

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co., :
a Division of MDU Resources : Case No.
Group, Inc. : PU-10-124
Electric Rate Increase Application :

TRANSCRIPT OF

HEARING

VOLUME III

PAGES 629-914

Taken At
State Capitol
Bismarck, North Dakota
November 10, 2010

BEFORE JUDGE AL WAHL
-- TEMPORARY ADMINISTRATIVE LAW JUDGE --

A P P E A R A N C E S

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A P P E A R A N C E S (Continued)

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1 (The proceedings continuing, commencing at
2 8:32 a.m., Wednesday, November 10, 2010, as
3 follows:)

4 JUDGE WAHL: All right. Let's be in
5 order. I think that we're running. This is
6 November 10th, 2010, and day three of the hearing
7 of the application of Montana-Dakota Utilities Co.
8 for an electric rate increase application. This is
9 the North Dakota Public Service Commission Case No.
10 PU-10-124.

11 Before we begin, I would say to anyone who
12 is listening on the Internet that I would expect to
13 finish this afternoon and I say, again, that any
14 member of the public who has an interest in
15 testifying to the Commission concerning any matter
16 related to MDU's electric rate increase
17 application, anyone who has any information which
18 they think the information -- which they think the
19 Commission should have, including any documents
20 which they would offer to the Commission, is
21 welcome, in fact encouraged, to come to the hearing
22 later this afternoon at their convenience and they
23 will be provided an opportunity to testify before
24 the Commission then.

25 With that, Mr. Kuntz, I think it's Ms.

1 Mulkern back to the stand.

2 MR. KUNTZ: That's correct, Your Honor.

3 RITA A. MULKERN,

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

6 JUDGE WAHL: Ms. Mulkern, you understand,
7 of course, that your testimony continues under oath
8 and subject to the penalties of perjury?

9 THE WITNESS: Yes, I do.

10 JUDGE WAHL: Mr. Savelkoul.

11 CONTINUED CROSS-EXAMINATION

12 BY MR. SAVELKOUL:

13 Q. Good morning, Ms. Mulkern.

14 A. Good morning.

15 Q. Now, you filed some updates to your
16 testimony throughout this case. You filed one on
17 Friday and you updated that again on Monday
18 morning; is that correct?

19 A. I think, yeah, we have what we're -- what
20 I'm discussing today before the Commission is what
21 was filed on Monday morning.

22 Q. Okay. As compared to the initial filing,
23 are there material changes to your request in what
24 you filed on Monday morning?

25 A. In terms of the initial filing we made in

1 April, is that what your question is?

2 Q. Yes.

3 A. The most significant change is in the --
4 as I mentioned in my rebuttal testimony, is the
5 bonus tax depreciation. That was -- the law was
6 passed in September of 2010. That's the most
7 significant change in the -- from what we filed to
8 where I am today.

9 Q. Okay. Did you file updated financial
10 schedules that were included in your initial
11 filing?

12 A. What do you mean by financial schedules?

13 Q. In your initial filing you had several
14 statements which provided accounting data,
15 financial statements, income tax calculations, et
16 cetera.

17 A. No, we included all that -- all the
18 changes to those were included in the -- showing
19 the calculation of those in my rebuttal exhibits.

20 Q. The final numbers were shown in your
21 rebuttal exhibits, or did you demonstrate each
22 change that was in one of these statements?

23 A. The rebuttal statement showed for each
24 wind project the rate base, the associated reserve
25 for depreciation, deferred income taxes on the

1 income statement side, the fuel -- revenue
2 associated with fuel, the O&M.

3 Q. But you didn't change the statements that
4 would show the overall impact to the entirety of
5 your case, did you?

6 A. No. I summarized that in my rebuttal
7 testimony.

8 Q. Okay. Thank you. So you don't believe
9 the information in your initial filing was correct?

10 A. No, I do believe what we filed initially
11 overall was correct. However, as I discussed in my
12 rebuttal testimony, the most significant change was
13 the bonus tax depreciation. We have not changed
14 our overall plant values from the initial filing in
15 this one or where I'm at today.

16 Q. But there was a significant change to
17 depreciation?

18 A. To the bonus tax depreciation --

19 Q. Yes.

20 A. -- on deferred income taxes, yes.

21 Q. And there was a change with the treatment
22 of the North Dakota investment tax credit?

23 A. Yes, that also was a change, although that
24 is -- in terms of revenue requirementwise, that's
25 not a very -- in terms of the dollars changed in

1 the revenue requirement, that's not very much.

2 Q. That's your position, it's not very much?

3 A. Calculationwise, the rate base deduction
4 for the North Dakota investment tax credit is
5 \$292,000, and I can do a quick revenue requirement.
6 That's about \$35,000 of the change. We had a
7 change of about \$1.5 million in the revenue
8 requirement, and I would say of that 1.4 million
9 was due to the bonus tax depreciation or deferred
10 income taxes.

11 Q. And that North Dakota investment tax
12 credit -- well, let's back up. The bonus
13 depreciation, that changed your overall taxable
14 income in this case, didn't it?

15 A. Yes, it did.

16 Q. That's a material change, isn't it?

17 A. It actually -- it changed the -- if you're
18 looking from a tax perspective, it had no change in
19 our overall income taxes because we do deferred
20 taxes. And on the income side -- income statement
21 side you get that tax deduction, it reduces your
22 current income taxes, but there's a 100 percent
23 offset on deferred taxes. So it doesn't change
24 anything in terms of your revenue requirement or
25 your income statement or what your net income is.

1 The change you see is on the rate base side where
2 you have a much larger tax deduction.

3 Q. And that depreciation affected your
4 ability to take advantage of investment tax
5 credits, didn't it?

6 A. It affects the ability to take the full
7 investment tax credit in the full year. You do
8 have 20 years to recover that investment tax
9 credit, and so what it essentially does, it just --
10 instead of taking it all within the first five
11 years, it extends it to perhaps -- at this point
12 we're saying it would extend to taking it over the
13 first six years. We do believe that we will be
14 able to get the full investment tax credit.

15 Q. Now, wouldn't it be a policy decision that
16 would be appropriate for the Commission to decide
17 as to how to recognize investment tax credits in
18 rate base and in revenue requirement?

19 A. Montana-Dakota elected years ago in its
20 treatment of investment tax credits, and it's
21 called -- it is option 1 and option 2, and option 1
22 is what Montana-Dakota has chosen and that is you
23 get a rate base deduction and you normalize that
24 over the life of the property in question or the
25 applicable property. And to do so -- do otherwise

1 time period would be, in my understanding, a
2 violation of the IRS tax normalization.

3 Option 2 is to basically still amortize it
4 over the life of the plant, but instead of a rate
5 base deduction, it's a credit to income tax. It
6 also is normalized.

7 We have chosen years ago to be an option 1
8 company and, therefore, that's how we've treated
9 any investment tax credits in the past and how we
10 would continue to treat investment tax credits.

11 Q. Okay. But this Commission isn't bound by
12 income tax law, is it?

13 A. I believe that when there's an IRS
14 normalization violation, I don't believe that the
15 -- my understanding is, the same with deferred
16 taxes, that that would violate normalization and
17 the Commission cannot propose something that would
18 violate that.

19 Q. The North Dakota investment tax credit
20 you've chosen to normalize. Have you normalized
21 the production tax credit?

22 A. Production tax credit is a different type.
23 Production tax credit is just that -- it is a tax
24 credit based on the energy that's produced by the
25 plant. It's a federal tax effect. So there's no

1 normalizing required because we get the tax credit
2 the year -- in whatever amount that we generate
3 that year, whereas the investment tax credit it's a
4 very short time period that it's received and it's
5 normalized over the life of the plant.

6 Q. It's a lot for staff to digest in two
7 days, isn't it?

8 A. I can't answer that. I believe staff is
9 very qualified. They've looked at -- for instance,
10 they're familiar with the Otter Tail filings, so I
11 believe they have a good understanding of the
12 investment tax credit and deferred income taxes.

13 Q. Would it surprise you to understand that
14 the Otter Tail filings dealt with the investment
15 tax credit differently?

16 A. I understand that with the first two wind
17 farm -- wind developments, the Langdon and the
18 Ashtabula, they did the production tax credit. And
19 my understanding with the third one, the Luverne,
20 that they have proposed to go with the federal
21 investment tax credit.

22 Q. Yeah. I'm speaking with respect to the
23 North Dakota investment tax credit.

24 A. I'm sorry. I don't understand your
25 question.

1 Q. Is it your understanding that you are
2 treating revenue requirements with respect to the
3 North Dakota investment tax credit the same way
4 Otter Tail is?

5 A. I noticed in their -- I did review the
6 filing, but, of course, because of trade secret, it
7 had no numbers in it, but there was an investment
8 tax -- appeared to be an investment tax credit
9 deduction to rate base, which is how we are
10 treating it.

11 Q. From my recollection, it was treated
12 differently there.

13 MR. SAVELKOUL: I guess at this point it
14 would be appropriate to request that the Commission
15 take official notice of the Otter Tail filing for
16 recovery in PU-10-18.

17 MR. KUNTZ: That was a multi-
18 jurisdictional recovery of a wind farm, Mr.
19 Savelkoul?

20 MR. SAVELKOUL: I'm sorry. I don't
21 understand the relevance of your question.

22 MR. KUNTZ: I guess I'm trying to figure
23 out what the Commission was determining in that
24 case. Were they allowing recovery over a multi-
25 jurisdictional basis of a wind farm?

1 MR. SAVELKOUL: My understanding is, yes,
2 they were based on the information provided.

3 MR. KUNTZ: Then I have no objection.

4 JUDGE WAHL: The Commission -- I'm sorry,
5 Mr. Savelkoul. This was an Otter Tail application,
6 was it?

7 MR. SAVELKOUL: It was.

8 JUDGE WAHL: And it was Public Service
9 Commission Case No. PU-10-18?

10 MR. SAVELKOUL: That's correct.

11 JUDGE WAHL: Mr. Roaché, any objection to
12 the motion?

13 MR. ROACHÉ: No objection.

14 JUDGE WAHL: Mr. Skokos?

15 MR. SKOKOS: No objection.

16 JUDGE WAHL: Ms. Jeffcoat-Sacco?

17 MS. JEFFCOAT-SACCO: I have no objection,
18 but I have a question. Are we talking -- the other
19 ones -- I didn't have as big a question yesterday
20 because there's not as much in the file. Are we
21 talking the order? Are we talking everything in
22 the file or what?

23 JUDGE WAHL: No. Listen, I'm not too sure
24 about how I'm handling these. I think the prudent
25 way is to make a record, which I'm doing, and

1 everybody has a response, but it's my view, subject
2 to some research, but I'm fairly confident that,
3 motion or no motion, the Commission can take
4 official notice of anything and everything that it
5 will find relevant to its consideration. So
6 everything and -- I think everything and anything
7 the Commission has of record in a previous
8 proceeding that is relevant, the Commission on its
9 own motion should deem it appropriate, rely on what
10 it's done before.

11 MS. JEFFCOAT-SACCO: I understand that. I
12 was trying to ask what the party wanted -- let's
13 assume the Commission does not decide to take
14 anything -- take official notice of something, but
15 what does the party asking the Commission to take
16 notice of, which is to me a little bit different
17 because if we say, yes, we must do it.

18 JUDGE WAHL: You're right. You're right.
19 I can guess what Mr. Savelkoul's response will be,
20 but what is it that you want to take -- the
21 Commission to take notice of in PU-10-18?

22 MR. SAVELKOUL: The initial filing
23 containing the financial data with respect to
24 recovery of those wind farms.

25 JUDGE WAHL: All right.

1 MR. SAVELKOUL: Again, my understanding
2 with respect to what the Commission can consider,
3 an order is an order and can be considered by the
4 Commission in any case.

5 JUDGE WAHL: All right. The motion is
6 granted.

7 Q. (MR. SAVELKOUL CONTINUING) Okay. Now,
8 with respect to rebuttal testimony, the one you
9 filed on Monday, Exhibit 8R, on page 2, on lines 9
10 through 15, you state, "The amounts for the
11 incentive compensation and board expenses are from
12 Mr. Mathai's testimony and summarized in GM-3-A.
13 The amounts for wind generation are different than
14 those used by Mr. Mathai as the company's
15 calculations represent a more detailed analysis
16 with all wind generation. Exhibit No." blank
17 "(RAM-2) shows the exclusion of all wind generation
18 affecting rate base and income statement." That's
19 correct, isn't it?

20 A. Yes.

21 Q. In your opinion, did staff attempt to
22 ascertain more accurate numbers?

23 A. I believe we answered to the best of our
24 ability the request that the staff had asked of us.
25 As I note in my testimony, Montana-Dakota does not

1 track basically a revenue requirement for every
2 generation facility or any facility, and primarily
3 this is due to what -- most utilities use what's
4 called mass asset accounting, and that's because
5 there's so many units of property a utility has,
6 every pole, every line, utilities when they
7 calculate depreciation expense roll everything up
8 to a -- what's called an account level, like a pool
9 account, and do depreciation expense on the entire
10 account rather than by each individual unit.

11 We do track separately the plant by
12 generating unit, so we have the information by
13 generating unit for the plant. But after that the
14 depreciation expense and reserve are done at a unit
15 or a rolled-up level. So we really do not have
16 available the accumulated reserve for depreciation
17 for an individual unit of property such as the
18 Diamond Willow. We did provide information to
19 staff.

20 The other thing that this affects, the
21 major item is accumulated deferred income taxes.
22 Because of our mass asset accounting when we
23 calculate that tax depreciation, it's done at a
24 function level. We roll up all the production
25 plant and calculate the tax depreciation in all

1 production plant, because all production plant has
2 the same tax depreciation rate, and the same with
3 transmission plant. So on our books --

4 MR. SAVELKOUL: I'll object, Your Honor.
5 This isn't the question that I asked.

6 JUDGE WAHL: Well, you've got to let the
7 witness -- give the witness some latitude, Mr.
8 Savelkoul.

9 MR. SAVELKOUL: Okay.

10 JUDGE WAHL: Then your motion really
11 should be to object and move to strike.

12 MR. SAVELKOUL: Move to strike.

13 JUDGE WAHL: Well, denied.

14 THE WITNESS: I'll try to clarify. What
15 I'm explaining is why information wasn't readily
16 available is that we do not keep track of all
17 generating assets, a complete revenue requirement.
18 We provided Mr. Mathai with the information that we
19 had, and primarily the difference here --
20 difference that I enumerate in my testimony between
21 what we use and what Mr. Mathai used is on the
22 deferred income taxes on Cedar -- excuse me -- the
23 first increment of Diamond Willow. Mr. Mathai,
24 when he removed the first increment of Diamond
25 Willow from the rate base, he removed just the 2009

1 accumulated reserve level, but it actually goes
2 back to 2010 cost of service. And so that was
3 something. So it was just going through and taking
4 out exactly what was in our projected cost of
5 service.

6 Q. (MR. SAVELKOUL CONTINUING) Did he use
7 what you provided to him?

8 A. He did use what we provided to him and
9 that's what I noted, that we provided the 2009
10 because at that point that's the actual -- the 2009
11 plant and reserve levels, but it was a 2010
12 projected cost of service, and so it would have --
13 if taking out what was in the rate case, would have
14 needed to take out the matching level.

15 Q. Somewhere in your first -- the previous
16 answer you mentioned what most utility companies
17 do. But earlier in your testimony you testified
18 that you knew what Otter Tail did in North Dakota,
19 and doesn't Otter Tail keep a separate revenue
20 requirement for their wind farms?

21 A. I think you're talking about some
22 different things here. Mass asset accounting is
23 what I was referring to as how most utilities
24 keep -- do their fixed assets and related items. I
25 don't recall I knew whether or not -- excuse me.

1 As I said in my testimony, if this Commission says
2 we're going to have a rider, you need to track all
3 those expenses, we will. We will make sure that we
4 can do that. Any company such as Otter Tail that
5 has a rider that recovers a separate cost
6 completely separately would track that, and we
7 will.

8 Q. And wasn't it prudent for the Commission
9 staff to make such a request based on the history
10 of the Commission's decisions?

11 A. I believe we have stated we have no
12 objection to going with a rider for the renewable
13 -- for the wind generation.

14 MR. SAVELKOUL: Okay. May I approach,
15 Your Honor?

16 JUDGE WAHL: You may.

17 MR. SAVELKOUL: Your Honor, may we have
18 this marked?

19 JUDGE WAHL: For the record, the document
20 just handed to the witness is marked Exhibit
21 CAS 11.

22 Q. (MR. SAVELKOUL CONTINUING) Now, the
23 question asked in this discovery request was,
24 "Provide a revenue requirement calculation for each
25 wind farm facility included in the test years

1 including all rate base and expense components,"
2 doesn't it?

3 A. Yes, it does.

4 Q. And as you previously testified, your
5 response was generally we don't keep this and
6 referred us to -- and you stated, "Please see
7 response number 82 for the revenue requirement for
8 North Dakota electric operations for the 30
9 megawatts of wind generation installed in 2010,"
10 doesn't it?

11 A. That's what the response says.

12 MR. SAVELKOUL: Your Honor, I would
13 request that -- or I would offer this exhibit.

14 JUDGE WAHL: Mr. Kuntz?

15 MR. KUNTZ: No objection.

16 JUDGE WAHL: Mr. Roaché?

17 MR. ROACHÉ: No objection.

18 JUDGE WAHL: Mr. Skokos?

19 MR. SKOKOS: No objection.

20 JUDGE WAHL: Ms. Jeffcoat-Sacco?

21 MS. JEFFCOAT-SACCO: No objection.

22 JUDGE WAHL: Exhibit CAS 11 is received.

23 MR. SAVELKOUL: Your Honor, may we
24 approach?

25 JUDGE WAHL: You may.

1 MR. SAVELKOUL: Your Honor, if I could
2 have DR response 82 marked next and then after that
3 81.

4 JUDGE WAHL: All right. For the record,
5 the document which is data request dated August 26,
6 2010, NDPSC-DR-082 will be marked Exhibit CAS 12
7 and data request dated August 26, 2010,
8 NDPSC-DR-081 will be marked Exhibit CAS 13.

9 MR. SAVELKOUL: Thank you, Your Honor.

10 Q. (MR. SAVELKOUL CONTINUING) Now,
11 DR-request number 51 directed staff to DR-82.
12 DR-82, with respect to two parts of it, directs
13 staff to DR-81. Isn't that correct?

