  
18 developers they have indicated to us that the most  
19 serious obstacle they face is with regard to the  
20 transmission system to enable the output of their  
21 wind generation.

22 Q. I understand that. But wouldn't the  
23 owners of the potential power plant have an option  
24 to, if they chose, then move forward with 120  
25 megawatts -- let's say Otter Tail and MDU, even

1       though the Commission had thought it was only  
2       prudent for 90, you would have the opportunity to  
3       still move forward with that project at the same  
4       size and just to have that risk be out there for  
5       your company, those 30 megawatts, which Otter Tail  
6       has done a lot of buying and selling of power on  
7       the market in the -- through the MISO market,  
8       anyway, so how would this really -- would it have  
9       any impact at all? You wouldn't have to scale  
10      back. You could still just move forward.

11           A.     But I'm not sure that the outcome is a  
12      known outcome for what you suggest. On the one  
13      hand, the Commission could approve --

14           Q.     It wouldn't be a known outcome, no.

15           A.     The Commission could approve a 90-megawatt  
16      participation level and Otter Tail could continue  
17      116 megawatt, of which 30 megawatt would be  
18      essentially a merchant power plant project that we  
19      would earn our recovery from not through rates, but  
20      from the market price.

21           Q.     Mm-hmm.

22           A.     But it's entirely possible that the board  
23      of directors of our company would say that they're  
24      not in the business of taking on the risk of a  
25      merchant power plant, in which case they could say

1 we no longer have a viable project and Otter Tail  
2 would be forced to pull out. If Otter Tail pulled  
3 out of the Big Stone II project, I think the rest  
4 of the partners likely would, as well, and then you  
5 don't have any of the transmission that's being  
6 proposed by Big Stone II. So now instead of being  
7 able to accommodate 50 megawatts more wind, you  
8 might be able to accomplish a whole lot less  
9 because you don't even have that supporting  
10 project.

11 Q. So what you're saying is the Commission  
12 has a choice of 120 megawatts -- or 116 or nothing?

13 A. We've asked for a prudence determination  
14 on 116.

15 COMMISSIONER WEFALD: Thank you.

16 JUDGE WAHL: Any further questions from  
17 the Commission? Commissioner Clark.

18 COMMISSIONER CLARK: I do have a few and I  
19 fear it might take longer than I had hoped.

20 **FURTHER EXAMINATION**

21 **BY COMMISSIONER CLARK:**

22 Q. How much has Otter Tail Power spent in  
23 time and money on the case it brought against a  
24 railroad that it doesn't believe is gouging  
25 customers?

1           A.     Well, we filed in January of 2002, so  
2 we're five and a half years, and I'm not sure of  
3 the exact amount of money, but it's between five  
4 and six million dollars.

5           Q.     Okay. On a separate issue, would Otter  
6 Tail --

7           A.     Excuse me. If I might correct myself.  
8 That's total cost, not just Otter Tail.

9           Q.     Thanks. Would Otter Tail be willing to  
10 stipulate as part of this proceeding to holding  
11 Otter Tail Power consumers harmless to future fuel  
12 clause adjustments above and beyond Otter Tail's  
13 projections for fuel cost in this case?

14          A.     No. I think --

15          Q.     Would it be willing to share in some of  
16 the risk with ratepayers?

17          A.     Well, my preference would be to make sure  
18 that the dialog that we have between Otter Tail and  
19 the commissions that regulate us is close enough so  
20 that those activities that we're engaged in are  
21 deemed to be prudent.

22                     I want to just point out, you know, the  
23 five, six million dollars that was spent to try and  
24 lower the delivered coal prices were not passed on  
25 to consumers. Those were prices that we paid for

1 directly from the shareholder portion of the  
2 return.

3 Q. Right. But I'm not asking about that with  
4 this question. I'm asking about the fuel clause  
5 adjustment and I'm trying to explore a way forward  
6 here where at least my concern -- I don't know  
7 about other Commissioners' concerns, we'll talk  
8 about it in the work session -- where somehow Otter  
9 Tail and -- the applicants can alleviate the  
10 concern regarding future fuel clause adjustments,  
11 the concern being that -- capital costs are one  
12 thing, and I think the applicants have made a very  
13 strong case with regard to capital costs of this  
14 project. Overall costs are something else that  
15 have to include the FCA. Is there some way that  
16 you can envision the applicants becoming a shared  
17 risk partner with consumers with regard to these  
18 fuel clause adjustments?

19 A. You know, I don't -- I don't know the  
20 answer to that. As Mr. Deason testified, that's a  
21 delicate thing. You know, so often time and again  
22 utilities are finding it easier to take the  
23 expedient path of doing those things with the least  
24 risk and, consequently, the least reward  
25 opportunity for the customers, too. We're not in

1 the business of investing money to not earn a  
2 return on it.