14 A. Yes, it does.

15 MR. DILLER: I don't think Attachment A is
16 here.

17 MR. SAVELKOUL: Does anybody have
18 Attachment A to DR-82?

19 COMMISSIONER CRAMER: Yes.

20 JUDGE WAHL: And for the record, the
21 document -- the exhibit for the record does not
22 have Attachment A.

23 MR. SAVELKOUL: Is that 82 or 81 you're
24 looking at?

25 COMMISSIONER CRAMER: 81.

1 JUDGE WAHL: Oh, no, we're looking at --
2 I'm looking at 82.

3 MR. SAVELKOUL: That's what I asked about.
4 We'll have to supply that later. I'll cover those
5 questions later.

6 JUDGE WAHL: All right.

7 Q. (MR. SAVELKOUL CONTINUING) Let's just go
8 to 81 then.

9 JUDGE WAHL: Which is Exhibit CAS 13.

10 Q. (MR. SAVELKOUL CONTINUING) Now, looking
11 at 81, I'd like to direct your attention to the
12 lines titled purchases and sales for resale. Do
13 you see those?

14 A. Can you provide the reference again?

15 Q. It's under the overall total column in the
16 fuel cost column, the line labeled purchases and
17 sales for resale.

18 A. I see that.

19 Q. Okay. Now, noting what the numbers are
20 there, I'd like to direct you to your rebuttal
21 testimony, Attachment RAM-2 -- I'm sorry. I think
22 my notes referred to your Friday filed rebuttal.
23 So I'm going to direct you to RAM-2, page 5 of 6.

24 COMMISSIONER KALK: Mr. Savelkoul, it's
25 hard to follow what -- it's hard to follow what

1 you're talking about because I don't know that we
2 have the documents that you're referring to. What
3 did you just say?

4 JUDGE WAHL: It's in -- I don't know if
5 your bundle is as big as mine, Commissioner, but
6 it's MDU Exhibit 8.

7 COMMISSIONER KALK: Okay. All right.
8 Thank you.

9 JUDGE WAHL: Then past the last divider.

10 COMMISSIONER KALK: Okay. Thank you.

11 MR. SAVELKOUL: Actually, it's 8R.

12 JUDGE WAHL: I'm sorry. It is 8R, but the
13 top of my bundle is 8, then you dig down to 8R.

14 COMMISSIONER KALK: Thank you.

15 MR. SAVELKOUL: A lot of digging.

16 JUDGE WAHL: Is everybody -- are we --
17 okay.

18 Q. (MR. SAVELKOUL CONTINUING) Now, CAS 13,
19 again, we were talking about -- and I should give
20 you a little more direction. In the far left
21 column of the first page of the attachment,
22 approximately a third of the way down there's a
23 title projected 2010 with wind, and then a little
24 further down there's a title projected 2010 without
25 any wind. Do you see those?

1 A. I do.

2 Q. And what I would like to focus our
3 attention on is the lines under both those sections
4 titled purchases and sales for resale. Now, that's
5 also what your -- if I understand, your Exhibit
6 RAM-2, page 5 of 6, that's also what that attempts
7 to illustrate, isn't it?

8 A. Yes. Exhibit 5 of 6 is a total company
9 exhibit versus the data request is for North
10 Dakota, but, generally speaking, they're both
11 looking at the use of resources with and without
12 wind.

13 Q. Okay. Do the numbers appear to translate
14 to equal amounts?

15 A. They're very close.

16 Q. The total number -- I'm looking at total
17 for sales on page 5 of 6, and this is the whole
18 company, and it looks like the dollars received by
19 the total company assuming wind is in the system is
20 \$4,095,000; is that correct?

21 A. Excuse me. Can you ask that question
22 again?

23 Q. The sales for resale line in the column
24 that is titled amount, and then under that the
25 column titled with wind, and the line that says

1 sales for resale, it says \$4,095,000, does it not?

2 A. Yes, that's what it says.

3 Q. Okay. And what percent of that would
4 belong to North Dakota?

5 A. Approximately 64, 65 percent.

6 Q. Okay. Now, with respect to that same page
7 5 of 6, previous witnesses have testified as to
8 who's been a benefit of these wind investments, and
9 it's the company's position, is it not, that
10 ratepayers have been the beneficiaries?

11 A. Yes, all customers have benefited -- all
12 interconnected system customers have benefited from
13 having the wind generation on the system.

14 Q. And it offsets MISO sale purchases?

15 A. As well as other higher-cost company-owned
16 generation. I believe Mr. Neigum discussed that
17 yesterday in detail. It's a combination of both.

18 Q. Okay. I direct your attention to that
19 page 5 of 6. There is a column to the left which
20 shows the kilowatt-hours that are purchased. The
21 total purchases change is relatively small, doesn't
22 it?

23 A. Yes, based on this dispatch. If you look
24 at the difference, probably more is made up by the
25 own generation than the purchases.

1 Q. Okay. And if you go down to the very next
2 line, doesn't that say sales for resale, and
3 doesn't that indicate that with wind there are 100
4 million more hours of -- kilowatt-hours of energy
5 sold?

6 A. Yes, based on this, and this isn't a --

7 Q. Wait. Isn't this what you filed and you
8 said it's currently accurate?

9 A. Excuse me. Could I answer the question?
10 This is a projected 2010. It's not an actual, just
11 to clarify. But, yes, based on this with the wind
12 and then the sales for resale would be 164,700,000
13 kilowatt-hours.

14 Q. Okay. And the total kilowatt-hours
15 produced by these wind farms we could find up under
16 the filed column one, two, three, four, five,
17 six -- seven lines up, and if you combine Diamond
18 Willow and Cedar Hills, it states 164,200
19 kilowatt-hours are produced?

20 A. Approximately 195 million kilowatt-hours
21 would be produced by the wind.

22 Q. Approximately what?

23 A. 195 million kilowatt-hours.

24 Q. Where is that provided?

25 A. Oh, excuse me. I added incorrectly. I'm

1 sorry for that.

2 Q. Not surprising.

3 A. 164 million kilowatt-hours would be
4 produced by the wind.

5 Q. Okay. And of that 164 million, this
6 attachment to your final, final rebuttal testimony
7 indicates 98 million of that 164 million goes to
8 sales for resale, does it not?

9 A. That's what is sold, yes, or assumed to be
10 sold.

11 Q. Okay. And prior to the filing of this
12 rate case, are you familiar with what the margin
13 sharing agreement the company had with ratepayers
14 was?

15 A. Yes, I'm very familiar with that tariff.

16 Q. Okay. Can you explain that?

17 A. Yes, I can. And this goes back to the
18 last general rate case in 2003. As part of that
19 rate case, as part of a settlement the company
20 agreed to credit \$6.5 million into base rates for
21 sales for resale margin, and then, in addition to
22 that, the company agreed that the extent that sales
23 for resale were higher than 6.5 million, customers
24 would get 85 percent of that additional sales for
25 resale margin. To the extent that sales for resale

1 fell below 6.5 million, the company would get to
2 recover 85 percent of that differential below.
3 However, there was a floor set in that of \$3.2
4 million plus 15 percent of whatever the company
5 sold. So if the company sold less than 3.2
6 million -- had less than 3.2 million of margin for
7 North Dakota customers, customers still got credit
8 for \$3.2 million.

9 Q. Okay. So doesn't that mean up until this
10 rate case this line that says sales for resale
11 benefited the company, not ratepayers?

12 A. No. I would say both benefited up until
13 the point where the wholesale sales margin fell
14 below 3.2 million. At that point the company was
15 giving back to customers more than it received in
16 margin. For example, in 2009 North Dakota's share
17 of wholesale sales margin was 400,000 and customers
18 received \$3.2 million credit of sales for resale
19 margin.

20 Q. Okay. I understand that. So the
21 customers up to 3.2 million. If you had a hundred
22 thousand worth of sales and sales went to 2
23 million, customers get 3.2 million either way?

24 A. Could you repeat that?

25 Q. If sales without wind were 100,000 and

1 adding wind provided an additional \$3 million,
2 customers wouldn't receive any of that \$3 million
3 dollars, would they?

4 A. Yes, customers receive a base of \$3.2
5 million regardless of what the company actually
6 sells. As I mentioned, in 2010 North Dakota's
7 share was 400,000. So to the extent that sales for
8 resale are below the 6-and-a-half-million-dollar
9 level, customers receive more of the benefit.

10 Q. Would you like to change your company's
11 position as to whether the customers received all
12 of the benefit of these wind farms prior to the
13 filing?

14 A. I would say the company -- the customers
15 received all of the benefits.

16 Q. All right. I'll move on on that.
17 Actually, I'm just going to bring out one more
18 point. I'm going to direct you again to that page
19 5 of 6 and I'm going to direct you to the total
20 dollars sales for resale, the middle columns. Can
21 you tell me how much more -- how many more dollars
22 with wind were produced for sales for resale as
23 opposed to without wind?

24 A. In terms of the cost -- excuse me.

25 Q. I believe it would be \$4,095,000 minus

1 \$1,596,000.

2 A. And what this schedule shows is fuel
3 costs, not margin. So this is a fuel cost
4 associated with the sales for resale, not the sales
5 for resale margin.

6 Q. Doesn't it show fuel and purchased power?

7 A. It does.

8 Q. So it says sales for resale, and wouldn't
9 the fuel be included up above under the generation
10 lines?

11 A. Right, and that's why it's deducted to
12 arrive at the total, but this whole schedule is
13 just fuel -- kilowatt-hours requirements and fuel.
14 It's not -- I'm not sure maybe -- it seems as if
15 you're implying that this is margin, and it's not.
16 This is the assumed sales for resale kilowatt-hours
17 and fuel costs associated with that.

18 Q. Is there anywhere we have what margin
19 would have been made? I mean, it certainly appears
20 according to the schedule that that's the margin
21 made.

22 A. In our filing we put a base margin of zero
23 and propose to flow back 85 percent of all margins
24 received to customers through the fuel cost
25 adjustment. Therefore, we did not assign any

1 margin to this because we're proposing to use a
2 fuel cost mechanism as a means of providing the
3 benefit to customers rather than setting a base
4 level.

5 Q. And that's effective when you filed the
6 case, not for the period prior to that, isn't it?

7 A. That's actually what we're proposing, and
8 in the settlement agreement we've agreed to credit
9 back 100 percent of all sales for resale margins to
10 customers through the fuel cost adjustment.

11 Q. That wasn't my question. Prior to the
12 filing of the rate case was that the treatment?

13 A. Well, up until today still we have the
14 margin sharing credit, the margin sharing tariff is
15 still in effect, and will be in effect until an
16 issue is ordered in this filing.

17 Q. Okay. But internal rates would roll
18 margin treatment back, would it not?

19 A. Our interim rate calculation excluded --
20 excluded any amounts for the change in the sales
21 for resale margin -- excuse me. Our interim rates
22 reflected the continuation of the existing tariff
23 because to change that would require a Commission
24 order.

25 Q. So are you not requesting the company to

1 roll back the decision in this rate case back to
2 the date it was filed?

3 A. No. We've proposed, as with anything
4 coming out of this case, it will be prospective.
5 On the date that this Commission or the date final
6 rates go into effect, we would change that tariff.
7 The current margin sharing tariff would no longer
8 be in effect. And if our proposal or the
9 settlement, either one, on that date, the sales for
10 resale margin will start flowing back to customers
11 through the fuel cost adjustment.

12 Q. Okay. The revelation on what this shows,
13 and that information actually causes me to have a
14 couple more questions. So this is 2010 and you
15 currently have the margin sharing agreement in
16 place until an order is issued. It appears that if
17 this is fuel cost, with wind fuel costs go up. I'm
18 looking at page 5 of 6 again, sales for resale, the
19 amount column, the with wind column says
20 \$4,095,000, the without wind number is \$1,596,000.
21 So with wind are we to assume ratepayers' costs
22 went up?

23 A. No.

24 Q. Can you explain that?

25 A. Yes. The -- and I'll call it the dispatch

1 fund for sake of ease -- dispatches in this
2 scenario -- two scenarios, one with all the wind
3 running for a full year and the other with no wind
4 running. Wind -- I think the easiest way to say
5 what customers -- effect on customers is the
6 columns to the right with the per megawatt-hour.
7 With the wind the overall cost of fuel is \$18.35.
8 If you take out the wind, the overall cost is
9 \$19.81. So overall the addition of wind lowers the
10 fuel cost to customers by approximately \$1.50 per
11 megawatt-hour.

12 Q. That's on an incremental basis, that's not
13 on a total basis, is it?

14 A. No, total dollars are also less when
15 there's no wind.

16 Q. So total costs are less when there's no
17 wind?

18 A. Total fuel costs -- excuse me. Total fuel
19 costs are less when the wind is on line.

20 Q. I'm confused as to what the sales for
21 resale effect are.

22 A. Sales for resale really has very little
23 effect and perhaps -- and if you want to look at
24 what North Dakota customers would be paying, that's
25 really what -- I think the original filing we had a

1 \$32.8 million fuel sales. When you take out the
2 wind, that goes up by \$2.5 million.

3 Q. And where was that provided?

4 A. That was provided in Exhibit RAM-2, page
5 4. Initially in our filing we had \$32.8 million of
6 total fuel costs for North Dakota customers. With
7 no wind, you take out all the wind and redispatch,
8 the costs would rise to 35,323,000.

9 Q. Okay. Then I'm going to direct your
10 attention to the fuel and purchased power
11 line-sale. Can you tell me what those numbers
12 mean?

13 A. That reflects the -- and that correlates
14 to page 5 of 6. That shows the fuel costs
15 associated with assumed sales -- wholesale sales
16 for the time period with the wind and without the
17 wind, and on these dispatch runs with the wind the
18 company would have more energy available and would
19 sell -- be able to sell more in the market at the
20 time it's able to than it would be able to do
21 without the wind.

22 And as Mr. Neigum discussed yesterday,
23 we're a net buyer in the -- buyer in the market.
24 To the extent we take out some of our resources, we
25 have even fewer units available -- fewer

1 kilowatt-hours that we are able to sell, so it's
2 natural that when you take out the wind, your sales
3 for resale sales will go down.

4 Q. And, again, the current agreement with
5 ratepayers is if it's below 3.2 million, ratepayers
6 don't receive the benefit?

7 A. No. Actually it's quite the opposite.
8 Customers receive \$3.2 million if Montana-Dakota
9 sold zero sales for resale -- I'm talking dollars
10 here, not kilowatt-hours -- dollars of margin,
11 customers would still receive 3.4 -- \$3.2 million.
12 In 2009 again, the total sales for resale margin
13 for North Dakota was \$400,000. Customers received
14 \$3.2 million. So customers received 100 percent
15 plus of the actual sales for resale margin received
16 in 2009.

17 Q. Okay. So there were 400,000 in sales.
18 Now, you previously said sales for resale will
19 increase with wind.

20 A. Yes, and that's why we propose to put a
21 zero base -- excuse me -- zero base in our filing
22 and give back, our initial proposal, 85 percent of
23 all margins.

24 Q. I understand what it --

25 A. So what we propose to do, it takes the

1 volatility, it takes out determining what is the
2 proper base to be, takes it out of the equation and
3 says we'll just share or now in our settlement give
4 back a hundred percent of whatever it is. And we
5 don't need to discuss what the base should be,
6 should it be this level or this level. Whatever we
7 receive, customers will receive the benefit.

8 Q. But that's not currently what's in place?

9 A. No. Currently customers are receiving
10 more of a benefit than we're actually getting in
11 sales for resale margins.

12 Q. And the wind is increasing sales for
13 resale margins?

14 A. I can't answer how the margin -- it's a --
15 let me explain a little bit.

16 Q. You did answer before.

17 A. I think I'm trying to address your
18 questions as they're asked and as I understand
19 them, and that's in part why I keep asking you what
20 you mean.

21 Sales for resale are any type of sales for
22 resale. It depends on the market and it depends on
23 the price, so the total margin is going to vary not
24 only with the amount sold, but with the margin that
25 we're able to receive. So it is a factor in the

1 total margin.

2 Q. Do sales for resale increase with wind as
3 opposed to without wind?

4 A. It is likely that we will be able to sell
5 more on the market as our dispatch shows than we
6 would without any wind.

7 Q. And you have in the past, as well?

8 A. With the --

9 Q. Due to the wind.

10 A. With the initial increment of Diamond
11 Willow, all other things being equal, yes, we
12 would.

13 MR. SAVELKOUL: Thank you. Your Honor,
14 may we approach?

15 JUDGE WAHL: Yes. So what are we getting
16 now, the attachment to CAS 12?

17 MR. SAVELKOUL: Correct.

18 JUDGE WAHL: Okay. I see I've got a
19 stapler here. For anybody who would, I recommend
20 stapling these together.

21 COMMISSIONER KALK: CAS 13.

22 JUDGE WAHL: 12. What you receive now,
23 Commissioner, is an attachment to CAS 12.

24 COMMISSIONER KALK: Okay.

25 JUDGE WAHL: Does anybody else wish to

1 staple theirs together? All right.

2 Q. (MR. SAVELKOUL CONTINUING) Let's see now.
3 This is -- this is the question that MDU directed
4 staff to as a result of its question DR response
5 51; correct?

6 A. That's correct.

7 JUDGE WAHL: Referring to CAS 12?

8 MR. SAVELKOUL: Correct.

9 JUDGE WAHL: Yes.

10 Q. (MR. SAVELKOUL CONTINUING) Now, looking
11 at Attachment A, just for context, can you explain
12 to us what these demonstrate?

13 A. Attachment A, the question is basically a
14 revenue requirement associated with the wind
15 installed in 2010.

16 Q. Is it associated with all wind power as
17 staff requested?

18 A. No. It is the new wind. As stated in the
19 previous response -- or the previous data request
20 response, one of them, we did not have available a
21 revenue requirement for the initial increment of
22 Diamond Willow.

23 Q. Did you ever provide an update to this
24 response?

25 A. No, we did not.

1 Q. But a summary of what an update might be,
2 be included in your testimony?

3 A. A summary of the effect of all the wind
4 with the changes is included in my rebuttal
5 testimony.

6 Q. Not the detail behind it?

7 A. Excuse me?

8 Q. Not the detail behind it?

9 A. I'm sorry. What's the question?

10 Q. The detail behind the summary was not
11 provided in your rebuttal testimony, was it?

12 A. For anything that changed, it was.

13 Q. Okay. With respect to this Attachment A
14 then, I will direct you to page 5 of 6, and I'm
15 assuming this whole answer relies on the
16 assumptions you make with respect to megawatt-hours
17 produced, does it not?

18 A. Yes, it does.

19 Q. So this purportedly represents the effect
20 or revenue requirement with the new wind. Would
21 you please look at the lines, Cedar Hills megawatt
22 production and Diamond Willow megawatt production?

23 A. I see that.

24 Q. Are those the actual megawatt hours
25 produced by those wind farms?

1 A. In looking at this now, it appears that
2 the Cedar Hills -- excuse me -- the Diamond Willow
3 is probably overstated. I see 64,700, that would
4 be associated with the 19.5, so I think it would be
5 about 30 or half of that or --

6 Q. Okay. Maybe that's why it was hard for
7 staff to come up with its numbers, do you think?

8 A. As I stated before, I think staff is very
9 experienced in looking at this information.

10 Q. And your information was wrong, wasn't it?

11 A. This data request, yes. I believe our
12 filing --

13 MR. SAVELKOUL: Thank you. Your Honor,
14 may we approach?

15 JUDGE WAHL: You may.

16 MR. SAVELKOUL: Maybe I should offer
17 these, CAS -- I think we've offered 10, so we've
18 got 11, 12 and 13.

19 JUDGE WAHL: No. I think we've offered --
20 I believe that 11 has been offered and received.

21 MR. SAVELKOUL: Okay. Then I would offer
22 12 and 13 at this time.

23 JUDGE WAHL: Let's do them together, I
24 think. Mr. Kuntz, Exhibits CAS 12 and CAS 13.

25 MR. KUNTZ: No objection.

1 JUDGE WAHL: Mr. Roaché?

2 MR. ROACHÉ: No objection.

3 JUDGE WAHL: Mr. Skokos?

4 MR. SKOKOS: No objection.

5 JUDGE WAHL: Ms. Jeffcoat-Sacco?

6 MS. JEFFCOAT-SACCO: No objection.

7 JUDGE WAHL: Exhibits CAS 12 and CAS 13
8 are each received.

9 Q. (MR. SAVELKOUL CONTINUING) I would like
10 to direct your attention to, and I'll read the
11 sentence --

12 JUDGE WAHL: Let's mark it. You're
13 referring now to document -- or data request 050?

14 MR. SAVELKOUL: Correct.

15 JUDGE WAHL: For the record, that will be
16 marked as Exhibit CAS 14.

17 Q. (MR. SAVELKOUL CONTINUING) I'd like to
18 direct your attention to the last sentence of this
19 answer in which you state, "On a projected 2010
20 basis, Montana-Dakota's investment in renewable
21 generation on a system-wide basis is approximately
22 nine percent of system capacity." Is that what it
23 states?

24 A. That's what it states.

25 Q. Is that correct?

1 A. I believe it's approximately correct. Ms.
2 Stomberg or Mr. Neigum -- probably Mr. Neigum
3 yesterday discussed what the energy capacity
4 amounts would be from these plants as a percent of
5 total system.

6 Q. Okay. Did you provide this response?

7 A. I had some input into the response as well
8 as the electric supply people.

9 Q. Is it your understanding that this
10 response is accurate?

11 A. Yes, it is.

12 Q. All right. So you believe that 9 percent
13 of the system capacity is provided by these wind
14 projects?

15 A. By our renewable -- renewable resources or
16 I guess -- yes, renewable generation in total.

17 Q. Okay. Can you go through how you got the
18 9 percent?

19 A. I may have that. I don't believe I have
20 that information with me.

21 Q. Can you tell me your understanding of it?

22 A. Understanding of what?

23 Q. How you calculate the 9 percent of the
24 system capacity.

25 A. You take the capacity -- excuse me --

1 capacity from each of the generating units and add
2 it up and what percent of that is the renewables.

3 Q. Okay. And roughly what is your
4 understanding of MDU's system capacity?

5 A. I believe it is -- you mean, the capacity
6 just --

7 Q. I want to know what you were thinking when
8 you answered this question.

9 A. Well, to be honest, I don't -- Mr. Neigum
10 is the one that deals with the capacity.

11 Q. But didn't you provide this answer?

12 A. I provided input into the answer. My
13 expertise is more in the area of cost of service
14 and allocation, not in system requirements.

15 MR. SAVELKOUL: I guess, could we have Mr.
16 Neigum appear again?

17 MR. KUNTZ: Perhaps maybe I can clarify.
18 Ms. Mulkern, are you familiar with the distinction
19 between nameplate capacity and certified capacity?

20 THE WITNESS: I'm generally aware of that.

21 MR. KUNTZ: And you heard Mr. Neigum's
22 testimony yesterday that originally Diamond Willow
23 was certified for 20 percent and then lowered to 8
24 percent. What would be the difference between the
25 certified capacity for Diamond Willow versus the

1 nameplate capacity of Diamond Willow, if you know?

2 If not, we can call Mr. Neigum.

3 THE WITNESS: The difference is what is --
4 I believe the MISO credits currently 8 percent for
5 the wind generation.

6 MR. KUNTZ: And some different number for
7 the gas and some different number for the coal; is
8 that correct?

9 THE WITNESS: Yes, each one has a
10 different accreditation.

11 MR. KUNTZ: Do you know whether this 9
12 percent is nameplate or certified capacity?

13 THE WITNESS: I can't recall at this
14 moment. We can provide that information.

15 MR. KUNTZ: Or we can call Mr. Neigum,
16 too, if you don't know the difference.

17 THE WITNESS: Or we can call Mr. Neigum.

18 MR. SAVELKOUL: I think that's the point,
19 that at best this is confusing. Your Honor, I'd
20 like --

21 JUDGE WAHL: I don't want to do that now.
22 I want you to stay with the witness, finish that,
23 know what you're going to pursue with Neigum and
24 then let's recall him.

25 MR. SAVELKOUL: Okay. I'm finished with

1 this, so we'll hold this for Neigum.

2 JUDGE WAHL: All right. So are you
3 finished -- have you completed your --

4 MR. SAVELKOUL: No.

5 JUDGE WAHL: Okay. That's fine. Let's
6 move on. We've twice interrupted the testimony of
7 this witness. I don't want to do it again. We've
8 got intervenors and commissioners here.

9 Q. (MR. SAVELKOUL CONTINUING) Can you please
10 turn to page 4 of Exhibit 8R?

11 MR. KUNTZ: What was that exhibit number
12 again?

13 MR. SAVELKOUL: It's the rebuttal
14 testimony.

15 MR. KUNTZ: Okay. Thank you.

16 Q. (MR. SAVELKOUL CONTINUING) Okay. I'm
17 going to start and I'm just going to read two
18 sentences, the one that starts halfway through line
19 16, and you state, "The amounts" --

20 JUDGE WAHL: Just a moment.

21 COMMISSIONER CLARK: Which page again?

22 MR. SAVELKOUL: I'm sorry. Page 4.

23 JUDGE WAHL: Of 8R.

24 MR. SAVELKOUL: 8R, line 16.

25 JUDGE WAHL: I have it.

1 Q. (MR. SAVELKOUL CONTINUING) And those
2 sentences -- or that sentence states, "The amounts
3 on Exhibit No. RAM-2, page 3 are different than
4 those shown on Mr. Mathai's schedule GM-3-8 for
5 several reasons, primarily the failure to exclude
6 fuel savings associated with the wind," and you
7 continue on about fuel into the next page and
8 through that paragraph. Is that your current
9 position with respect to the primary reasons there
10 are differences between you and Mr. Mathai?

11 A. It's one -- as I stated, it's one of the
12 primary reasons.

13 Q. Okay. Then can you turn to RAM-2. Page
14 3, can you show me where that difference flows out?

15 A. Yes. At RAM-2, page 3, in the -- there
16 are columns for each wind project and there's a
17 column called fuel, and in that, when you take out
18 all the wind out of the revenue requirement --
19 obviously when the revenue requirement was
20 developed, it included the fuel savings associated
21 with the wind. When wind is excluded, you have to
22 match and take out the fuel -- associated fuel and
23 the associated revenue. In other words, you have
24 to match. The overall effect is nothing on the --
25 does not affect the revenue requirement, but it

1 reflects the revenue level that you need to
2 achieve.

3 Q. In this schedule on this page doesn't the
4 effect of fuel wash out to zero?

5 A. I believe I just said that.

6 Q. So is it one of the primary reasons why
7 yours and Mr. Mathai's numbers differ?

8 A. Yes, it does make a difference, because if
9 you're going to take out the wind on one side, you
10 have to take out all the associated elements with
11 the wind. And to exclude one important piece, even
12 though it doesn't necessarily change the revenue
13 requirement, is a difference, and it is a primary
14 difference in saying I'm going to take out the
15 wind, but I'm going to leave in the fuel savings.
16 If you're going to take out the wind, you have to
17 take it out and that's a pretty -- that is a
18 primary difference.

19 Q. Okay. I'm going to direct you to page 1
20 of 6 in that same RAM-2. You included your fuel
21 calculation both as a revenue item as well as an
22 expense item. Mr. Mathai included neither. Isn't
23 the net effect the same?

24 A. The net effect is the same. However, it's
25 important when saying I'm taking out all the wind

1 generation to reflect all related adjustments even
2 though on an overall basis it may not make a
3 difference. It is important if you are going -- if
4 someone is going to remove all the wind to also
5 take out the savings to customers associated with
6 that wind. As a result, while it doesn't make a
7 difference in the revenue requirement, overall it
8 requires more dollars from customers. As you can
9 see in the exhibit with this, we are going to
10 require more dollars to recover through revenues
11 than we would without the wind.

12 Q. And you correct it through an adjustment
13 to the fuel?

14 A. As well as revenue.

15 Q. Both, yes?

16 A. Both. They have to match.

17 Q. And Mr. Mathai's matched?

18 A. Mr. Mathai's revenue requirement matched.
19 However, the result of his would be not designing
20 to the correct revenue level.

21 Q. Okay. And this submittal, again, had a
22 material difference from the one you submitted on
23 Friday, which was Exhibit 11, I believe? Wasn't
24 there a material difference in those two
25 submissions?

1 A. There was a difference between -- really
2 between -- going between what the settlement was
3 and what the revenue requirement associated with
4 the wind. I believe at that point we did not have
5 settlement yet. That's why we thought -- we were
6 not there yet. And so that's why we replaced it
7 with what we -- our final settlement agreement.

8 MR. SAVELKOUL: Okay. Your Honor, may we
9 approach?

10 JUDGE WAHL: You may. Do you wish to have
11 this document marked, Mr. Savelkoul?

12 MR. SAVELKOUL: Yes, Your Honor. Thank
13 you.

14 JUDGE WAHL: For the record, the document
15 being distributed, data request dated August 23,
16 2010, NDPSC-DR-075, is marked CAS 15.

17 Q. (MR. SAVELKOUL CONTINUING) Now, in
18 looking at CAS 15, and I believe it provides the
19 same detail or similar detail. What it tries to do
20 is get at ADIT, which would be what's reflected on
21 the DITs line in page 1 of RAM-2, doesn't it?

22 A. Would you give me the reference again?

23 Q. CAS 15, which is discovery response 75.
24 Why don't I just read it. Doesn't that discovery
25 request state, Please refer to response 40A

1 attachment, and then it goes on, why ADIT for 2010
2 -- for 2009 and 2010 balances remain constant even
3 though wind plants are added in 2010 June. So
4 apparently staff found what they thought was an
5 error in your initial filing, they were trying to
6 get to what was appropriate to use for ADIT,
7 weren't they?

8 A. Yes. When we make a filing, sometimes we
9 actually do make mistakes and -- or things change
10 after we make the filing, and we were -- Mr. Mathai
11 did ask us for this information, we did provide it,
12 and we agreed that we did make a mistake. If we
13 hadn't had the change in bonus tax depreciation,
14 the revised numbers here of \$3,275,000 would have
15 been the numbers we used. However, that was
16 superseded by the bonus depreciation. And I do
17 apologize. We would like to be able to produce a
18 filing without any mistakes whatsoever.
19 Unfortunately, sometimes they happen.

20 Q. Okay. Now, with respect to Exhibit 8R,
21 RAM-2, page 1 of 6, I understand it to attempt to
22 back out the effect of wind as wind was filed
23 initially in the case; is that correct?

24 A. That's correct.

25 Q. Now, looking back at CAS 15, DR response

1 75, doesn't that indicate what you included in your
2 filing for wind generation ADIT of \$34,000?

3 A. That's correct.

4 Q. So if that's how you filed the case, then
5 why now would you back out more than that?

6 A. We didn't. If you look at Exhibit No.
7 RAM-2, page -- RAM-2, page 2 of 6, and there's a
8 line, it's a rate base statement and it shows all
9 the components of rate base and it starts with what
10 we made in our filing and it backs out each piece
11 of the wind. And if you looked at the 10.5
12 megawatts of Diamond Willow, which was the 2010
13 increment, and we are deducting or taking out
14 \$11,000 of accumulated deferred income taxes. For
15 the 19.5 megawatts of Cedar Hills, it's \$23,000.
16 Combined that's a \$34,000 shown on the exhibit. So
17 we took out the \$34,000 that was in there
18 initially.

19 Q. Then what does Exhibit CAS 15, the second
20 line down, as revised, 32-75 represent?

21 A. The 32-75 is what it would have been or
22 what corrected the amount would be. We took out
23 what was included in our filing, which was the
24 \$34,000.

25 Q. Well, doesn't it say accumulated DITs as

1 follows, and there's three lines in your response
2 at the bottom. The top line says accumulated DITs
3 as follows, 49,973. That's what was included in
4 your filing; correct?

5 A. For the total accumulated DITs, yes.

6 Q. Okay. And doesn't page 2 of 6, which you
7 were just referring to, indicate 44,729?

8 A. If you look at the projected column, the
9 first column on Exhibit -- on page 2 of 6, that's
10 what our original projected rate base was, 49
11 million-973 of total accumulated deferred income
12 taxes. From there we proceeded to take out the
13 amount associated just with the wind, and that's
14 where the \$34,000 associated with the wind came in.
15 So we did start with the 49 million-973 as filed
16 and removed the 34,000 that was included in that
17 filing for the DITs on the wind generation in 2010.

18 Q. So in your response to DR-75, why did you
19 make the revision?

20 A. We responded to the data request and
21 showing what -- if we corrected the DITs, what they
22 were.

23 Q. You didn't -- this is confusing because,
24 yeah, you're backing out the 34 million, but
25 there's another 5.210 million that you're backing

1 out that you said wasn't included.

2 A. Okay. I think you're confusing the
3 increments of the wind generation. The request
4 on -- what we backed out on Exhibit -- was for the
5 initial increments -- or, excuse me, the 2010
6 increments of Diamond Willow -- Diamond Willow and
7 Cedar Hills, because that was the new depreciation
8 or the new -- new amounts in 2010. On Exhibit
9 RAM-2, page 2, for Diamond Willow I, that went into
10 service in 2008. So as we mentioned before, we did
11 not have readily available all items associated
12 with the initial increment of Diamond Willow. We
13 have to back out what was there in our beginning
14 balance, and we showed the calculation of that
15 on -- RAM-2, page 6 shows the calculation of the
16 2008 increment of Diamond Willow.

17 Q. Okay. Thank you. That's good to have.
18 Okay. With respect to Exhibit CAS 15, can you tell
19 us what the total is now for Diamond Willow and
20 Cedar Hills?

21 A. Yes. Now, including the bonus -- because
22 the bonus tax depreciation, the total is
23 \$10,785,000, and that is shown on Exhibit RAM-3,
24 page 7 of 8.

25 Q. Do you have calculations supporting that?

1 A. Exhibit RAM-3, page 7 of 8, does show the
2 supporting calculations.

3 Q. Then can you again tell me what the
4 as-revised line tells us on CAS 15?

5 A. Yes. That says -- we made our initial
6 filing in April. Mr. Mathai found that we made a
7 mistake. If we corrected that mistake as of April,
8 we would have included \$3.2 million more of
9 accumulated depreciation -- excuse me --
10 accumulated deferred income taxes. So that was an
11 error Mr. Mathai found, we corrected it and showed
12 him what the effect would have been on our rate
13 base.

14 Q. Okay. Just so I have an understanding
15 then, I think I understand, but isolating Cedar
16 Hills, ADIT as originally filed was 23,000, and
17 then looking at page 7 of 8, RAM-3, it's now
18 \$7,027,000, the difference being the correction to
19 include 2010 depreciation and then a correction to
20 revise that for the 50 percent bonus depreciation;
21 is that correct?

22 A. Basically what Exhibit RAM-3, page 7 of 8
23 is, start with the wind that was included in the
24 filing, the new wind, and calculate the tax
25 depreciation and then the resulting deferred income

1 taxes based on the bonus tax depreciation. We went
2 from our filing to today -- at the point that the
3 tax law or the law passed on bonus depreciation,
4 that made PSC-75 moot in a sense because that
5 changed the tax depreciation rates.

6 Q. Did you provide an update to PSC-75?

7 A. Excuse me?

8 Q. Did you ever provide an update to that to
9 staff?

10 A. No.

11 Q. Next, I'd like to direct your attention
12 to --

13 JUDGE WAHL: Mr. Savelkoul, how much more
14 do you have left? More than five or ten minutes?
15 I'm not pushing you.

16 MR. SAVELKOUL: Yeah, I know.

17 JUDGE WAHL: This is an appropriate time
18 for a break, but --

19 MR. SAVELKOUL: Yeah, I don't --

20 JUDGE WAHL: Well, let's be in recess
21 until 10:15.

22 MR. SAVELKOUL: Thank you.

23 (Recess taken at 10:06 to 10:21 a.m.)

24 JUDGE WAHL: Let's be in order. We're
25 running. You may proceed, Mr. Savelkoul.

1 Q. (MR. SAVELKOUL CONTINUING) Ms. Mulkern,
2 if I can direct your attention to your rebuttal
3 testimony, Exhibit 8R, page 3 of 6 on RAM-2. I'm
4 looking at the three columns for the wind farms,
5 the depreciation and amortization lines, and then I
6 am looking at RAM-3, page 1 of 8, those same lines.
7 I note that they're different. Can you explain why
8 they're different?