3 As Mr. Deason indicated, one of the things  
4 that people struggle with is if it appears that the  
5 people that are investing the money in these  
6 projects can do better elsewhere, there's no  
7 requirement that it's invested in a regulated  
8 electric utility, so that's a shared  
9 responsibility. Now, I would -- and I certainly  
10 don't make these commitments on behalf of Otter  
11 Tail Power Company, and Otter Tail Power Company  
12 doesn't make them on behalf of Otter Tail  
13 Corporation. Okay. There is competition for  
14 money.

15 From my personal perspective, I would  
16 suggest that I would personally have some  
17 willingness to discuss that, but would suggest then  
18 that, okay, if there's the risk of not earning a  
19 return on some of those fuel clause costs, would  
20 there be the opportunity for the upside of being  
21 able to keep some of --

22 Q. But, as I understand it, Otter Tail  
23 doesn't earn a return on the fuel clause costs; is  
24 that correct?

25 A. But you were suggesting, I thought, that

1 we put some of that money at risk by not being able  
2 to recover it in the fuel clause if it exceeded a  
3 threshold. And what I was suggesting was if that's  
4 what you were heading toward, my willingness to  
5 consider a portion of the money at risk that way  
6 would probably have to be offset with an  
7 opportunity to get more if I did better than that.

8 Q. But isn't right now 100 percent of the  
9 risk of the fuel clause adjustment, of escalating  
10 fuel costs borne by consumers? How is it that a  
11 movement towards the utility sharing in some of  
12 that risk then entitles the utility to additional  
13 revenue recovery opportunities in the future?

14 A. As Mr. Deason pointed out, the whole issue  
15 of the fuel clause adjustment is a complex one.  
16 Just for example, our wind cost recovery, that's  
17 been deemed to be prudent and we will be able to  
18 pass those things along automatically.

19 Q. Sure.

20 A. The Coyote fuel prices have gone up more  
21 percentagewise.

22 COMMISSIONER WEFALD: Actually, the  
23 Commission hasn't done anything in regard to  
24 wind -- your wind. We haven't taken any action on  
25 that.

1           THE WITNESS:  Then I spoke incorrectly.  
2   But my point is that that whole -- that whole  
3   notion of how costs are recovered is an important  
4   one to us.  That's why we're in this business and  
5   that's why as regulated monopolies that's a shared  
6   responsibility that requires a post dialog with the  
7   commissions.  We don't want to be in a business  
8   where significant costs and the way in which we  
9   recover those is unknown to us or poses an  
10  unacceptable business risk.  It is a business  
11  proposition, and I can't speak for our company with  
12  regard to that.  I can only suggest that my first-  
13  blush reaction is that it would step outside of the  
14  normal comfort level of what we've historically --

15         Q.    (COMMISSIONER CLARK CONTINUING)  I'll take  
16  one last try at it, then I'll give up.  I can  
17  understand how the rate base items are a shared  
18  risk between shareholders and ratepayers.  
19  Completely understand it.  Completely agree with  
20  you on that.  Explain to me how the fuel clause  
21  adjustment, the cost of the delivered fuel costs,  
22  are a shared risk between shareholders and  
23  ratepayers.

24         A.   Well, I'm not sure that I understand your  
25  question completely then.  If what you're

1 suggesting is that the Commission would allow us to  
2 pass annual percentage increases in delivered fuel  
3 prices of 3 percent on automatically to the  
4 customer, okay; but that if those fuel prices  
5 increased by 7 percent, that that would be a risk  
6 to be borne by our shareholders. If that was, you  
7 know, what you were wondering, I think that that  
8 would give us some concern.

9 Q. Okay. I would term it a little  
10 differently. I would probably term it as Otter  
11 Tail being -- is Otter Tail willing to be held  
12 accountable to the projections that you're  
13 testifying to in this case on a going-forward  
14 basis?

15 A. I think that in order --

16 Q. Financially accountable.

17 A. In order to have those kinds of  
18 accountabilities, I think you would have to be able  
19 to have some control regulation over the railroad,  
20 but you would also have to have the same kind of  
21 control over the coal mine.

22 Now, an alternative to an automatic  
23 pass-through in the fuel clause would be to take  
24 some of those costs and require that they be  
25 covered in annual rate increases supported by a

1 filed rate case in which case it's a mutual  
2 determination as to prudence. But over the course  
3 of time utilities are going to have to be engaged  
4 in the management of their fuel and freight supply,  
5 and that's a shared responsibility.

6 Q. Okay. I do want to get back to the  
7 question of deliverability because the testimony  
8 that I had previously sought to have entered was  
9 disqualified because we don't have someone here who  
10 is able to be cross-examined to it or it would be  
11 considered hearsay. I am interested in getting  
12 your reaction as a witness to the testimony so I  
13 can understand what -- if there's anything  
14 inflammable -- flammable about -- if there's  
15 anything flammable, as Mr. Kuntz indicated, in the  
16 statements that were made, I want to know what it  
17 is.