9 A. Yes, I can. As I noted, when
10 Montana-Dakota made the filing in April of 2010, we
11 had a depreciation study that had a depreciation
12 rate of 5.17 percent for wind generation and we
13 used that in our filing. Subsequent to that, when
14 the wind farms went on line and we started
15 depreciating, it was determined that the 5.17
16 percent rate was not applicable to new plant and,
17 therefore, we used the 5 percent or the 20 years.
18 The difference is fairly small.

19 Q. Okay. And you mentioned that you used 20
20 years. Are you familiar with what other utilities
21 in the state have used for amortization periods?

22 A. No, I'm aware generally 20 to 25 years
23 are -- generally might be used for the depreciation
24 of wind facilities.

25 Q. Okay. And then on those same two pages

1 there's a small difference in the Diamond Willow
2 column, taxes other than income. Do you know what
3 that is?

4 A. Taxes other than income.

5 Q. The change, yeah.

6 A. The change between --

7 Q. The Diamond Willow 19.5 column on the same
8 two pages. That's page 3 of 6 and then 1 of 8.

9 A. Yeah, it's slightly different because of
10 the way our projected -- or our cost of service
11 model worked. We use a -- for transmission plant
12 we used a composite ad valorem or property rate for
13 all transmission, and that's what we used in this.
14 So in rounding and other small items it came out to
15 2,000 different. I describe it basically as
16 probably rounding.

17 Q. You didn't provide that with this filing,
18 did you?

19 A. Provide what?

20 Q. The revision.

21 A. We show how we calculate in here. We show
22 how we're calculating those ad valorem or property
23 taxes. It's shown on RAM-3, page 3, shows a
24 calculation for all the property taxes on the wind
25 facilities.

1 Q. So do you know which one changed from the
2 original filing?

3 A. It would be the Diamond Willow, the first
4 increment. We have -- that's the one it would
5 change.

6 Q. And you said it had to do with
7 transmission, so it would be that \$10 number?

8 A. Yes, that's likely the one. It's
9 rounding. When you try to separate something out
10 and you calculate, you get a little bit different
11 answer than if you do it in total.

12 Q. All right. Next, if you could please go
13 to that same page 1 of 8 in RAM-3. Can you explain
14 in the revenue requirement where the North Dakota
15 investment tax credit is being passed through?

16 A. Yes, I can. If you look on page 2 of 8 as
17 the rate base statement, and if you look at the
18 Cedar Hills column, there's an investment tax
19 credit line towards the bottom of \$293,000, so it's
20 being treated as a rate base deduction. And if you
21 look at page 8 of 8, that shows what the investment
22 tax credit would be over the life of the plant,
23 showing that while we couldn't take that full
24 amount in 2010, we will probably take it then in
25 year six, and so this shows the stream on what the

1 balance would be by year over the life.

2 Q. And then on page 8, are you returning it
3 to ratepayers as immediately as the benefit can be
4 received?

5 A. We are going to normalize it over the life
6 of the plant, and, so, yes, the amount that we
7 would have will be a rate base -- it will reduce
8 the value of the rate base and lower the cost to
9 customers throughout the life of the plant.

10 Q. I thought you said you were only going to
11 start passing it through in year six when you could
12 start taking advantage of it.

13 A. No. I'm sorry if I misspoke and gave that
14 impression. We are going to give it back each year
15 as a reduction to the value of the rate base based
16 on how -- what we pay and normalized. For example,
17 the first year, while it would be a \$1.3 million
18 tax credit, because of the bonus tax depreciation,
19 we can only take 300,000, so that's the first-year
20 amount that would be -- it will reduce the value of
21 our rate base. As we go through time, and this
22 schedule basically steps it out through the entire
23 life of the plant, that will rise to a peak of \$5.4
24 million reduction to the North Dakota customers in
25 the value of the rate base.

1 Q. So did the addition of the bonus
2 depreciation in essence change how you were
3 treating this as compared to the initial filing?

4 A. I don't believe. In fact, in the initial
5 filing I don't believe we had it in, and I can't
6 recall at the time why it wasn't included. Now
7 what we're just putting in, the incentive
8 investment tax credit, the only difference that the
9 bonus tax depreciation makes is that it changes the
10 stream of dollars. It's going to come in over --
11 the tax credit will be taken over -- instead of
12 five years according to our schedule now, it will
13 take six years. The benefit is the same. It's
14 only changing which year that benefit comes in.
15 And by providing -- by normalizing it, it provides
16 the benefit to customers -- all customers over the
17 life of the plant.

18 Q. Now, these are somewhat unique projects.
19 Isn't the revenue requirement on the front end of
20 these projects significantly higher than at the
21 back end?

22 A. It is higher. Over time what will happen
23 is you have a rate base and, say, it remains flat,
24 and you're going to have the accumulated reserve,
25 which is going to go up and reduce value. At the

1 same time you're going to have the deferred income
2 taxes that currently are a reduction going away.
3 So there's going to be a decline over time, but
4 it's going to be -- to a certain extent the net
5 plant will be offset by the reduction in the
6 deferred taxes.

7 Q. Won't MDU's investment in this project be
8 reduced immediately when they can take advantage of
9 these investment tax credits?

10 A. Well, we can't take advantage of them all
11 immediately. The tax credit is 3 percent over five
12 years. And I believe the IRS tax treatment says it
13 should be normalized. In other words, it has to be
14 amortized over the life of the property, the same
15 treatment as property-related deferred income
16 taxes. The tax depreciation isn't flowed through
17 to the customers in the initial years. It's
18 normalized over the plant -- over the life of the
19 plant so that all -- so the benefit goes over the
20 entire life of the plant.

21 Q. So you've shown the benefit in rate base.
22 Shouldn't there also be an expense item where it's
23 credited through?

24 A. That expense item is not included in the
25 -- it's what we call -- it's not included as a tax

1 credit to the utility income tax. It's a below --
2 called a below-the-line, and that's pursuant to --
3 I mentioned earlier you can be option 1 or option
4 2. And if you're option 1, which Montana-Dakota
5 is, you give the credit as a rate base deduction
6 and you amortize that below the line. If you're an
7 option 2 company, there's no rate base deduction
8 and you just give the tax credit back.

9 Q. And it's possible that other utilities in
10 the state would treat it differently?

11 A. Yes. It would depend if they're an option
12 1 or option 2, which way they have elected.

13 Q. And do you know the specific authority
14 that you're referring to that binds the Commission
15 with respect to how they deal with this for
16 ratepayers?

17 A. My understanding with things like deferred
18 income taxes or this, where there is an IRS
19 regulation that says you cannot amortize less than
20 normalized, that that's -- if the Commission would
21 decide differently, it would violate normalization.

22 Q. I'm just asking if you know what the
23 revenue requirement number is.

24 A. Excuse me. I'm sorry. I misunderstood.
25 The revenue requirement for?

1 Q. This treatment. I'm sorry. The revenue
2 ruling. Did you say it was a ruling or a proc
3 or --

4 A. I have here -- I'm not sure if it is a --
5 IRC Section 46.

6 Q. What's that?

7 A. I have a reference to an IRC Section 46.

8 Q. Are you familiar with FASB rules?

9 A. Generally familiar.

10 Q. Would it be your opinion that FASB 71
11 might overrule this?

12 A. It might, but my understanding is that
13 with respect to the normalization of income
14 taxes -- on deferred income taxes, that the
15 Commission cannot require something that would --
16 if we violated -- if we were to violate the income
17 tax rule, we would not be able to take deferred
18 income taxes. And so if the Commission were to
19 rule that, essentially it's saying we want you not
20 to comply with the tax rules and we would lose our
21 ability to take deferred income taxes.

22 Q. But there is different accounting for
23 regulatory and tax basis, isn't there?

24 A. There can be different regulatory
25 accounting for various items.

1 Q. I'm sorry. Did you say that if kept in a
2 rider, these wind assets would have a revenue
3 requirement that drops significantly year over
4 year?

5 A. I know they will drop. I don't know about
6 significantly, but they will drop over time. On
7 the other hand, our revenue requirement over time,
8 you will have inflation that will affect the
9 expense side of it, so the overall revenue
10 requirement will depend on those factors, but
11 generally speaking.

12 Q. Present value?

13 A. Generally speaking over time the revenue
14 requirement on an individual asset will decline.
15 If you put more investment into that asset, you do
16 some life extension or something, then it will go
17 up again.

18 Q. And with the tax incentives and
19 accelerated depreciation, these assets are
20 different than what utilities traditionally invest
21 in?

22 A. I'm not aware that they're different than
23 what utilities have traditionally invested in.

24 Q. You're not aware of tax incentives and
25 benefits to accelerated depreciation?

1 A. Well, accelerated depreciation has been
2 around for quite some time.

3 Q. 50 percent bonus depreciation?

4 A. The 50 percent bonus depreciation has been
5 2008, 2009, I believe, and then it was just
6 extended for 2010.

7 Q. Do gas facilities enjoy bonus
8 depreciation?

9 A. I believe all facilities that qualify to
10 -- will receive bonus depreciation. There are some
11 rules with regard to when it started, when it ends,
12 the length of time that it takes, so I can't give a
13 blanket statement. It would be any gas facility
14 that does qualify would receive it.

15 Q. To your knowledge, do gas facilities
16 qualify?

17 A. I'm not sure. It would depend on what --
18 whether or not what is being built qualifies based
19 on the qualifications.

20 Q. And you're not aware of what the
21 qualifications are, it sounds like?

22 A. I'm aware of some of them. I'm not aware
23 of all the detailed qualifications.

24 Q. Are you aware whether coal would qualify?

25 A. Coal, itself?

1 Q. Coal facilities. Investments in coal
2 technology.

3 A. I believe that the bonus tax depreciation
4 isn't related to a resource. It just relates to
5 capital additions.

6 MR. SAVELKOUL: All right. Your Honor,
7 may we approach?

8 JUDGE WAHL: Yes.

9 MR. SAVELKOUL: Will you please mark this
10 exhibit?

11 JUDGE WAHL: For the record, the document
12 being distributed is marked Exhibit CAS 16.

13 Q. (MR. SAVELKOUL CONTINUING) I'd like to
14 direct your attention to page -- or Attachment B,
15 page 1 of 8. If you look at the column on the
16 left, there is a line titled per kW cost. Now,
17 from the first year to the fourth year it drops
18 from .086 to .055. In your view, is that a
19 significant drop?

20 A. It is a big drop, yes.

21 Q. And isn't this how -- if these assets were
22 put in a rider and adjusted annually, how revenue
23 requirements would drop?

24 A. Yes, this would be a similar factor. And
25 as I stated before, we have no objection to a

1 rider.

2 MR. SAVELKOUL: Okay. Your Honor, I would
3 offer discovery response 52.

4 JUDGE WAHL: Well, Mr. Savelkoul, what
5 about CAS 14 and CAS 15?

6 MR. SAVELKOUL: I think CAS 14 we're going
7 to --

8 JUDGE WAHL: Okay. All right. Just so
9 you're aware of them. So at this time you're
10 offering CAS 16?

11 MR. SAVELKOUL: And I would offer 15, as
12 well.

13 JUDGE WAHL: And 15.

14 MR. KUNTZ: No objection.

15 JUDGE WAHL: Mr. Roaché?

16 MR. ROACHÉ: No objection.

17 JUDGE WAHL: Mr. Skokos?

18 MR. SKOKOS: No objection.

19 JUDGE WAHL: Ms. Jeffcoat-Sacco?

20 MS. JEFFCOAT-SACCO: No objection.

21 JUDGE WAHL: Exhibits CAS 15 and CAS 16
22 are each received.

23 MR. SAVELKOUL: Your Honor, we have
24 nothing further.

25 JUDGE WAHL: Mr. Roaché, questions for Ms.

1 Mulkern.

2

CROSS-EXAMINATION

3 **BY MR. ROACHÉ:**

4 Q. Good morning, Ms. Mulkern. Can you hear
5 me?

6 A. I can hear you, yes.

7 Q. To start, I apologize up front. I've been
8 told that my questions sometimes are too long and
9 complicated. But to be fair, sometimes the answers
10 have seemed too long and too complicated.

11 Yesterday speaking about the employment
12 compensation, you mentioned that the -- and I'm
13 old-fashioned. We've got union and nonunion
14 employees; right?

15 A. Yes, we do.

16 Q. Okay. And what's the politically correct
17 term now?

18 A. I think it's bargaining unit and
19 nonbargaining unit.

20 Q. I'll have to leave that for the newer
21 generation. For the nonunion employees it was 2
22 and a half percent?

23 A. For 2010 it was 2 and a half.

24 Q. And 4 and a half percent for the union?

25 A. That's correct.

1 Q. For contract employees?

2 A. That's correct. Overall.

3 Q. Did you know that the Social Security
4 recipients in 2010 got a zero percent increase?

5 A. I believe I have heard that.

6 Q. And in 2011 they will be receiving a zero
7 percent increase?

8 A. I was not aware of that.

9 Q. Do you agree that -- well, I believe the
10 number is 17 or 18 percent of the population in
11 North Dakota is above 65. Are you familiar with
12 that?

13 A. I was not familiar with that statistic.

14 Q. So a goodly portion of the ratepayers with
15 MDU are not receiving any increases and haven't
16 been receiving increases like this; do you agree?

17 MR. KUNTZ: Objection to the form of the
18 question. It's vague and ambiguous.

19 JUDGE WAHL: Well, actually I was with
20 him, Dan -- or Mr. Kuntz.

21 MR. KUNTZ: Over what period of time?
22 What increases has he said "like this"?

23 JUDGE WAHL: Well, that's true. You're
24 correct. Mr. Roaché, could you rephrase your
25 question with regard to what period of time you're

1 talking about.

2 Q. (MR. ROACHÉ CONTINUING) Okay. For 2010
3 the Social Security recipients received zero
4 increase and the Montana-Dakota employees received
5 either 2 and a half percent or 4 and a half percent
6 increase. Do you agree with that?

7 A. Yes. I believe, if I understand that,
8 yeah, that -- I believe I do.

9 Q. Moving on, you spoke about the savings in
10 fuel costs for the windmills. When the windmills
11 are turning, there had been a savings on fuel cost;
12 is that correct?

13 A. That's correct.

14 Q. I think we've established that the cost
15 for fuel is somewhere in the 18 to \$20 a megawatt
16 cost?

17 A. That 18 to 20, I believe, is what --
18 generation at our own units.

19 Q. Yes.

20 A. And then the purchased power price, I
21 believe Mr. Neigum said, about \$30.

22 Q. Okay. So -- and I think we also
23 established that the cost, which is capital cost,
24 since there's no fuel cost, but the capital cost
25 for the windmills is \$96 per megawatt, or 9.6 cents

1 per kilowatt, however you want to say it?

2 A. That's the all-in cost of the facility,
3 including the operating expenses.

4 Q. Okay. So what's happening then is that
5 we're saving \$18 a megawatt but it's costing us \$96
6 a megawatt to save that \$18?

7 A. I don't know that I'd quite agree with
8 that comparison. Right now today -- if you say
9 overall today, the cost would be, all other things
10 being equal, a slight increase to North Dakota
11 customers because of the wind today. Over time as
12 we look at that we expect that to be overall less
13 than they're paying, but initially the first year
14 or so it would be a small net increase to
15 customers.

16 Q. A difference of five times the cost is
17 only -- you consider that small?

18 A. Well, the comparison that you are talking
19 about, that 9.6 cents, includes other things other
20 than just the investment. It includes all the
21 labor costs, all the costs to run the plant. The
22 20 -- the \$2 -- the \$2 or \$20 at our own
23 generation, that's just the fuel cost. That
24 doesn't include the cost of running the plant. So
25 the comparison isn't quite on the same basis.

1 Q. Okay. If there were no wind power, then
2 we would have to use the fuel?

3 A. We would use a combination of our own
4 generation plus what we purchase.

5 Q. And the purchase -- the fuel savings is
6 \$18 a megawatt and the purchased cost is \$30 a
7 megawatt and to replace that we're replacing it
8 with \$96-a-megawatt costs. From what I can see, am
9 I making a mistake? Is there a loss?

10 A. Yeah, I'm not sure I agree with your
11 numbers, but, as you said, sometimes our answers
12 can be very complicated because this is a complex
13 subject. I agree that overall when you take
14 everything into account, customers will be paying a
15 little bit more as a result of the wind today, but
16 we put the wind facilities in not just for today,
17 but for the future.

18 Q. Big Stone II, there was a great deal of
19 planning in preparing for that?

20 A. Yes, there was.

21 Q. And \$15 million or so was spent by MDU
22 anticipating putting that plant together; correct?

23 A. That sounds correct.

24 Q. And all of that was projected on the
25 future?

1 A. That was based on not only our future, but
2 also it was to replace a contract -- in part to
3 replace a contract that had expired, so that was
4 also looking at current and future needs, that's
5 correct.

6 Q. And it failed; correct?

7 A. We were not able to build the plant,
8 that's correct.

9 Q. Could you understand how a ratepayer could
10 doubt your projection for future in windmill power
11 when your projections in the past have not proven
12 out to be exactly what you expected?

13 MR. KUNTZ: Objection to the form of the
14 question. The fact that the Big Stone II project
15 was not completed does not correlate to a failure
16 of projections.

17 JUDGE WAHL: Well, that's for the witness
18 to explain. It's a proposition that Mr. Roaché has
19 put forward. Overruled.

20 THE WITNESS: The Big Stone II plant, the
21 reason it was not completed was not because of a
22 change in our forecast or anything like that. It
23 was because of several participants pulled out of
24 the plant and we were unable to get additional
25 participants. We felt it was a good project. We

1 weren't able to move forward with it, but it wasn't
2 as a result of our forecasted energy or capacity
3 needs. It was really the forces of market and
4 economic and everything else.

5 Q. (MR. ROACHÉ CONTINUING) Okay. Moving on
6 to return on equity. The return on equity figure I
7 think that's been bandied about is 10.75 percent?

8 A. That is the return on equity that's
9 included in the settlement, that's correct.

10 Q. That you have with the Public Service
11 Commission?

12 A. That we have with the Commission staff.

13 Q. Not with Jim Roaché?

14 A. Not with -- that's correct, Mr. Roaché.
15 You are not a party to this settlement.

16 Q. You're familiar with -- oh, from what I
17 understand, the part of the rationale for coming up
18 with the figure of 10.75 percent was an agreement
19 that had been done previously with Otter Tail Power
20 in 2008. Was that part of the consideration?

21 A. I think we looked at -- and primarily this
22 was in determining the -- one of the parts of the
23 settlement is that if our return on equity -- if
24 our earned return on equity exceeds that 10.75, we
25 will share some of that with customers, and I think

1 that's what was in the Otter Tail settlement that
2 we looked at in designing this settlement on the
3 return on equity.

4 Q. But the figure, itself, came from that
5 same agreement, and that was completed in 2008, I
6 believe?

7 A. I think the number is the same. I think
8 we discussed what our -- in our settlement
9 discussed that number.

10 Q. But the time frame involved with Otter
11 Tail was 2007, 2008?

12 A. I'm trying to think. I can't remember
13 when that settlement was signed in the Otter Tail
14 case.

15 Q. According to the information I have from
16 the Public Service Commission staff, it is 2007,
17 2008 time frame. Would you be comfortable with
18 that?

19 A. Yeah. I was going to say 2008, yes, maybe
20 that would be the time period.

21 Q. Are you familiar with the Great Depression
22 in the 1930s?

23 A. Well, not personally, but my parents both
24 lived through the Depression, so I have heard about
25 it quite a bit.

1 Q. I'll give a comparison and then you see if
2 you agree or disagree. We're in 2010 and in a deep
3 recession in this country. 1930, very similar
4 situation. Do you think it's fair and reasonable
5 to use 1927, 1928 figures when it was boom times?
6 Could you use those kinds of rates and project it
7 into the 1930s, as we're doing now in 2010 in a
8 deep recession, using boom time figures of 2007,
9 2008 and putting those rates into 2010, 2011 and
10 beyond? Aren't we basically taking the time of
11 high employment and economic activity and using
12 those years as the base years when now we have a
13 completely different economy? Would you kind of
14 walk me through how you can justify that?

15 A. Yes. And actually what we proposed in our
16 case, and we start with -- when we do a rate case,
17 we start with what the company proposes, and you
18 heard Dr. Gaske give a brief overview of what he
19 does, and he came up with a return on equity, and
20 actually in our case we proposed a lower return
21 than his studies came up with to recognize that
22 there is some economic difficulties. We proposed
23 an 11 and a half percent return on equity. Through
24 negotiations with staff in the settlement we
25 lowered that to 10.75, but that does still more or

1 less recognize current conditions. It happens to
2 be the same as Otter Tail, but it wasn't precisely
3 copying that. We looked at Otter Tail and the
4 agreement I think more was looking at the sharing
5 mechanism that they had in their settlement
6 agreement. I guess that's kind of walking through
7 how we arrived at that.

8 MR. ROACHÉ: I have no further questions.

9 JUDGE WAHL: Mr. Skokos.

10 **CROSS-EXAMINATION**

11 **BY MR. SKOKOS:**

12 Q. Good morning, Ms. Mulkern. I just have
13 kind of some follow-up questions from some of the
14 testimony today. Mr. Savelkoul and Mr. Roaché
15 seemed to talk a lot about like the one-year --
16 like how the wind would work in 2010 and not very
17 much into the future. Do you think -- like you
18 were saying, you said it earlier that wind projects
19 last about 20 years and that they do create fuel
20 savings, but not right at the beginning. As you
21 project 20 years in the future, will these fuel
22 savings end up benefiting the North Dakota
23 ratepayers in comparison to a situation where you
24 did not build a wind project?

25 A. Yes, and I just went through, I think the

1 wind -- the fuel savings go to customers at the
2 time the wind starts generating. Where we expect
3 to see the savings to customers is in the future
4 when we're not dependent upon the market, the
5 market can be volatile, we have that zero marginal
6 cost. So I think the savings start today. Where
7 we're going to see the benefit accelerate is in the
8 future.

9 Q. Okay. Other people -- like other parties
10 were arguing about essentially that you should be
11 buying from the market versus creating new capacity
12 via wind. Do you think there's advantage -- is
13 there a direct advantage for utilities to build new
14 capacity in renewables versus buying directly out
15 of the MISO market into the future?

16 A. I think -- we always look to see what is
17 the best option, and in this case the wind was the
18 best option to go. In the future we'll look at all
19 the resources and pick the best one and it may be,
20 you know, wind, another type of renewable or
21 whatever the options are at the time we need that
22 generation.

23 Q. Mr. Roaché mentioned the Big Stone II
24 project and he talked about how -- essentially how
25 it was partially your bad projections that led to

1 it in a way. In your opinion, did -- was it
2 regulatory uncertainty from other parties in other
3 states regarding fossil fuel -- future fossil fuel
4 generation? That was one of the major factors that
5 led to the collapse of the Big Stone II project?

6 A. I think there were various factors that
7 led to that. The economic conditions had an effect
8 with some of the participants because of what we
9 say demand destruction. The regulatory
10 uncertainty, some of the -- looking at -- some of
11 the companies looking at the environmental changes
12 perhaps coming. So what you said was probably one
13 of the factors, but it was a combination of factors
14 that led to -- I believe led to the other
15 participants to leave the group.

16 Q. Okay. Out of those factors, I mean,
17 there's like -- I think I heard about three or four
18 different factors there, how much did the
19 regulatory uncertainty weigh, not just for your
20 group but for the other groups? I know there was
21 parties in Minnesota that were involved in that and
22 that was one of their major factors. I know the
23 economy was a major factor in 2008, but how did
24 that weigh?

25 A. I really can't answer for the other

1 companies as to exactly why, because we are
2 actually the ones that stayed in until we couldn't
3 get the other -- any additional participants.

4 Q. Okay. Would you be able to answer some
5 questions about the rate schedule, or is there a
6 better person that I could be asking about those,
7 like in future witnesses?

8 A. It kind of depends on which rate schedule.

9 Q. Okay. Number -- Rate 55 -- or not Rate
10 55, Rate 54.

11 A. And Rate 54 is?

12 Q. It's the load management tracking
13 adjustment.

14 A. And I will defer that to Ms. Aberle.

15 MR. SKOKOS: That's fine. No further
16 questions.

17 JUDGE WAHL: Ms. Jeffcoat-Sacco?

18 MS. JEFFCOAT-SACCO: We have no questions.

19 JUDGE WAHL: Questions from the
20 Commission. Commissioner Kalk.

21 **EXAMINATION**

22 **BY COMMISSIONER KALK:**

23 Q. Yeah. We've covered a lot of ground
24 today, haven't we, Rita?

25 A. We have.

1 Q. You know, I just -- I don't really have
2 any specific questions, but just kind of a general
3 discussion maybe for a bit, Your Honor, if you'll
4 indulge.

5 You know, when I got to the Commission,
6 the Xcel rate case had already been in front of the
7 Commission, but I reviewed it and we voted on it,
8 and I lived through the whole Otter Tail rate case,
9 but this dialogue this morning and the documents
10 being added and changed, can you just give me a
11 general feel of why does that take place, what --
12 why did that happen? We've had a long time to
13 prepare this. We've had a long time for these
14 folks to ask their questions, you folks to respond
15 back. Why does this kind of discussion take place
16 at the hearing when there's been ample time, in my
17 opinion, to get this stuff hammered out before
18 this?

19 A. You know, I'm not sure how to answer that
20 question. Some of the things that changed in
21 respect to the numbers we mentioned, the biggest
22 one was the bonus tax depreciation. That wasn't
23 signed until the end of September, which meant it
24 was probably October. It was signed September
25 27th. By the time we look at it and factor it in,

1 staff probably would have already filed their
2 rebuttal testimony. There is always differences in
3 opinions.

4 Q. No question.

5 A. And other than that, I'm not sure. I
6 don't know how I can answer your question.

7 Q. And I'll just ask the direct question
8 then. There's a perception that perhaps
9 Montana-Dakota delayed some of this information
10 till now. How would you answer that question?

11 A. I would say, no, absolutely not. We
12 responded to information requests and, you know,
13 staff asked quite a few and there was some
14 followups. We --

15 Q. Okay. I think you answered the question.
16 You don't have to follow up. Okay. Then I think I
17 heard you say that you're not opposed to the wind
18 going out on a rider. Well, then if you are key in
19 preparing the case, why didn't you just set it up
20 that way?

21 A. Well, our understanding was that -- that
22 some of the companies, they go in in a rate -- when
23 they go in in a rate case, then they move that wind
24 into their base rate. They might go in for a rider
25 when it comes on line, because you won't want to go

1 in -- might not go in for a rate case just for that
2 reason and have a rider, then the next time you do
3 a rate case, you would take that investment and
4 those expenses and move them into your base rate
5 just like any other asset you have.

6 Q. I don't believe that -- I don't believe
7 the Commission has a rate for Otter Tail. Perhaps
8 there's a base rate in a rider. That's just
9 discussion, I guess. But I think that's going to
10 be key to how this all shakes out.

11 And then this is just for my own. I could
12 ask this question to Illona, I guess, but why isn't
13 Mr. Roaché party to this settlement? Isn't he an
14 intervenor in this case? How does that work?

15 MR. KUNTZ: Mr. Commissioner, he had the
16 opportunity to be and he just chose not to.

17 COMMISSIONER KALK: Okay. And that would
18 be the same for --

19 MR. KUNTZ: The same with Missouri River.
20 I mean, every party can make their own decision
21 whether they want to join in some or all --

22 COMMISSIONER KALK: I just want to make
23 sure they had the opportunity.

24 MR. KUNTZ: Mr. Roach was involved in our
25 settlement discussions, he had an opportunity to

1 participate, but he elected not to sign the
2 settlement agreement, which is his right.

3 COMMISSIONER KALK: Fair enough.

4 MR. KUNTZ: We could have had --
5 theoretically we could have had a separate
6 agreement with Mr. Roaché and not the staff.

7 COMMISSIONER KALK: Understood.

8 Q. (COMMISSIONER KALK CONTINUING) I guess
9 just to follow up, too, this is going back to maybe
10 another witness, if you will. Yesterday talking
11 with -- I don't remember who it was -- about the
12 900 employees and all receive some incentive
13 compensation and there was reference to there was a
14 study done and the study was not readily available.
15 That struck me as odd yesterday that here's a study
16 that was completed and nobody in Montana-Dakota can
17 produce that study. I mean, I just -- do you think
18 that there's someone in the company that could find
19 that study on tab 4, page 6, that talks about --
20 and I can show you mine, too.

21 Basically the gist of it is that
22 Montana-Dakota went out and did a study about where
23 their employees fell out with incentive
24 compensation and no one in the company can find it.
25 That struck me as odd yesterday and it really

1 strikes me as odd today. I would just offer or ask
2 that the company do a little research and see if
3 they can produce that.

4 MR. KUNTZ: Mr. Commissioner, when we
5 prepared this testimony and I visited with Mr.
6 Del Vecchio, you know, he walked through the
7 process they used for base salary and I asked him,
8 do you do a similar thing for incentive comp, and
9 he says, well, we've looked at this a couple years
10 ago. We do it every three, four years, but we
11 didn't keep a copy of it. So it's something they
12 went in, internally just compared what our
13 incentive comp program looked like to what the rest
14 of the industry was doing, were comfortable where
15 they were at and whatever happened. It wasn't a
16 formal like report or something that gets done. It
17 was just more of an internal check and they just
18 didn't keep it. There was no reason to from their
19 standpoint. It was just --

20 COMMISSIONER KALK: You don't find that as
21 interesting that a company would not keep that
22 information?

23 MR. KUNTZ: I think we do a lot of
24 internal reviews, and I don't know what other
25 departments keep or don't keep. I can tell you you

1 won't find much in my office that I keep.

2 COMMISSIONER KALK: That doesn't comfort
3 me.

4 MR. KUNTZ: Well, I mean, from a legal
5 standpoint, I'm reviewing contracts and stuff like
6 that, I don't keep copies of everything I review.
7 I couldn't. I mean, physically I couldn't.

8 COMMISSIONER KALK: That's all I have,
9 Your Honor. Thank you.

10 JUDGE WAHL: Commissioner Clark.

11 **EXAMINATION**

12 **BY COMMISSIONER CLARK:**

13 Q. I do have some along the same lines that
14 Commissioner Kalk asked, because I was struck by
15 the same sort of feeling as what we were
16 experiencing for the last several hours was really
17 what should have taken place as part of a discovery
18 process between the company and staff advocates,
19 but really isn't something that's tailor-made for
20 this type of setting. It was information gathering
21 that should have been done previously. And I'm not
22 pointing any fingers when I say that, but it leads
23 me to the question which is, do you think it would
24 be in MDU's own interest to have a longer statutory
25 timeline than what we have to complete rate cases

1 in North Dakota?

2 A. I think that may be an option. I believe
3 Mr. Kuntz mentioned the other day that what tends
4 to happen is you use as much time as you have. In
5 other words, if you -- it's kind of like in a
6 house, you fill the house with stuff.

7 Q. So if we had a two-month rate case, would
8 that be -- we'd get the same quality result?

9 A. In a two-month total time frame?

10 Q. Sure.

11 A. No, I would say probably not.

12 Q. When did you and others at MDU start
13 preparing for this rate case, building the
14 evidence? I mean, when was kind of the decision
15 made to start putting this all together?

16 A. I believe we probably started the initial
17 preparation in February of 2010.

18 Q. If you need to defer this to someone else,
19 let me know, but I think it's CAS 16, it was the
20 last one that was handed out by Mr. Savelkoul which
21 details for each year -- wind farm yearly per cost
22 KWH from beginning to end of plant life, if we
23 could look at that. Why is Cedar Hills so much
24 more expensive than Diamond Willow -- either
25 Diamond Willow or the Diamond Willow expansion?

1 The per KWH cost of the initial Diamond Willow --

2 A. I can explain some of it --

3 Q. Sure.

4 A. -- in terms of, the initial Diamond Willow
5 was in 2008 and the capital costs were a little bit
6 lower in 2008 than they were today. With the
7 Diamond Willow expansion or Diamond Willow II, the
8 site was all done basically and we just added more
9 turbines to an existing site. With Cedar Hills it
10 was a brand-new site and so it cost more from that
11 viewpoint -- from that standpoint.

12 Q. What was the primary cost driver
13 difference between Diamond Willow I and Cedar
14 Hills?

15 A. You know, just looking at this in a short
16 time frame, I can't. I need a little more time to
17 look at it. We can provide something or perhaps
18 someone else -- I'm not sure if someone else would
19 -- okay. It looks like Mr. Neigum would be able to
20 answer that.

21 Q. Maybe when he comes back up. Yeah, the
22 questions would be regarding its -- initial cost is
23 over two cents per kilowatt-hour more for a
24 similar-sized wind farm.

25 Are you familiar with why in year 11 of

1 these projects the per-KWH cost goes up? Is there
2 some maintenance that's done at that point?

3 A. I believe the primary factors is the loss
4 of the PTC, production tax credit.

5 Q. So it assumes the -- that that is phased
6 out at that point?

7 A. Yeah. It's a 10-year period. We assumed
8 it would not be reimplemented at that point.

9 COMMISSIONER CLARK: That's all I've got.
10 Thanks.

11 JUDGE WAHL: Commissioner Cramer.

12 **EXAMINATION**

13 **BY COMMISSIONER CRAMER:**

14 Q. My colleagues have asked a couple
15 questions I wanted to ask, but maybe I'll put it --
16 let me ask you this: Mr. Roaché asked a question
17 that Mr. Kuntz objected to and Mr. Kuntz's
18 objection was because it presumed a direct
19 correlation between the failure of Big Stone II and
20 your projections, and that was an appropriate
21 objection and appropriate clarification, but his
22 fundamental question was, can you understand why
23 ratepayers lack confidence in this process, and I
24 guess my question is, can you?

25 A. I think if you're a customer and you're

1 reading the newspaper and the things that go there,
2 they have difficulty -- it is -- because of the
3 timing to correlate Big Stone with this rate case,
4 but they are separate things and the timing is, you
5 know, unfortunate, but they are not directly
6 correlated.

7 COMMISSIONER CRAMER: I guess my -- that's
8 a fair answer and I just have sensed sometimes a
9 bit of tone deafness from the utilities, quite
10 honestly, so I'm just wanting to clarify it.
11 That's all I have.

12 JUDGE WAHL: Commissioner Kalk.

13 **FURTHER EXAMINATION**

14 **BY COMMISSIONER KALK:**

15 Q. I just have to continue about what
16 Commissioner Cramer said. I mean, when we started
17 this thing, it was a combined rate case, Big Stone
18 II, it was all rolled together, so to say that you
19 didn't expect this to happen, I don't think that
20 makes any sense.

21 A. I'm sorry. I just meant that the need for
22 the wind generation was not a result of the failure
23 to --

24 Q. I understand that. But the point of
25 understanding what goes on in the world, when MDU

1 chose to do Big Stone, the rate case, all this, I
2 mean, there had to be -- I would hope that
3 companies really look at the surroundings and
4 understand, and for you to say that you weren't
5 aware of it, that just struck me as odd. I had to
6 point that out.

7 A. And, you know, as Mr. Goodin testified, we
8 do everything that we can to operate efficiently
9 and keep our costs low so that our customers have,
10 you know, cost-effective electricity. And
11 everything goes together. It isn't just -- you
12 know, when we look at things, we try to operate
13 efficiently, lower costs, we try to make the best
14 cost options in our generation. And, you're right,
15 initially we did file to recover Big Stone in this
16 proceeding and it got separated out. And the
17 timing of it -- and timing sometimes is everything.

18 Q. But that timing was a choice by
19 Montana-Dakota, not a choice by the Public Service
20 Commission or others?

21 A. That is correct, yes.

22 COMMISSIONER KALK: That's all I have.
23 Thank you.

24 JUDGE WAHL: Commissioner Clark?

25 COMMISSIONER CLARK: No.

1 got that 400,000 plus another 2.8 million, is that
2 correct, credit for wholesale sales?

3 A. Yes, they did.

4 MR. KUNTZ: No further questions.

5 JUDGE WAHL: Mr. Savelkoul.

6 **RE-CROSS-EXAMINATION**

7 **BY MR. SAVELKOUL:**

8 Q. Just one followup. If that 400,000
9 counsel was referring to were zero, ratepayers
10 would still get that same 3.2 million, wouldn't
11 they?