18 MR. GUERRERO: Mr. Uggerud, do you have a  
19 copy of that document in front of you?

20 THE WITNESS: I do not.

21 MR. GUERRERO: Can I ask a few questions  
22 to know whether he's even read it?

23 COMMISSIONER CLARK: I'll read it. I'll  
24 read it to him.

25 JUDGE WAHL: I don't think he has to read

1 it.

2 COMMISSIONER CLARK: I'll ask the  
3 questions and he can say yes or no if he agrees  
4 with the statement.

5 Q. (COMMISSIONER CLARK CONTINUING) Would you  
6 agree with the statement that a majority of coal  
7 used for electric generation is transported to  
8 electric utilities in the PRB under noncompetitive  
9 conditions which often results in extremely high  
10 rates and poor service?

11 MR. GUERRERO: What page are you reading  
12 from? I'm sorry.

13 COMMISSIONER CLARK: I don't know that  
14 it's important that I'm -- consider these  
15 questions. But if you'd like to follow along, this  
16 particular question is on page 4.

17 MR. GUERRERO: I guess I would.

18 Q. (COMMISSIONER CLARK CONTINUING) Would you  
19 agree with the statement that a majority of coal  
20 used for electric generation is transported to  
21 electric utilities under noncompetitive conditions  
22 which often results in extremely high rates and  
23 poor service?

24 A. Well, I'm afraid that I would have  
25 difficulty with regard to making a response with

1 the degree of comfort as to what your  
2 interpretation of "often" and "very poor" might be.  
3 I'm concerned that an agreement in a general way  
4 could be misconstrued because I'm not sure that we  
5 would have the same understanding with regard to  
6 those two terms.

7 Q. Okay.

8 A. Now, I'm certainly not unaware of the  
9 thing that Mr. Sahr was testifying to.

10 Q. Sure.

11 A. But I think that he was trying to be  
12 inflammatory because he was trying to make a point,  
13 and sometimes you use adjectives differently when  
14 you're trying to do that.

15 Q. Okay. For those who may want to follow  
16 along, I'm moving to page 5, reduction in coal  
17 deliveries. The statement was made at our February  
18 meeting in Washington, D.C., the members of NARUC  
19 focused a good deal of attention on the coal  
20 delivery problem. We found that utilities in many  
21 states, particularly those powered by PRB coal, had  
22 experienced in 2005 reduced coal deliveries under  
23 firm contracts by 10 to 25 percent, thereby  
24 dramatically reducing the amount of coal inventory  
25 available for current and future electricity

1 production. Would you agree with that statement?

2 A. Yes, I would.

3 Q. It goes on to state, We understand that  
4 many utilities expect similar shortfalls in 2006.  
5 These reduced coal shipments resulted in coal  
6 conservation programs under which utilities reduced  
7 the operation of their coal plants to conserve  
8 their resources. Would you agree with that?

9 A. Yes.

10 Q. These utilities were forced to substitute  
11 much higher priced gas-fired production or market  
12 purchases of gas-fired generation to make up the  
13 difference. Would you agree with that?

14 A. Yes.

15 Q. The higher costs of the substitute  
16 gas-fired electricity has resulted in significant  
17 rate increases to customers of rural electric  
18 cooperatives, public power authorities, and  
19 investor-owned utilities all across the country,  
20 totaling hundreds of millions and even billions of  
21 dollars, and have placed upward pressure on natural  
22 gas market prices. Would you agree with that?

23 A. I think that gets into the area of  
24 potentially being inflammatory with a purpose.  
25 There is no question that there were some of those

1 things. Whether or not to the degree that was  
2 there, I'm not sure. I'm not sure that I could  
3 have written that statement with that same  
4 forcefulness as Commissioner Sahr did.

5 Q. Would you have any reason to doubt that  
6 the Edison Electric Institute testified that it  
7 cost at least 2 billion dollars more than -- coal  
8 delivered than coal?

9 A. I wouldn't dispute that.

10 Q. Moving down to subset V, South Dakota:  
11 One state's story. The NARUC testimony indicates,  
12 as delivered by Chairman Sahr, Back in my home  
13 state of South Dakota, we are seeing firsthand the  
14 effects of this coal supply crisis: Power plants  
15 operating at less than ideal capacity due to supply  
16 problems. Would you agree that that happened?

17 A. Right.

18 Q. Plant operators purchasing more expensive  
19 replacement power; would you agree with that?

20 A. Yes.

21 Q. Utilities paying more for electricity?

22 A. Yes.

23 Q. Consumers ultimately bearing these higher  
24 costs?

25 A. Yes.

1 Q. Adverse economic and social impacts of  
2 higher electricity prices?

3 A. Yes.

4 Q. And energy security and public safety of  
5 the region put at risk?

6 A. Yes.

7 Q. Moving to the next paragraph starting with  
8 two major electric producers in my region. The  
9 testimony indicates that, as I said, Two major  
10 electric producers in my region, the 460 megawatt  
11 Big Stone Power Plant near Milbank, South Dakota,  
12 and the Laramie River Station in Wyoming with its  
13 three coal-based units, each with 550 megawatts,  
14 rely on coal delivered by rail from the PRB. Would  
15 you agree at least with regard to the Big Stone  
16 Plant that's the case?