12 A. Under the existing mechanism they would
13 still receive more than we received.

14 Q. They would still receive the same amount?

15 A. To the extent that our margin is under
16 3.2, there is the floor of 3.2.

17 Q. So yes?

18 A. I'm sorry. I lost track of the question.

19 Q. The answer is yes?

20 A. My answer is that customers receive a
21 floor of 3.2 million regardless of the level of
22 sales for resale.

23 Q. Okay. In that situation counsel suggested
24 that there was 400,000 worth of sales for resale.
25 If that number were zero, would customers benefit

1 any more or any less?

2 A. Under the existing mechanism, and that's
3 what's in effect today, customers would receive
4 that floor amount.

5 Q. So nothing more or nothing less?

6 A. To the extent margins are below that
7 floor, that's correct.

8 Q. In that scenario?

9 A. In that scenario, that is correct.

10 MR. SAVELKOUL: Thank you.

11 JUDGE WAHL: Mr. Roaché. I'm sorry. I'm
12 assuming you were --

13 MR. SAVELKOUL: I am. Thank you.

14 JUDGE WAHL: Mr. Roaché.

15 **RE-CROSS-EXAMINATION**

16 **BY MR. ROACHÉ:**

17 Q. My question -- try to simplify it. As
18 requested by MDU to have the wholesale sales folded
19 into the fuel adjustment completely a hundred
20 percent, then it alleviates that \$3.2 million
21 requirement that's being done now?

22 A. That's correct.

23 Q. That makes the ratepayers pay more?

24 A. That is in essence part of the reason we
25 asked for the increase in this case, because

1 customers were receiving \$3.2 million when the
2 company was only making margins for North Dakota of
3 \$400,000. And so now what we're proposing to do,
4 if that \$400,000 were what we received, say, in
5 2011, customers receive that credit directly as a
6 reduction to their fuel cost.

7 Q. If the Public Service Commission does what
8 you ask and drops that \$3.2 million credit now, my
9 rates go up?

10 A. Well, it's overall. Our rate case is
11 overall. Yes, your rates will go up as a result of
12 this because we requested a rate increase.

13 Q. Without a rate increase, if you took the
14 \$3 million -- 3.2 million reduction off, my rates
15 would go up?

16 A. All other things being equal, if we
17 eliminated that margin credit -- margin sharing
18 mechanism, then the rates would go up.

19 Q. Thank you. Speaking of late filings, when
20 did you receive Mr. Mathai's -- his testimony?

21 A. It was late on October 15th.

22 Q. And your response to his filing was?

23 A. Our rebuttal testimony is the response to
24 staff's testimony.

25 Q. And that was Friday at four o'clock before

1 we started this hearing?

2 A. It was Friday afternoon, yes.

3 Q. And I received it in the mail on Saturday?

4 A. There was no procedural schedule set that
5 would say that the company has to -- that the staff
6 has to file on this day or the company has to file
7 on this day, so each of -- the staff and we filed
8 when it was able to get their testimony done.

9 Q. And then on Monday morning we had further
10 corrections that we were handed?

11 A. Yes.

12 Q. So could you see where for an intervenor
13 receiving MDU's response a day prior, two days
14 prior to the hearing and then the morning of the
15 hearing still getting new data, 72-page response,
16 that may have -- well, you see where the difficulty
17 would be for an intervenor?

18 A. I understand the difficulty, and I think
19 all parties had that same difficulty, as well as
20 the commissioners.

21 Q. Do you think MDU will be able to respond
22 if and when the case comes up more promptly and
23 give more time?

24 MR. KUNTZ: Objection, Your Honor, to the
25 assumption that we didn't respond properly. Let me

1 correct the record here. We received that
2 testimony -- the staff's testimony on the 15th.
3 There was nothing in this case that -- a procedural
4 schedule that directed when the staff's testimony
5 would be filed, let alone whether we were even
6 required to file rebuttal testimony. We were
7 requested by staff if we would provide written
8 rebuttal testimony. We agreed as a courtesy to do
9 that. We could have handed out all of our rebuttal
10 testimony live, not even in writing. We did that
11 as a courtesy. And we did it based upon as a
12 result of the settlement discussions to reflect the
13 issues that remained after the settlement
14 discussions which were still going on over the
15 weekend.

16 So the implication that somehow we didn't
17 respond promptly or hid the ball because we didn't
18 file until Friday afternoon, we made it very clear
19 to the hearing officer we would do our best effort
20 to provide written rebuttal testimony on Friday
21 prior to the hearing so people would have it over
22 the weekend. No one -- the staff, no one else has
23 requested a continuance in this case because of
24 that. So our people worked over the weekend and
25 all week and late at night last week to get that

1 out the door, and the implication that we delayed
2 or drug our feet to get that rebuttal testimony
3 out, I really object to.

4 JUDGE WAHL: Your objection -- your
5 objection is understandable and correct, Mr. Kuntz,
6 but I don't think -- I don't -- I don't read into
7 Mr. Roaché's question any assertion or allegation
8 of bad faith. I don't think anybody here has had
9 any complaint of any bad-faith conduct by anyone.
10 And I agree, the problem may have been that there
11 should have been more procedural schedules. The
12 problem should have been, it may well be that we
13 should have had a prehearing conference much
14 earlier, although I'm not sure that in considering
15 there wasn't a settlement conference until the
16 Monday that an earlier prehearing conference would
17 have been much better. But this is not the time to
18 discuss that.

19 Your objection is overruled because I
20 don't see that -- I don't see that implication in
21 Mr. Roaché's testimony and I don't believe that he
22 intends that, and for that reason, but your
23 explanation is correct and to the point.

24 Q. (MR. ROACHÉ CONTINUING) Then follow up
25 with another question and it will clarify some of

1 this. MDU's position on changing the rules on
2 length of time to have the -- an application and to
3 complete the application is about seven months now,
4 and the question is, do you feel that it would be
5 better after hearing all of this to extend that out
6 to perhaps nine months or twelve months in order to
7 give more time to get these things done?

8 A. I think as the company, we live with
9 whatever the rules and statutes of the state are.
10 If the legislature were to change that, we would go
11 with the change.

12 Q. And MDU more or less began this
13 application process in February of this year?

14 A. Yes, that's right.

15 Q. And generally ballpark figure, about how
16 many people do you think were involved in setting
17 up the total application and dealing with the
18 responses to questions and that sort of thing?

19 A. I'm not sure of the number of people. A
20 lot of those are the ones that are here today. In
21 doing a rate case and responding to data requests,
22 none of that would be anyone working on full-time.
23 It's all part of, you know, working it into their
24 job. The number of people I can't -- off the top
25 of my head, I can't count very well.

1 Q. Mr. Mathai strongly recommended more money
2 for dealing with these applications for rate
3 increases. Could you see where -- from the
4 ratepayers' side where we would see it unfair for
5 the Public Service Commission staff to be so
6 outnumbered in the competition or the dealing with
7 these kind of rate cases, comparing -- I'll let you
8 go. Go ahead.

9 A. I think there is -- a difference is the
10 burden of proof is on the company in preparing its
11 case and coming forward with its case. The staff
12 is reviewing, and to the extent that they believe
13 they need more staff or consultants, they can, you
14 know, make that case. To the extent that more
15 money is spent on the case, that money that --
16 those amounts will just get passed through to the
17 customers. So in effect it would off -- you know,
18 provide some of that -- when we come in for an
19 increase, it would add a little bit more to that
20 increase.

21 MR. ROACHÉ: Thank you.

22 JUDGE WAHL: Mr. Skokos?

23 MR. SKOKOS: No questions.

24 JUDGE WAHL: Ms. Jeffcoat-Sacco?

25 MS. JEFFCOAT-SACCO: No questions.

1 the things, and even today I think we may have set
2 the standard that this hearing needs to be done
3 today. If it takes today and Friday and next
4 Monday, that's fine with me. And the more
5 information folks have ahead of time, it reduces
6 the time that we have the hearing.

7 That's the only point that I think that --
8 well past this hearing. I appreciate what you're
9 saying, Mr. Kuntz, but I also appreciate the
10 expectation, I think, that is set by us and you
11 that we do these things in the effort to
12 consolidate all of our time to do a very concise
13 hearing. That's my only rant there, Judge, so --

14 JUDGE WAHL: Commissioner Cramer.

15 COMMISSIONER CRAMER: It's probably unfair
16 to you that you're the one on the stand at this
17 point.

18 COMMISSIONER KALK: It wasn't directed to
19 anybody.

20 **FURTHER EXAMINATION**

21 **BY COMMISSIONER CRAMER:**

22 Q. But you're right, the burden of proof is
23 on the company and that's why the company spends a
24 lot more money and a lot more time and puts a lot
25 more effort into making the -- into proving the

1 case, but doesn't confusion make it -- confusion on
2 the part of those charged with representing the
3 ratepayers that might be the result of too short a
4 time frame or not enough money actually hurt the
5 company's chance of proving their case? Could it
6 be?

7 A. That's a convoluted question and I believe
8 that the answer would be, it could be, it could.

9 Q. And then since you made this statement
10 that MDU will live with whatever the legislature
11 decides, does that mean that MDU is not going to
12 lobby against the bill that I had drafted to double
13 the filing fee and extend the timeline to 12
14 months?

15 A. You know, I can't answer that. I don't
16 know.

17 COMMISSIONER CRAMER: Like I said, it's
18 unfortunate you're the one on the stand. I have
19 nothing further. Thank you.

20 JUDGE WAHL: Any further questions from
21 the Commission? Mr. Kuntz?

22 MR. KUNTZ: Nothing further.

23 JUDGE WAHL: Mr. Savelkoul?

24 MR. SAVELKOUL: Nothing Your Honor.

25 JUDGE WAHL: Mr. Roaché?

1 MR. ROACHÉ: Nothing.

2 JUDGE WAHL: Mr. Skokos?

3 MR. SKOKOS: Nothing.

4 JUDGE WAHL: Ms. Jeffcoat-Sacco?

5 MS. JEFFCOAT-SACCO: Nothing.

6 JUDGE WAHL: Ms. Mulkern, I think you're
7 finished. Thank you very much. Where are we now?

8 MR. KUNTZ: I understood there were some
9 questions of Mr. Neigum.

10 JUDGE WAHL: We could take Mr. Neigum.

11 MR. SAVELKOUL: Yeah. Yes. We've got a
12 time limitation here.

13 JUDGE WAHL: Well, that's my -- also my
14 concern.

15 MR. SAVELKOUL: I understand it's the
16 company's right to put on their case. Maybe we
17 could ask the company if they would be willing to
18 let staff's witness Mathai on at this time.

19 JUDGE WAHL: There's a reason for your
20 request, I assume.

21 MR. SAVELKOUL: Yes.

22 JUDGE WAHL: Which is?

23 MR. SAVELKOUL: Our witness has a plane
24 that he needs to be getting to and he has an
25 international flight that he needs to be on.

1 JUDGE WAHL: Mr. Kuntz.

2 MR. KUNTZ: I have no objection to calling
3 Mr. Mathai out of order. Could we have -- how long
4 are we going to go before a break?

5 JUDGE WAHL: We're going to go to lunch.

6 MR. KUNTZ: Okay. At noon?

7 JUDGE WAHL: Assuming we're finished with
8 Mr. Mathai.

9 MR. KUNTZ: I don't think we're going to
10 be done with Mr. Mathai by lunch.

11 JUDGE WAHL: When does he have to leave?

12 MR. SAVELKOUL: His plane is leaving at
13 2 -- 2:20.

14 JUDGE WAHL: So can we break for lunch
15 then?

16 MR. SAVELKOUL: We would prefer to
17 continue until Mr. Mathai is done if the parties
18 would not disagree with that.

19 JUDGE WAHL: Mr. Kuntz, objection?

20 MR. KUNTZ: Well --

21 JUDGE WAHL: Well, how long are we going
22 to go? What do you anticipate? And I understand
23 how difficult a question that is. What do you
24 anticipate for direct testimony?

25 MR. SAVELKOUL: We have only a handful --

1 we have a summary statement which we're going to
2 hand out and read and then a handful of questions.

3 JUDGE WAHL: You're going to read the
4 summary statement verbatim?

5 MR. SAVELKOUL: Yes.

6 JUDGE WAHL: All right. And so where are
7 we?

8 MR. SAVELKOUL: It will take 10 minutes to
9 do his.

10 JUDGE WAHL: So maybe we're done with
11 direct by noon?

12 MR. SAVELKOUL: Yeah. Yes, oh, certainly.

13 JUDGE WAHL: Is there an objection to
14 working into the noonhour by, say, half an hour?
15 Mr. Kuntz?

16 MR. KUNTZ: No.

17 JUDGE WAHL: Mr. Roaché?

18 MR. ROACHÉ: No.

19 JUDGE WAHL: Mr. Skokos?

20 MR. SKOKOS: No.

21 JUDGE WAHL: Ms. Jeffcoat-Sacco?

22 MS. JEFFCOAT-SACCO: No.

23 JUDGE WAHL: Commissioners?

24 COMMISSIONER CLARK: No, although I'd
25 point out if his plane is at 2:20, then we may just

1 need to work till 1:30 and take a late lunch.
2 We're not going to make it back from lunch for
3 anything.

4 JUDGE WAHL: No. What I'm suggesting is
5 that we keep --

6 COMMISSIONER CLARK: We just push through
7 until he has to leave?

8 JUDGE WAHL: Until -- no, no. That we
9 push through until his testimony is complete, which
10 may be 12:30.

11 MR. KUNTZ: You said direct.

12 COMMISSIONER CLARK: Right. But what I'm
13 saying is, I don't think he'll ever get -- I don't
14 think we'll ever get back in time for anyone else
15 to ask him questions if we take a break prior to
16 his needing to leave.

17 JUDGE WAHL: I see. That would be my
18 thought. If the Commission is willing to continue
19 until we finish his testimony, that's exactly what
20 I will do.

21 COMMISSIONER CLARK: The testimony
22 inclusive of cross?

23 JUDGE WAHL: Of cross.

24 COMMISSIONER CLARK: Cross. Okay. Yep.

25 MR. KUNTZ: But then could we have 10

1 minutes now if we're going to do that, or five at
2 least?

3 JUDGE WAHL: Ten if we take 10, not 15.

4 (Recess taken at 11:29 a.m. to 11:45 a.m.)

5 JUDGE WAHL: You may proceed, Mr.
6 Savelkoul.

7 MR. SAVELKOUL: Staff calls witness George
8 Mathai, and if we could get the prefiled responsive
9 testimony of George Mathai marked, please.

10 JUDGE WAHL: All right. Let's -- for the
11 record I have the prefiled responsive testimony of
12 George Mathai, CPA, marked for the record as
13 Exhibit CAS 17 and I have the summary testimony of
14 George Mathai, CPA and response to MDU rebuttal
15 testimony marked CAS 18.

16 Mr. Mathai, as you have heard me advise
17 previous witnesses, your testimony is required to
18 be under oath and I'm required by law to advise you
19 regarding perjury before administering the oath.
20 Perjury is a false statement of material fact which
21 you do not believe to be true. In North Dakota
22 perjury is a Class C felony, punishable by a fine
23 up to \$5,000, imprisonment for a period of up to
24 five years, or both.

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GEORGE MATHAI,

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

JUDGE WAHL: Mr. Savelkoul.

MR. SAVELKOUL: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. SAVELKOUL:

Q. Mr. Mathai, before you is an exhibit
marked as CAS 17. It is your prefiled responsive
testimony. Now, if I were to ask you the same
questions as are contained in that filing, would
your answers remain the same today?

A. Yes. The only minor changes will be on
certain verbiage. In the -- some of the notes I
would have written a little bit differently, but it
will be the same.

MR. SAVELKOUL: Okay. Your Honor, I would
offer CAS 17.

JUDGE WAHL: Mr. Kuntz?

MR. KUNTZ: No objection.

JUDGE WAHL: Mr. Roaché?

MR. ROACHÉ: No objection.

JUDGE WAHL: Mr. Skokos?

MR. SKOKOS: No objection.

JUDGE WAHL: Ms. Jeffcoat-Sacco?

1 MS. JEFFCOAT-SACCO: No objection.

2 JUDGE WAHL: Exhibit CAS 17 is received.

3 Q. (MR. SAVELKOUL CONTINUING) Mr. Mathai,
4 also in front of you is a document marked as CAS
5 18. Would you please describe that?

6 A. It's the summary testimony of George
7 Mathai, CPA, in response to MDU rebuttal testimony.

8 Q. Would you please read that?

9 A. Yes. First of all, I want to thank this
10 Commission and the advocacy staff for providing an
11 opportunity for me to represent the people of North
12 Dakota in this case. And I had a very good
13 different experience in working in this
14 jurisdiction for the first time, and I want to
15 thank even the company who worked with me in
16 putting the information together to prepare the
17 recommendations on behalf of the advocacy staff.

18 I'll read my summary. On behalf of the
19 North Dakota Public Service Commission's advocacy
20 staff, I conducted the review of the rate increase
21 application of Montana-Dakota Utility, Case No.
22 PU-10-124. My goal is to present to the Commission
23 my audit findings that would enable the Commission
24 to evaluate whether MDU's revised request of
25 \$11,518,000 increase is fair, just and reasonable.

1 Based on the company evidence I reviewed,
2 my conclusion is that the company failed to justify
3 the requested increase. There are still three
4 major unresolved issues that have the potential
5 monetary value ranging from zero to 7.3 million.

6 These three major issues include advocacy
7 staff's disallowance of MDU's revenue requirement
8 calculation for wind investments, 60 percent
9 disallowance of MDU's incentive and bonus pay
10 amounting to 1.1 million and about \$70,000 related
11 to board of directors expense. My recommendations
12 have not changed with respect to these issues.

13 Let me go with the wind-related
14 investments and expenses first out of the three.
15 What you see in my Exhibit CAS 18 is the DR numbers
16 that I issued on -- the discovery request numbers
17 that I issued that is related to the wind
18 investments and expenses.

19 Let me state the three major reasons for
20 our recommendation of excluding the wind projects
21 from the consideration of this rate case.

22 The company -- number 1, the company had
23 great difficulty in identifying the total dollar
24 amount applicable to wind included in the current
25 filing. There had been several discovery requests

1 on this subject, and we received differing answers
2 for the same components in different discovery
3 requests. What is filed even as late as last
4 Friday, one business day before this hearing, is
5 brand-new information on wind-related investments
6 and expenses from what I had seen before. We
7 currently cannot quantify or know how much is
8 really included in the current filing for
9 wind-related items.