17 A. Yes.

18 Q. These plants furnish electricity to a wide  
19 variety of utility sectors including investor-owned  
20 companies, rural electric cooperatives and  
21 municipal utilities. Representatives of these  
22 energy suppliers recently participated in a forum  
23 hosted by the South Dakota Public Utilities  
24 Commission to describe the scope of this problem.  
25 Did Otter Tail participate in that forum?

1           A.    Yes.

2           Q.    At this forum, my fellow commissioners and  
3 I heard, in staggering detail, how these vital  
4 electric producers servicing our region have been  
5 hit hard by poor rail service, which has  
6 substantially hindered efficient plant operations  
7 and produced dramatic and unexpected price  
8 increases.  Would you agree with this  
9 characterization of that forum?

10          A.    Again, it's a matter of degree, but, yes.

11          Q.    Okay.  Moving to paragraph A, depletion of  
12 coal stockpiles.  Because the power plants are not  
13 receiving their demand for coal normal  
14 operations -- coal for normal operations, they have  
15 been forced to dip into their coal stockpiles.  The  
16 stockpiles have grown perilously sparse as the  
17 railroads' performance has continued to lag and the  
18 railroads have failed to replenish the stockpiles  
19 with new coal deliveries.  Is that your experience  
20 with Big Stone I?

21          A.    For a period of time.

22          Q.    In March, the Big Stone -- continuing, In  
23 March, the Big Stone Power Plant stockpile dwindled  
24 to a 10-day supply while the plant waited for their  
25 rail service provider to deliver the needed coal.

1 Is that 10-day supply approximately correct?

2 A. Yes.

3 Q. Some of the coal at the bottom of the  
4 stockpile has been stored on open ground, exposed  
5 to the elements for 20 years in some cases, and can  
6 only be used as a last resort. Is that also  
7 correct?

8 A. That's correct.

9 Q. Moving to security concerns. Besides the  
10 problem I have just described, the depletion of  
11 this stand-by coal supply creates significant  
12 operational concerns. Would you agree with that?

13 A. Are you reading from?

14 Q. I'm sorry. Under paragraph B, security  
15 concerns.

16 A. Oh, yes.

17 Q. Given the critical shortage of coal being  
18 experienced at these plants, and the fact that  
19 these are large plants designed to meet the  
20 baseload needs of the public, any weather,  
21 operational, rail accident, terrorism, or other  
22 incident could further compromise the ability of  
23 these electricity providers to meet the public  
24 demand, the effect of which could be crippling for  
25 our state and region. Would you agree with that?

1           A.     I would.

2                    JUDGE WAHL:   I'm sorry, Mr. Uggerud.   Your  
3 answer was.

4                    THE WITNESS:   I would agree.

5                    JUDGE WAHL:   Oh, I'm sorry.

6                    COMMISSIONER CLARK:   Well, I've got quite  
7 a bit.

8                    THE WITNESS:   Well, I think that it's  
9 uncharacteristically unfair to take that event,  
10 though, and to leave it on the table as a  
11 continuing concern.   We've provided testimony as to  
12 the actions that Otter Tail has undertaken to  
13 restore deliveries to Big Stone.   This was clearly  
14 an unprecedented event in our experience within the  
15 country for the delivery of coal from the Powder  
16 River Basin, and many utilities experienced those  
17 problems.   There was a lot of pressure that was  
18 being put on the railroads to make changes.   And I  
19 believe that the system is much improved.

20                    But I want to remind you that delivery of  
21 coal from the Powder River is not the only fuel  
22 supply problem that you're going to have.   We got  
23 three inches of rain at Coyote a couple weeks ago  
24 and we were almost forced off line because of the  
25 fuel quality at Coyote.   And that's an occurrence

1 that happens routinely during conditions of heavy  
2 rainfall in western North Dakota. So the issues  
3 that we faced at Big Stone were not unique to Big  
4 Stone alone, and that's just a part of being an  
5 electric utility and operating under various  
6 conditions. I am not sitting before the Commission  
7 personally to stress with regard to the  
8 deliverability of coal from the Powder River to Big  
9 Stone.

10 Q. (COMMISSIONER CLARK CONTINUING) I'm not  
11 doing this to be particularly antagonistic. It's  
12 because the record up to this point, I believe,  
13 indicates that there were problems described in  
14 various ways, but I don't know that we have any  
15 specific document that details the extent and very  
16 specific concerns with regard to Big Stone II. I  
17 don't recall problems at Coyote, for example,  
18 having U.S. Senate Congressional hearings. This is  
19 the one document that provides those so that we can  
20 put it on the record. This procedurally would seem  
21 to me is the way to get these concerns on the  
22 record. So far you haven't disagreed with much  
23 that's been stated.

24 A. But, you know, what's on the record  
25 documents a situation that existed for about a

1 year's period of time following a specific event at  
2 Powder River. It's not my opinion that those  
3 conditions continue today for delivery to the Big  
4 Stone Power Plant, nor is it my opinion that those  
5 conditions had ever existed prior in the 30-plus  
6 years of operation of the Big Stone facility.

7 Q. Okay. Thank you for your opinion on that.  
8 I'll continue building the record, however. Moving  
9 to conservation measures. Even if future coal  
10 shipments match daily burn requirements,  
11 replenishing the coal reserves at the plants is  
12 taking an extended period of time. As a result,  
13 these electricity providers have had to develop or  
14 implement conservation measures to preserve and  
15 rebuild their diminished stockpiles. You would  
16 agree with that?

17 A. Yes.

18 Q. Continuing, In early April, due to the  
19 carriers continuing service failures, the Big Stone  
20 Power Plant was forced to reduce its generation  
21 output to 45 percent of normal levels. Is that  
22 accurate?

23 A. Yes.

24 Q. When the stockpile is replenished, it is  
25 anticipated that plant output levels will only be

1 allowed to increase to approximately 85 percent of  
2 the historic levels experienced in 2004 and 2005  
3 and still maintain the stockpile. Was that true to  
4 a certain point?

5 A. That was true until the point that we  
6 received delivery of the third set of train cars.

7 Q. Thank you. Moving on to market-purchased  
8 electricity. Curtailments such as this forced the  
9 plant to purchase replacement energy on the open  
10 market at a significant cost to customers. For  
11 example, the Big Stone Plant co-owners have  
12 explained they are purchasing power on the open  
13 market at \$20 a megawatt-hour higher than they can  
14 produce the power. Is that, do you feel, an  
15 accurate characterization?

16 A. That was -- that was the experience at  
17 that time.

18 Q. Okay. The co-owners estimate that their  
19 retail customers are paying an additional 3 million  
20 dollars per month for this more expensive  
21 replacement electricity. Is that figure correct?

22 A. I'm not going to disagree with it. I  
23 don't -- I don't know.

24 Q. Approximately how long did that go on for?  
25 How many months?

1           A.     I don't think that it continued at that  
2 level for the entire period during which we had the  
3 D rates, and this is Mr. Sahr's testimony, and I do  
4 not know what the total cumulative impact of that  
5 was.

6           Q.     Okay. He goes on to state that Because  
7 the retail utility customers have rate adjustment  
8 clauses, these higher costs are being passed on to  
9 their residential, business and industrial  
10 customers who are seeing electric bills 5 to 10  
11 percent higher than normal as a result. Would you  
12 agree with that?

13          A.     Yes.

14          Q.     Moving on to paragraph F, captive shipper  
15 costs. Besides receiving poor service, as captive  
16 shippers, these companies are facing exorbitant  
17 rail fees. Otter Tail Power Company, co-owner of  
18 the Big Stone Plant, reported a 38 percent increase  
19 in freight rates at their Big Stone Plant in just  
20 one year. I won't ask you to comment on the  
21 pejorative of exorbitant because we've gone over  
22 that quite a bit, but is the 38 percent increase in  
23 freight rates at Big Stone accurate?

24          A.     Well, I think that the 38 percent was the  
25 experience that we had when we elected to go from a

1 contract to a tariff for the purpose of challenging  
2 the tariff.

3 Q. Okay. Thank you. So that would be  
4 unrelated to the coal supply problems?

5 A. And, again, you have to keep in mind the  
6 purpose -- Commissioner Sahr's purpose here was to  
7 try and seek some changes with regard to railroad  
8 regulation --

9 Q. Sure.

10 A. -- and treatment, and I can't disagree  
11 with his intention.

12 Q. Moving on to page 11, safety and economic  
13 threats. The second paragraph, Further, this  
14 shortage threatens economic development throughout  
15 my state and region as well. When a power plant  
16 goes into curtailment mode, their retail customers  
17 may need to impose drastic conservation measures.  
18 Industrial customers, for example, may not be able  
19 to meet contractual agreements and may be forced to  
20 pay penalties to their customers. Again, not  
21 commenting on the nature of drastic and other  
22 adjectives, would you agree with the statement that  
23 industrial customers have -- may not be able to  
24 meet contractual arrangements and then may be  
25 forced to pay penalties to their customers?

1           A.     I would not have an opinion as to that.

2           Q.     In addition, when these plants purchase  
3     electricity, such as that generated by natural gas,  
4     on the open market, it drives up the cost of  
5     natural gas for all purchasers of that product.  
6     Would you agree with that statement?