10 Number 2. The company did not consider
11 wind investment of approximately 115 million as big
12 enough of an investment which required ADP from
13 this Commission. Therefore, the Commission or
14 staff did not have an opportunity to scrutinize in
15 detail the used and useful concept and the
16 associated cost factors of this wind investment
17 prior to the resource being built or as of this
18 hearing. It is a fundamental ratemaking principle
19 that the company has the burden of proof to justify
20 every dollar that it requests through rates from
21 its customers.

22 Number 3. The company has not established
23 that the proposed wind projects are the least-cost
24 options for the energy needs of MDU. We have not
25 been privy to any economic studies conducted by

1 MDU, if they have done any at all. Staff needs
2 additional time and reliable information to make an
3 informed judgment concerning the level of wind
4 investment that should be the responsibility of
5 North Dakota ratepayers. 73 million out of a 276
6 million rate base requested by MDU is material in
7 itself and whatever decision the Commission makes
8 on this issue has long-term consequences.

9 Based on the above reasons, we are
10 objecting to the inclusion of wind investments and
11 expenses as a cost of service item in this case.
12 It's staff's opinion, the company has not yet
13 provided the needed information nor established the
14 need. Alternatively, if the Commission decides to
15 grant any portion of the recovery as appropriate,
16 advocacy staff plead to the Commission to bifurcate
17 the wind portion from this proceeding and provide
18 the opportunity for the parties to examine the
19 actual issues related to cost and the level of
20 inclusion, if any, to be paid for by the North
21 Dakota customers.

22 The second item is related to the
23 incentive pay. I have issued the -- related the
24 DR, discovery request, of 25, 26 and 28B.
25 Regarding the incentive pay, staff is not against

1 allowing a reasonable level as a part of the
2 compensation in addition to the base salary, the
3 annual raises and the employee benefits. Staff is
4 opposed to the level of what is requested by MDU.
5 Our reasons to share the cost include:

6 1. Based on the review of company-
7 provided information, contrary to what Mr. Goodin
8 testified, the benchmark criteria standards are
9 heavily weighted in favor of profitability and
10 financial performance. For example, for midlevel
11 management employees, it is -- 50 percent weight is
12 profitability and the rest of the 50 percent weight
13 is for all other performance criteria, including
14 safety and customer satisfaction and operational
15 savings. For non-management employees, the factors
16 range from 4.5 value points to 7 value points, in
17 which the financial weighing is 4 points. It is
18 not equal weighing between financial, safety and
19 customer relations as the company witnesses claimed
20 in their rebuttal testimony.

21 Number 2. Staff is of the opinion that
22 the company's current salaries are at a reasonable
23 level to the area even without staff's recommended
24 level of incentive pay.

25 Number 3. Staff does not believe that

1 employees remain with or leave a company, just how
2 big the incentive pay is, as the company witnesses
3 were implying through their testimony. When
4 employees choose an employment, they consider
5 several known factors other than an unknown and
6 nonquantifiable item of incentive pay when they are
7 hired. So MDU's argument that the incentive pay as
8 a needed tool to retain employees is a
9 stretched-out argument.

10 Number 4. Other commissions have dealt
11 with this issue of incentive and bonus pay for
12 several years and I have taken positions ranging
13 from complete exclusion to partial inclusion in
14 different rate cases as a compromised position.
15 That is over a 30-year period of time and over
16 about 156 different rate cases.

17 I take note of Mr. Goodin's testimony that
18 MDU changed the incentive plan weighing in 2010.
19 However, MDU's revenue requirement had not been
20 amended to reflect the new level of incentive pay
21 based on the new standards. Additionally, other
22 utilities in North Dakota had put limit on their
23 distribution of incentives and bonus pay even when
24 their overall compensation was below median from
25 other companies. Incentive payout for MDU

1 employees ranges from 6 percent to 30 percent.
2 Staff requests the Commission to find the 60/40
3 split, as I recommended, is the appropriate level
4 of incentive pay to be included in the compensation
5 package, in addition to the base pay, annual raises
6 and other employee benefits included in this case.

7 The third item is board of directors
8 expenses. That is based on DR-35 that I issued.
9 Regarding the board of board directors expenses,
10 again, staff is not against allowing a reasonable
11 level of board of directors expenses as a part of
12 the O&M. In my experience, I have been -- I have
13 seen companies booking the investors and board of
14 directors expenses below the line, not to be paid
15 for by the ratepayers, and above the line for
16 ratemaking purposes, which normally is paid by the
17 ratepayers. I have recommended and accepted by
18 commissions -- I have recommended and accepted by
19 commissions to exclude all investor-related and
20 board of directors expenses for ratemaking
21 purposes. I thought it is fair to exclude such
22 expenses completely from cost of service since the
23 board of directors expenses are primarily
24 responsible to the investors. However, my recent
25 analysis made me to think that there is some

1 secondary responsibility and benefits to the
2 ratepayers from the good fiduciary responsibilities
3 of the board of directors. So it is fair, just and
4 reasonable to share such expenses between the
5 shareholders and customers. Therefore, the
6 advocacy staff requests the Commission to accept
7 our sharing approach in this matter.

8 The general observations and
9 recommendations. There are three other
10 recommendations I made to the Commission, one
11 regarding MDU's minimum standing filing
12 requirements, or MSFR, for rate change cases;
13 number 2, accounting system and jurisdictional
14 allocation process; and, number 3, corporate
15 allocation methodology and affiliate transactions.

16 Advocacy staff and MDU have reached some
17 understanding to work together to resolve these
18 issues as a part of the settlement. I made the
19 following comments and suggestions in my prefiled
20 testimony with the very positive objective that the
21 operations of MDU will be more transparent and
22 regulatory friendly which will be beneficial to all
23 stakeholders of MDU. Let me give brief
24 descriptions of the issues the advocacy staff
25 raised in my testimony.

1 The first one is meeting minimum standard
2 filing requirements for rate case filing and other
3 procedural concerns. The staff recommends to the
4 Commission that it should establish through
5 rulemaking or otherwise a better minimum standard
6 filing requirement for utilities when they initiate
7 a rate increase filing. Staff's processing of
8 MDU's rate increase application, PU-10-124,
9 revealed this case could have been processed in a
10 more timely and efficient way if the filing itself
11 was made to the Commission under a better MSFR. If
12 the timeline was longer, the issues could have been
13 fleshed out more thoroughly before the hearing so
14 the hearing could be conducted more effectively and
15 with reliable information.

16 Number 2. Evaluation of MDU's accounting
17 system and jurisdictional allocation process.
18 Staff's processing of MDU's rate increase
19 application, PU-10-124, revealed that an evaluation
20 or study of MDU's accounting system should be
21 conducted to understand its adherence to the FERC
22 system of accounting and cost allocation process.
23 Staff found it very difficult to trace amounts back
24 to any original source document to create a
25 reasonable and manageable audit trail.

1 If I just put it in a more understandable
2 way, I will say the way their accounting system
3 is -- the practice and everything, I think the
4 traffic from the Tower of Babel would be much more
5 faster than how to reach it from the practice of
6 these accounts to final, final point of the real
7 expense.

8 During the processing of a rate increase
9 application, there is not enough time or resources
10 to concentrate on such crucial and unique issues as
11 the company's internal accounting process or
12 detailed review of its jurisdictional allocation.
13 Therefore, we recommend the Commission order a
14 management audit of MDU.

15 Number 3. Corporate allocation
16 methodology/affiliate transactions. Similarly,
17 staff proposes that the Commission order a
18 comprehensive review of MDU's corporate allocation
19 factor calculation methodology and its affiliate
20 transactions. Such review is beneficial to MDU's
21 North Dakota customers to ensure they are not
22 subsidizing any of the nonregulated or other
23 regulated utilities.

24 Regarding the corporate allocation, MDU is
25 using an equity-based corporate allocation factor.

1 Traditional methodologies like Distringas
2 Methodology give broader assurance that established
3 rates are fair, just and reasonable and do not
4 disproportionately allocate corporate costs to its
5 utility operations. Staff recommends this issue be
6 incorporated as a part of the management order as
7 suggested above.

8 I also -- again, I want to emphasize that
9 my comments concerning these improvements that I'm
10 requesting is not personal. It is not to put any
11 blame on anybody. It is simply to have more
12 transparency, and the Commission which has the
13 authority to control the rates and set the rates
14 fair, just and reasonable will have more
15 transparent access to the information of the
16 company and make more informed and educated
17 decisions. In that process I believe that if the
18 company accepted my recommendation, it will be much
19 more easier for the company to provide the
20 information because you will be starting to set a
21 new course I heard in the settlement is an actual
22 difference. Yes, probably the company was not here
23 for 17 years one time and then for seven years
24 prior. So in the last 25 years the company has
25 been to a rate case only twice, and because of that

1 probably the company would not be knowing what
2 other jurisdictions are doing in this. But if my
3 recommendations are accepted, it will make the life
4 of the company personnel, regulatory personnel more
5 easy and it will be more transparent to all the
6 stakeholders of the company.

7 Q. And just one clarification, Mr. Mathai.
8 With respect to your general observations and
9 recommendations, that was with -- you were
10 summarizing your direct testimony. Issues two and
11 three have been settled by staff, have they not?

12 A. Yes, there is an understanding on all
13 three except the first one.

14 Q. And then I've got just a few other
15 questions for you. The first one has to do with
16 incentive pay and your summary statement
17 suggested -- dealt with some issues that you ran
18 into with incentive pay and your thoughts about
19 that. With respect to incentive pay, have you
20 reviewed MDU response to your data -- staff's data
21 request 28B?

22 A. Yes, I have.

23 Q. Can you please explain it?

24 A. Yes. It's confidential information so I'm
25 just going to go in generality on it. This was

1 discussed yesterday by the company personnel as the
2 same response, and so I would say that if -- I
3 don't know if the Commissioners have the copy or
4 not when I go through this.

5 Q. No, they don't.

6 A. So I can -- this is the response that I
7 received from the company to my request to "Please
8 provide a schedule showing the incentive and
9 performance pay and bonuses to each categories of
10 employees during 2008 through 2010 projected test
11 year. Please provide copies of any studies and
12 detailed calculations of such payments."

13 And all what I had was a bunch of tables
14 that I received. It's quite a few pages, about 53
15 pages of attachments -- yes, 54 pages of
16 attachments and I'm going to look at -- take the
17 first page, which is in this marked as 1. It has
18 got about 13 columns all across and it talks about
19 the identification of probably the employment
20 category, and so forth. It talks about the base
21 salary, then it talks about what actually the
22 people made or prorate the salary and they have
23 what is a target incentive and then the percentage
24 of target payout, what is that percentage, and then
25 it talks about what is the actual dollar figures in

1 bonuses and profit and then it goes into two
2 columns of criteria, which -- in this case which is
3 for mid management incentive compensation plan, the
4 bonus calculation is based on 50 percent
5 profitability and then individual goals that could
6 be varying from 1 to 50 percent. Everybody does
7 not -- everybody do not have the same percentage.
8 So it could be an employee can have a 50 plus 15,
9 which makes 65 as a total, percent that they can
10 get up to, or an employee can have 50 plus 50, a
11 hundred, percent of what they've targeted. So that
12 is what this one says.

13 So for my discussion, what I said is that
14 if you are setting a criteria in this particular
15 group, two segments are here, one identified as
16 profitability, the other one as individual goals,
17 so 50 percent emphasis on profitability in this
18 particular group.

19 And if you go to the next group, which is
20 the nonmanagement employees, they call that base
21 group, in that if you go -- there are several
22 groups of employees there they have categorized in
23 different ways, so I don't want to go into the
24 details because of the private information. But
25 just to tell you how they -- how I interpret what

1 they give me, it says how many total points are
2 weighed.

3 For example, it can go in some categories
4 up to 4.5 is the total. In some cases it goes up
5 to 7 points. But even though you have 7, for
6 example, financial, safety, independent safety,
7 group safety, group vehicles, unrelated, customer
8 service, operational A, B, C, all of this goes over
9 there, but if you take, for example, something with
10 the 4, still the financial -- take something with
11 the 4.5, which is the lowest one, out of that 4 is
12 financial in all these columns, which means what do
13 you have left in that point calculation, only half
14 a point. Half a point is divided between -- maybe
15 it is part of safety, in some cases it could be
16 part of customer services. Yesterday we heard that
17 it's all equally done. In my math, it doesn't
18 calculate that way.

19 Now, here where the highest point is 7,
20 there also financial is 4, and in that case
21 independent safety is 1, group safety is .5, group
22 vehicles is .5, unrelated is .5 and customer
23 service is .5. If you take any one component and
24 compare with the total financial of 4, the ratio is
25 so little for all other things other than the

1 financial.

2 So I want the Commissioners to know that
3 when I said 60/40, I was pretty generous about it.
4 In this kind of situation I could have said go to
5 75 percent excluded, but I thought I did not want
6 to go to the bone in that calculation, so I made a
7 fair, just and reasonable recommendation based on
8 the information that I received. And nobody had
9 provided any other studies even though I requested
10 for please provide copies of any studies and detail
11 calculations of such payment. That part was blank.

12 Now, later in the -- almost when I wrote
13 my testimony, at that time we got some confidential
14 information related to this, but it didn't change
15 any of my criteria to come up with what should be
16 included because of all being relevant in this data
17 request.

18 Q. Now, Mr. Mathai, you have been here
19 throughout the hearings, and did you hear that that
20 program has now changed?

21 A. Yes, I heard it.

22 Q. Do you have any reason to dispute that
23 change?

24 A. I don't have any information how it has
25 changed.

1 Q. Even if it did change, as has been
2 represented by MDU, does that change your position
3 about sharing?

4 A. My -- my position right now based on the
5 information I have before me today, it will not
6 change.

7 Q. And why is that?

8 A. We are dealing with a test year or
9 projected test year. What were the number the
10 company said their revenue requirement needed is
11 based on those numbers. If they are going to
12 change to something prospectively, unless they
13 reflected that in that filing, there is no way that
14 we can quantify it. And my understanding is that
15 the company's proposed changes are going to be
16 after they filed this rate case, so I have no basis
17 to know what will be the revenue requirement impact
18 of their changes.

19 Q. Okay. Are you familiar with other IOUs
20 within North Dakota and how they deal with
21 incentive and bonus pay?

22 A. I have read the testimony of two companies
23 regarding that. I did not go into all the -- what
24 are things they submitted at the hearing, but I
25 read their testimony quickly.

1 Q. And based on your understanding of their
2 testimony, do you believe that there's a sharing
3 mechanism in their bonus and incentive pay plan?

4 A. I didn't see a sharing mechanism in those
5 two. I don't know what was a final Commission
6 order or Commission decision -- or Commission
7 decisions I do not know.

8 Q. Was there a limitation with respect to
9 what was paid out?

10 A. Yes, the companies voluntarily made a
11 limitation. Based on their salary surveys, the
12 total compensation of these companies that I looked
13 at were lower than the area, yet they decided to
14 put a limit on the incentive pay payout, because
15 they did not want to make the impact of the
16 disparities in the salary, all of them that bring
17 it back and affect the customers and impact the
18 customers with that difference in one time.

19 Q. Now, you said you don't know what the
20 order would be. Would you expect any intervenors
21 or staff would suggest they pay more?

22 A. No, I don't think so. In my experience, I
23 haven't done that.

24 Q. Now, throughout this hearing you've heard
25 a lot of testimony. Are there other factors that

1 you think are worth considering when deciding
2 whether bonuses and incentive pay are justified in
3 this case?

4 A. I think the company emphasized retaining
5 the employees as a major factor or driving factor.
6 We heard yesterday from the company that -- the
7 company witnesses, their HR person, that they have
8 conducted studies to see what is the turnover, the
9 turnover of employees during the time, and what I
10 heard was that incentive pay had no impact on the
11 turnover in real salary that they had done in the
12 studies.

13 Q. All right. Also, and especially today,
14 there has been a fair amount of discussion about
15 responsiveness to ratepayers and accountability,
16 changing issues. Do you think that is a
17 consideration that could be weighed?

18 MR. KUNTZ: Objection, leading.

19 JUDGE WAHL: I'm sorry. Mr. Kuntz.

20 MR. KUNTZ: Objection, leading -- the
21 question.

22 JUDGE WAHL: Sustained. It's not that
23 that's anything new for this hearing.

24 MR. KUNTZ: I understand, Your Honor, but
25 I thought there should be a question there

1 someplace rather than counsel's statement.

2 Q. (MR. SAVELKOUL CONTINUING) Are there
3 other factors that you saw today that may be
4 worthwhile considering when determining the level
5 of incentive pay and bonuses that are included in
6 this rate case?

7 A. Yes. The experience that I had with the
8 company in getting the information and seeing the
9 final product, even if there is some break in the
10 process, that I had never been faced with a similar
11 situation in my years of experience where when the
12 company makes material changes to their filed
13 testimony, that is not even shown or told even at
14 the last minute, because yesterday after the
15 hearing started really I found out that Miss Rita
16 Mulkern had changed her testimony and there's so
17 many material changes, because every information
18 that I'm used to and what I'm seeing in her
19 exhibits now, they are very different.

20 MR. SAVELKOUL: That's all I have. I
21 would offer Exhibit 18.

22 JUDGE WAHL: Mr. Kuntz?

23 MR. KUNTZ: No objection.

24 JUDGE WAHL: Mr. Roaché, Mr. Skokos?

25 MR. ROACHÉ: No objection.

1 MR. SKOKOS: No objection.

2 JUDGE WAHL: Ms. Jeffcoat-Sacco?

3 MS. JEFFCOAT-SACCO: No objection.

4 JUDGE WAHL: Exhibit CAS 18 is received.

5 Anything further, Mr. Savelkoul?

6 MR. SAVELKOUL: We've got nothing further.

7 We would tender the witness.

8 JUDGE WAHL: Mr. Kuntz.

9

CROSS-EXAMINATION

10 **BY MR. KUNTZ:**

11 Q. Mr. Mathai, as I understand your direct
12 testimony, you worked for the Oklahoma Corporation
13 Commission from 1980 to October 2007?