7           A.     Probably.

8           Q.     Moving on to the stopgap efforts that were  
9     made, Commissioner Sahr indicates that the Big  
10    Stone Plant -- it's in the middle of the  
11    paragraph -- the Big Stone Plant arranged to commit  
12    receiving trains of Montana coal. Is that correct?

13          A.     Yes, we did.

14          Q.     And while that effort has allowed the  
15    plant to build back its stockpile to a normal  
16    30-day level, it has come at a cost. The Montana  
17    coal has a higher sulfur content than PRB coal.  
18    The additional sulfur dioxide allowances that are  
19    required with the fuel make this option  
20    prohibitively expensive for the plant. Would you  
21    agree with that, what I just read, beginning with  
22    the Big Stone Plant is receiving the Montana coal?

23          A.     I didn't write this and, again, it's a  
24    matter of detail, but if it was prohibitively  
25    expensive, I wouldn't know why we did it. I think

1 we did it. It came at a cost. I think what we're  
2 playing with here is construction of an argument  
3 that was intended to be inflammatory for a  
4 different purpose.

5 Q. But there were --

6 A. It was expensive, but it wasn't so  
7 prohibitive that we didn't do it.

8 Q. Would you be able to quantify those costs  
9 to the Commission in a filing?

10 A. The costs of fuel supply disruptions in  
11 2005.

12 Q. Well, switching to the Montana coal. I  
13 guess I'm specifically asking about that.

14 A. Well --

15 Q. Actually, I think I already asked for  
16 costs associated with it, so that would be  
17 contained in that.

18 Continuing on, In addition, Big Stone has  
19 fixed quantity contracts in place with two PRB  
20 mines and taking the Montana coal put the Big Stone  
21 co-owners at risk for not meeting contractual  
22 obligations. Is that correct?

23 A. Right. And we were able to avoid that  
24 through the invocation of a force majeure.

25 Q. Okay. And then the final question, in the

1 conclusion section, second paragraph, Legislative  
2 and regulatory reform at the federal level are also  
3 necessary to help ensure more reliable rail  
4 service, improved rail operations and dedicated  
5 capacity improvements, more rail carrier options  
6 for shippers, and more equitable rates for affected  
7 shippers. Are you aware of any legislative or  
8 regulatory reform efforts that have succeeded  
9 between when this was delivered and today?

10 A. I don't think that there's been any  
11 legislative or regulatory changes that have  
12 succeeded during the period since that event. I  
13 think that there have been some improvements  
14 through the actions of the Burlington Northern and  
15 the Union Pacific on their own volition that have  
16 improved the situation. These conditions do not  
17 exist today that were described in this report.

18 COMMISSIONER CLARK: Okay. Thank you.  
19 And I do apologize again for the amount of time  
20 that took.

21 JUDGE WAHL: Any further questions from  
22 the Commission?

23 COMMISSIONER CRAMER: I'll resist the  
24 great temptation.

25 COMMISSIONER WEFALD: But I do.



1 consider in your business?

2 A. No. In fact, I've worked with some of  
3 those shippers and advised them with regard to --  
4 on numerous rail transportation issues.

5 Q. And it's obvious you would agree, Mr.  
6 Uggerud, that Mr. Sahr was concerned when he wrote  
7 this testimony?

8 A. Yes, he was.

9 Q. And this testimony was written and  
10 submitted May 25th, 2006?

11 A. Right.

12 Q. Was Mr. Sahr a commissioner on the Public  
13 Utilities Commission in South Dakota for the Big  
14 Stone Unit II energy conversion facility permit  
15 matter?

16 A. Yes.

17 Q. Did he sit through several days of  
18 hearing?

19 A. Yes.

20 Q. Do you know how he voted in that case?

21 A. In an approval of the Big Stone project.

22 MR. GUERRERO: No further questions.

23 JUDGE WAHL: Mr. Breen, anything further?

24 I'm sorry. Ms. La Seur. I'm sorry.

25 MS. LA SEUR: I have nothing further.

1 JUDGE WAHL: Mr. Binek, anything further?

2 MR. BINEK: Nothing further.

3 JUDGE WAHL: All right. Thank you very  
4 much, Mr. Uggerud. Anything further, Mr. Guerrero?

5 MR. GUERRERO: Nothing further. Thank  
6 you, Your Honor.

7 JUDGE WAHL: All right. Commissioners,  
8 anything further?

9 COMMISSIONER WEFALD: Yes. Tuesday I  
10 asked a question about the concept of tying an  
11 incentive type of return to success in meeting the  
12 estimated busbar cost of constructing Big Stone II  
13 and transmission. I would like to receive  
14 late-filed exhibits from the parties setting forth  
15 their position on this issue, its application in  
16 this proceeding, setting forth a proposal and a  
17 description of the benefits of such a plan to  
18 consumers.

19 MR. KUNTZ: Can you repeat that again?

20 MR. BREEN: Could you repeat that?

21 COMMISSIONER WEFALD: Yes. Tuesday I  
22 asked a question about the concept of tying an  
23 incentive type rate of return to success in meeting  
24 the estimated busbar cost of constructing Big Stone  
25 II and transmission. I would like to receive

1 late-filed exhibits from the parties setting forth  
2 their position on this issue, its application in  
3 this proceeding, setting forth a proposal and a  
4 description of the benefits of such a plant to  
5 consumers.

6 MR. GUERRERO: What time frame do you  
7 anticipate?

8 COMMISSIONER WEFALD: I would leave that  
9 up to the hearing officer.

10 MR. GUERRERO: The only reason I ask, Your  
11 Honor, is something like that's not something  
12 that's put together.

13 JUDGE WAHL: Do we need to work this out  
14 on the record? I think probably not. Along  
15 with -- we've got what, we've got this question,  
16 we've got briefing, we've got some housekeeping  
17 things to finish up which we might do off the  
18 record and adjourn the hearing.

19 COMMISSIONER WEFALD: I'll just speak to  
20 the question of timeliness. It relates to the  
21 reasonableness of the proposal, and so that is why  
22 I'm asking for this information.

23 MR. BINEK: I would just like one  
24 clarification. I'm assuming you're not asking the  
25 advocacy staff to prepare that.

1           COMMISSIONER WEFALD: I would certainly be  
2 welcome to ideas from the advocacy staff as well as  
3 from the parties and from the intervenor.

4           MR. BINEK: I think we'd have difficulty  
5 putting that together, not having the access to the  
6 company records.

7           COMMISSIONER WEFALD: Well, basically, if  
8 you remember what my concept was in proposing this,  
9 and I'm going to try to get it right this time,  
10 that the company could earn a higher rate of return  
11 on capital cost if they came in below cost, they  
12 could earn a lower rate of return if they came in  
13 above cost.

14          MR. BINEK: Do you think we can do it?

15          MR. KUNTZ: Commissioner, with all due  
16 respect, this plant could operate for 30 years. I  
17 don't know how this Commission or these utilities  
18 could bind future commissions to giving a higher or  
19 lower rate of return on this plant that far into  
20 the future. Are you talking just for some limited  
21 period? I mean, this Commission may not have the  
22 same makeup at the time that this plant even comes  
23 on line for its first rate increase. I'm not sure  
24 how we could -- constitutionally, I'm not sure how  
25 we could even agree to something like this.

1           COMMISSIONER WEFALD: Well, apparently the  
2 Minnesota commission set up a plan that Xcel agreed  
3 to, and so if you want ideas on what has been done  
4 in the past, you could take a look at the Minnesota  
5 commission and the -- one of their coal plants, I  
6 believe it was the Riverside Plant that they  
7 converted from coal to natural gas.

8           MR. KUNTZ: Thank you.

9           JUDGE WAHL: Anything further for the  
10 record from the Commission?

11          COMMISSIONER CLARK: Closing comments, is  
12 that what you're asking for?

13          COMMISSIONER WEFALD: Closing comments, we  
14 would be welcome to do that.

15          JUDGE WAHL: All right. Is that where  
16 we're at?

17          MR. GUERRERO: This can be either on the  
18 record or off the record, but it may be helpful --  
19 and we can do this off the record -- just to go  
20 through so we're all on the same page as to what  
21 the late-filed exhibits are. There are several,  
22 and I think I've got a list. I'm just not sure I  
23 have a complete list, and I want to make sure that  
24 we're responsive to the Commission's request. So  
25 we can do that on the record or off the record or

1 we can huddle and come back, however you want to do  
2 it.

3 JUDGE WAHL: Well, I would have hoped that  
4 counsel would have their notes in order, frankly.

5 MR. GUERRERO: I was hoping to have it --  
6 if we could huddle off the record a minute, have it  
7 read onto the record so that there is a formal  
8 record as to exactly what late-filed exhibits are  
9 going to be required.

10 JUDGE WAHL: For the Commission's review  
11 and approval?

12 MR. GUERRERO: For a record more than  
13 anything as parties get the transcript. I'm sorry.  
14 Maybe I didn't understand your question. There's  
15 several late-filed exhibits and I think it's  
16 important --

17 JUDGE WAHL: I understand that. And you  
18 want to prepare a list that the parties agree on,  
19 and then do you want the Commission to review it  
20 and approval it?

21 MR. GUERRERO: Sure. Just to make sure  
22 that we didn't miss any that the Commission may  
23 have in their notes.

24 COMMISSIONER CLARK: Mr. Hearing Officer,  
25 that does carry a little bit of a risk for the

1 Commission in that if we sort of approve this list,  
2 there may be something that I just can't remember  
3 over the last three days that doesn't get on the  
4 list.

5 COMMISSIONER WEFALD: The record will  
6 show.

7 JUDGE WAHL: Again, that's my point. Mr.  
8 Kuntz.

9 MR. KUNTZ: How about if in three days or  
10 so we prepare a list of what we believe to be the  
11 outstanding exhibits, submit it to the Commission.  
12 If what we're preparing isn't what you wanted, then  
13 let us know so, you know, what we do submit meets  
14 your expectation sufficiently in advance. We're  
15 going to have to talk about when these are going to  
16 be filed. But what, I think, might be some value  
17 is that we give you a list based on our notes of  
18 what we understand the Commission was looking for.  
19 If there's a question, I think it may be an  
20 interpretation of what was asked for versus what we  
21 understood. We can provide that list of what we're  
22 going to prepare. If you want something different  
23 than that, then let us know before we submit it. I  
24 think that might be more beneficial.

25 COMMISSIONER WEFALD: Pat Fahn, do you

1 have -- he's our adviser to the Commission. Do you  
2 have any suggestions on this?

3 MR. FAHN: Well, I think the Commission  
4 could respond and determine whether the items in  
5 your list are what they thought they were.

6 MR. KUNTZ: Right.

7 MR. FAHN: But I don't know if the  
8 Commission will remember every item. We may have  
9 to look through the transcript to determine that.

10 MR. KUNTZ: And we've got notes where we  
11 were requested to provide late-filed exhibits. My  
12 concern is there could be an interpretation issue  
13 as to what we're going to generate is what was  
14 really being sought, and the list that we would  
15 provide, I think, would maybe have a little bit of  
16 detail in terms of what we intend to provide with  
17 late-filed exhibits.

18 COMMISSIONER WEFALD: I think that would  
19 be a good first step.

20 JUDGE WAHL: All right. Then let's  
21 proceed accordingly. All right. Commissioners,  
22 your closing comments. Commissioner Wefald.

23 COMMISSIONER WEFALD: I would like to  
24 thank everyone for the very thorough and thoughtful  
25 comments that have been presented to the Commission

1 in this case. I very much appreciate all of the  
2 parties' comments. I've learned a great deal from  
3 everyone's presentations. I had wondered, since  
4 there were such voluminous materials presented to  
5 the Commission ahead of time, whether I could learn  
6 more from the hearing than I had from the  
7 materials, but the hearing was very, very helpful  
8 to me as far as sorting through different ideas and  
9 clarifying my thoughts. And so I appreciate very  
10 much this opportunity to have this hearing and the  
11 thoughtful presentations that have been made by all  
12 parties. Thank you.

13 JUDGE WAHL: Commissioner Clark.

14 COMMISSIONER CLARK: I, too, would like to  
15 thank everyone. If there were -- just to put  
16 things in perspective, if there's moments where  
17 questions perhaps seem pointed, there's a good  
18 reason for it. As I look at this plant, 1.6  
19 billion dollars is more than the entire State of  
20 North Dakota spends in its general fund budget in  
21 an annual basis. It's a lot of money. North  
22 Dakota ratepayers are going to be asked to be put  
23 on line for potentially 300 to 400 million of the  
24 capital costs, not including completed retail  
25 costs.

1           So if there's one thing I think that all  
2 of us have learned through sometimes painful  
3 precedent is we have to have a really good record  
4 if we're going to make a decision, because that's  
5 the only thing upon which that we have to write an  
6 order. So our exploration of certain topics and  
7 our questioning of those in the record that you put  
8 forward is all in that spirit. And I want to thank  
9 you for the amount of time you put in. Thanks.

10           JUDGE WAHL: Commissioner Cramer.

11           COMMISSIONER CRAMER: I'll just echo what  
12 my fellow commissioners have said and say thank  
13 you.

14           JUDGE WAHL: All right. This hearing --  
15 these hearings, I guess, are adjourned.

16           (Concluded at 12:20 p.m., June 28, 2007.)

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## 1 CERTIFICATE OF COURT REPORTER

2  
3 I, Stephanie A. Smith, a Registered  
4 Professional Reporter,

5 DO HEREBY CERTIFY that I recorded in  
6 shorthand the foregoing proceedings had and made of  
7 record at the time and place hereinbefore  
8 indicated.

9 I DO HEREBY FURTHER CERTIFY that the  
10 foregoing typewritten pages (pages 1-320) contain  
11 an accurate transcript of my shorthand notes then  
12 and there taken.

13 Bismarck, North Dakota, this 9th day of  
14 July, 2007.

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17 Stephanie A. Smith  
18 Registered Professional Reporter  
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CERTIFICATE OF COURT REPORTER

I, Denise M. Andahl, a Registered Professional Reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages (pages 320-810) contain an accurate transcript of my shorthand notes then and there taken.

Bismarck, North Dakota, this 9th day of July, 2007.

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Denise M. Andahl  
Registered Professional Reporter

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