14 A. Yes.

15 Q. So you left the Oklahoma Commission about
16 three years ago?

17 A. Yes.

18 Q. And what was your reason for leaving?

19 A. I took an early retirement and I got an
20 opportunity to work with another consulting firm so
21 I left -- the day when I retired, I took a new job.

22 Q. During your tenure with the Oklahoma
23 Corporation Commission, did you testify on utility
24 regulatory matters before any other state or
25 federal regulatory commission?

1 A. I'm not sure.

2 Q. From 1980 to October 2007, did you ever
3 testify before a state or federal regulatory
4 commission besides the Oklahoma Commission?

5 A. During that period Oklahoma Commission is
6 the only one I testified, yes.

7 Q. And prior to working for the Oklahoma
8 Commission, did you testify on utility regulatory
9 matters before any state or federal regulatory
10 commission?

11 A. No, I haven't.

12 Q. And in your last 10 years with the
13 Oklahoma Corporation Commission, how many cases did
14 you provide testimony regarding revenue
15 requirements for an electric utility?

16 A. There are several of them. I was the
17 chief of the division of all rate cases, energy as
18 well as -- well, there's no telecommunications, but
19 even when it was there, I was in charge of that.
20 So I can think about the last case in 2007 that I
21 finished working was the PSO case, which is a
22 subsidiary of AEP. The case number was
23 2000-009285, I think. That was the last case when
24 I was leaving. I provided testimony on that --
25 major testimony on that. And prior -- a couple of

1 -- probably a year prior to that OG&E, which is the
2 largest electric utility in Oklahoma. I concluded
3 their case number 2000 -- 2005-00151. Those
4 numbers may not be correct, but, anyway, those are
5 the latest rate cases for those companies in
6 Oklahoma.

7 Q. Let's go back to your exhibit NDPSC-3,
8 which was an attachment to your prefiled testimony.
9 I'm looking from 2007 to 1997 electric cases that
10 you filed -- or that you indicate that you provided
11 testimony on, I see the 2007 case there for PSO, a
12 subsidiary of AEP; correct?

13 A. Yes.

14 Q. And at the bottom of that page I see
15 another testimony in 2005 for Oklahoma Gas &
16 Electric.

17 A. That is the one I said 151, yes.

18 Q. And then again in 2005 I see testimony for
19 PSO again. Is that an electric case?

20 A. Yes.

21 Q. And in 2004 another case for PSO; correct?

22 A. Right.

23 Q. And then in 1997 another case --

24 A. Wait. Not another case. It's a
25 two-phase -- two phases of the same case.

1 Q. So that's the same case.

2 A. Right.

3 Q. And then in 1997 I see another case for
4 PSO?

5 A. Right.

6 Q. So then in the last 10 years you were with
7 the Commission, basically you provided testimony on
8 a total of four cases for two electric utilities?

9 A. If your math is right, I agree with you.

10 Q. And how many of those electric utilities
11 are multijurisdictional utilities?

12 A. They both are multijurisdictional.

13 Q. How many are members of a regional
14 transmission organization similar to MISO?

15 A. Both.

16 Q. And when did they join their regional
17 transmission organization?

18 A. I don't know.

19 Q. Then after you left the Oklahoma
20 Commission, you were associated with ERG Consulting
21 Group; is that correct?

22 A. Yes.

23 Q. And were you an employee of that group?

24 A. Yes, I was an executive consultant for
25 them.

1 Q. A consultant or an employee?

2 A. A consultant. Well, my title is -- they
3 call it executive consultant because it is a
4 consulting firm.

5 Q. So you were paid a monthly salary?

6 A. Yes.

7 Q. In how many cases did you provide
8 testimony for that group regarding revenue
9 requirements for an electric utility?

10 A. One.

11 Q. And that would have been before the City
12 of New Orleans?

13 A. Yes.

14 Q. And why did you end your association with
15 that group?

16 A. That's what I decided to do.

17 Q. And when did you do that?

18 A. March -- April of -- April 1st of 2009.

19 Q. April 1st of 2009. Is that when you then
20 formed Mathai & Associates Regulatory Consultants?

21 A. Yes.

22 Q. And does Mathai & Associates have any
23 employees other than yourself?

24 A. I employ on a consulting basis other
25 people on case by case.

1 Q. So you retain consultants, but you don't
2 have any employees, per se?

3 A. No.

4 Q. Are there any other principals?

5 A. No.

6 Q. And other than these consultants, who are
7 the associates of Mathai & Associates?

8 A. Anyone who works with me in a case.

9 Q. So those would be retained as consultants
10 on a particular case?

11 A. Yes.

12 Q. Has Mathai & Associates provided testimony
13 in any other proceeding regarding the revenue
14 requirements for an electric utility since you've
15 initiated that company?

16 A. Yes, I have. Let me say I did not testify
17 before the Commission, but I prepared a report for
18 a rate hearing purpose.

19 Q. Before which commission?

20 A. Oklahoma Commission.

21 Q. And that was on an electric utility?

22 A. Oklahoma Gas & Electric.

23 Q. And when did you submit that testimony?

24 A. There were two reports that I submitted.
25 One was on prepaid pensions and the other one was

1 on storm damage recovery.

2 Q. And Oklahoma Gas & Electric, was that an
3 electric case or a gas case?

4 A. It's electric. That name is kind of
5 misleading. They're an electric company, but they
6 have subsidiaries related to the gas.

7 Q. And when were you retained for this
8 proceeding as a consultant for the staff?

9 A. It was in 2009. I was not for the staff.
10 I was working for --

11 Q. In this proceeding here before the North
12 Dakota Commission, when were you retained?

13 A. May -- actually it was June 19th of 2010.
14 Excuse me.

15 Q. And your first recommendation was that the
16 Commission find that there is no need for
17 Montana-Dakota's wind generation and that
18 investment and expenses associated with the
19 generation be excluded from determination of
20 Montana-Dakota's revenue requirement; is that
21 correct?

22 A. Right.

23 Q. And in support of your position you state
24 on page 6 of your testimony that MDU's main reason
25 for starting its wind project was to meet the

1 Montana legislative mandate. Was that correct?

2 MR. SAVELKOUL: Where are we?

3 MR. KUNTZ: Page 6 of his prefiled
4 testimony.

5 MR. SAVELKOUL: Do you have a line?

6 THE WITNESS: Where are we looking?

7 MR. SAVELKOUL: Page 6 of your prefiled
8 direct.

9 Q. (MR. KUNTZ CONTINUING) I'm sorry. Page
10 5, line 20. Do you see that testimony?

11 A. Yes.

12 Q. Assuming that that's a correct statement,
13 that in itself would not mean that there wasn't a
14 need for this particular generation, would it?

15 A. Well, to begin with, I have not been given
16 any report to justify the need for it.

17 Q. No, but my question is, assuming you're
18 right that the main reason for filing -- or for
19 building the Diamond Willow I project was to meet
20 the Montana legislative mandate, that doesn't mean
21 necessarily that there wasn't a need for the
22 facility, does it?

23 A. No.

24 Q. And, likewise, if a reason for the
25 company's building of Diamond Willow I or Cedar

1 Hills II was to meet the North Dakota objective,
2 that doesn't mean that there wasn't a need for that
3 particular facility to serve customers in Montana
4 or North Dakota, does it?

5 A. I cannot answer that whether there's a
6 need for it or not because I haven't seen enough
7 evidence to prove that there was a need for it.

8 Q. And that's your opinion based upon your
9 analysis of what you looked at?

10 A. Exactly.

11 Q. Also in support of your position you state
12 that Montana-Dakota has not established that wind
13 projects produce the least-cost energy available to
14 North Dakota customers; is that correct?

15 A. Yes.

16 Q. And assuming that is a correct statement,
17 what is your authority that a generation source
18 must be the least-cost generation source before a
19 public utility is entitled to recover the cost of
20 that source?

21 A. There is a principle called in ratemaking
22 fair, just and reasonable. If that principle has
23 to be applied to be fair, just and reasonable, you
24 look for the most reasonably or the least cost that
25 the ratepayers have to pay for, what is available

1 there, and you make your judgment on all that is
2 available and then you decide which one is the
3 least cost and then you make a decision to be fair,
4 just and reasonable.

5 Q. So in any investment decision the company
6 makes, if it's got an array of investment choices,
7 it must select the least cost of those choices
8 before it's entitled to recovery; is that your
9 opinion?

10 A. No, that's not my opinion.

11 Q. Well, then tell me what your opinion is
12 with respect to least-cost alternative because
13 that's the way I understand it.

14 A. Okay. In this particular case, first of
15 all, I did not have the information to see what is
16 the least-cost options, because I asked for
17 studies, the company did not provide anything.
18 From the testimony I understand the company did not
19 conduct anything to be even available now for us to
20 see whether that was the least cost or not when you
21 made the decision. So I have no information to
22 make a judgment except by looking at a 9-cent KW
23 for the revenue requirement that you are -- your
24 revenue requirement translates to 9.5 cents to 4.5
25 cents over a two-year period of time per KWH.

1 Q. I'm getting back to your --

2 A. Let me finish it.

3 Q. All right. I thought you were. I'm
4 sorry.

5 A. Let me finish it. So if you look at that
6 unit cost, is that the least cost available? In my
7 thinking, coal can be produced much cheaper. Gas
8 is a little more expensive, but less than the wind.
9 So it's a simple translation of what least cost is,
10 how you --

11 Q. My question is to you, though, if the
12 company makes an investment decision, is it your
13 opinion of the choices it has in front of it,
14 unless it picks the least cost, it's not entitled
15 to recover a return on that investment?

16 A. I did not say that. I don't -- I don't
17 think that because the company didn't pick the
18 least cost, they cannot recover it. I didn't say
19 that. I don't believe it.

20 Q. That's the way I read your
21 recommendations.

22 A. You may read that. If you want, I can
23 explain what is actually. I read it and I
24 understand differently.

25 Q. Let me give you an example of, do you

1 understand that overhead distribution lines are
2 generally cheaper, least cost than underground
3 distribution lines?

4 A. Yes.

5 Q. And would the company, in your opinion,
6 not be entitled to recover the cost of underground
7 distribution lines because it decided to build
8 underground distribution lines rather than overhead
9 distribution lines for other reasons rather than
10 cost?

11 A. In your scenario, if the company in its
12 own management decision makes it, that doesn't
13 guarantee that the Commission has to approve that.
14 The Commission has to look at all of the factors
15 and see why the company has done it, whether it's
16 used and useful, whether it is fair, just and
17 reasonable, whether it is the least cost or
18 reasonable cost. All those factors have to be
19 considered before the Commission or regulatory body
20 will allow you to recover it. But to build -- for
21 you to build it, nobody will object to it except
22 when you come forward for recovery of it, that's
23 the time you would analyze it and see whether that
24 was the right decision to do, is it the
25 responsibility of the ratepayers to pay for the

1 underground or the other one.

2 Q. So is it your position then that the
3 company could be entitled to recover for the cost
4 of underground distribution even though it's not
5 the least-cost alternative method to provide
6 distribution?

7 A. If the decisionmakers -- the public policy
8 decisionmakers make the decision and allow that,
9 yes.

10 Q. So if there were considerations such as
11 aesthetics, that customers and communities would
12 prefer to have underground rather than overhead
13 facilities, that would be a reason to justify
14 something other than a least-cost alternative
15 investment, would it not?

16 A. Yes. Let me -- I have gone through the
17 same example that you had done -- you said in
18 Oklahoma, but there was a process that they came to
19 the Commission before they decided to spend a lot
20 of money on the underground. There was something
21 called the vegetation management. I don't know
22 whether your company has got -- I issued a data
23 request and there wasn't much of that. And a
24 vegetation management is what they call the program
25 or tree trimming and others.

1 When those vegetation management
2 information is analyzed and they find out that the
3 circuits are going out every now and then because
4 of the difficulty in managing the lines and then
5 they come out and say we can save more money if we
6 go underground, then that cost is compared and
7 contrasted and see which one is more beneficial for
8 the ratepayers. It is discussed in a public forum.
9 The public has the opportunity to come and say that
10 we want to have it or we don't want to have it or
11 that area of people are going to pay for it or if
12 the whole customers are going to pay. All of those
13 discussions will take place. So I tell you again,
14 if the public policy decision is to allow that,
15 yes, it can be recovered.

16 Q. But it's your position then that we should
17 have hearings on whether we have underground or
18 overhead distribution?

19 A. Certainly, if it costs money.

20 Q. You're aware that MDU has both coal-fired
21 generation and also gas-fired generation?

22 A. Yes.

23 Q. And you're aware that each of those
24 resources has a different cost structure, does it
25 not?

1 A. Yes.

2 Q. Gas-fired turbines have lower capital
3 costs but higher fuel costs generally; is that
4 correct?

5 A. That's right.

6 Q. And coal-fired units generally have a
7 higher capital cost but lower fuel cost?

8 A. I agree with you.

9 Q. And changes in fuel prices can affect the
10 cost structure in comparative relationship of any
11 of those resources?

12 A. Yes.

13 Q. And still each of those facilities,
14 despite the fact they've got different cost
15 structures, can be used and useful in providing
16 electric service to North Dakota customers?

17 A. That's a determination to be made, used
18 and useful, because it is not an automatic
19 conclusion.

20 Q. But they can be used and useful despite
21 the fact they've got different cost structures?

22 A. I'm saying again, to me when I hear "used
23 and useful," it's a regulatory concept and that is
24 a determination by the policymakers and all the
25 other parties involved in it. So when you are

1 using the used and useful concept, I'm not so sure
2 what you really mean.

3 Q. Well, what I mean, Mr. Mathai, is that the
4 company has both gas turbines and it has coal-fired
5 generation, both of which you acknowledge have
6 different cost structures; correct?

7 A. Right.

8 Q. And yet they're both used and useful in
9 providing service to North Dakota electric
10 customers, are they not?

11 A. Currently, yes.

12 Q. Would you agree with me that wind
13 generation is the lowest fuel cost of any of these
14 generation resources?

15 A. It depends on how you define fuel cost.

16 Q. How do you define fuel cost?

17 A. Pardon me?

18 Q. How do you define fuel cost?

19 A. For me fuel cost is all the cost that it
20 requires a customer to pay for a kilowatt produced.

21 Q. I'm talking fuel cost -- you're saying
22 fuel cost includes all the costs the customer pays?

23 A. In reality. If you're just extracting the
24 energy portion of it alone, it's different. The
25 wind does not have a cost in that sense. But it

1 has a cost for every kilowatt that is produced
2 through the revenue requirement and the maintenance
3 and all the other things that are involved in it.

4 Q. That's a revenue requirement cost
5 associated with that facility; correct?

6 A. But from my concept as a regulator or a
7 regulatory staff, the total cost of a kilowatt is
8 the cost of it --

9 Q. I didn't ask --

10 A. -- whether fixed or variable.

11 Q. I didn't ask about the total cost. I
12 asked about the fuel cost. Would you agree with me
13 that wind has the lowest fuel cost of wind, gas and
14 coal?

15 A. If you define the fuel cost as a
16 generating -- generation cost, yes.

17 Q. Are you aware that the energy from
18 Montana-Dakota's wind facilities are used to
19 provide electric energy for Montana-Dakota's
20 integrated system since those facilities have come
21 on line?

22 A. That's what I was told, yes.

23 Q. Well, do you have any reason to disagree
24 with that?

25 A. Again, no, I don't have any reason to

1 disagree.

2 Q. And that integrated system includes North
3 Dakota customers, does it not?

4 A. Yes.

5 Q. And you're aware that the fuel cost or
6 lack of a fuel cost for that wind generation has
7 been included in the determination of the company's
8 fuel adjustment rates since those facilities have
9 come on line?

10 A. That is a representation of the company
11 because I did not go into detail about it to see
12 the backup documents on that's the way it is done.
13 If the company says that you have done it, I take
14 your word for it.

15 Q. And you heard Ms. Mulkern testify to that
16 yesterday; is that correct? You have no reason to
17 disagree to with her?

18 A. I don't have any reason to disagree. Now,
19 when you say that it is used for it, for the North
20 Dakota customers, is that what you're saying?

21 Q. I'm saying, are you aware that the cost of
22 fuel for these generation -- these wind facilities,
23 or the lack of a fuel cost, has been used in the
24 determination of what the company's fuel adjustment
25 rates have been since those facilities have come on

1 line?

2 A. Yes.

3 Q. And you have no reason to dispute Ms.
4 Mulkern's testimony to that effect, do you?

5 A. That part of -- her testimony on that
6 part, I don't disagree with it, but then on the
7 other side, where did that wind actually went,
8 whether it went for resale -- say for resale, then
9 it has a different impact on the customers.

10 Q. And would you agree with Ms. Mulkern that
11 the fuel adjustment rates charged to North Dakota
12 customers since these facilities have been on line
13 would have been higher but for the energy produced
14 by those wind facilities?

15 A. I'm not so sure about her conclusion about
16 that, no.

17 Q. Do you have evidence to suggest that they
18 would have not been higher to her -- as per her
19 testimony?

20 A. Well, I have evidence from the data
21 request 81 that was provided by the company which
22 is different from what she testified here today.
23 In data request 81 we asked for total fuel
24 generation purchased projected 2010 with wind and
25 excluding sale for resale. And we found that 34

1 million was the amount that was with the wind and
2 without wind it was 34 thousand-734 --
3 34 million-734. It's a \$723,000 difference is what
4 I have found the difference. Here the number had
5 been floating around from 3 million to -- on one
6 request it was 723, then on the other request it
7 says based on DR-54, MDU used a number 3.3 million
8 for it. And then based on 20 -- on the 11-3-10,
9 which means last Friday's number, it is 2.5
10 million. So I don't know, it goes all around and I
11 cannot quantify which number is correct.

12 Q. I didn't ask you to quantify it, Mr.
13 Mathai. I asked you, do you agree -- did you hear
14 Mr. Neigum's testimony yesterday that the wind
15 displaces the highest marginal fuel cost of the
16 company's own production or its purchased power
17 cost?

18 A. He said that, but then, again, there are
19 conditions that could happen. I don't think that
20 he was making the statement that that's a case
21 always, because when the demand is there, the wind
22 is not blowing, you had to have an alternative. So
23 even though you have wind energy out over there or
24 a plant out over there, that doesn't guarantee that
25 always you're going to get the wind and there's not

1 additional cost.

2 Q. I didn't say that. We're talking about
3 the fuel -- cost of fuel, Mr. Mathai.

4 A. I am talking about the fuel cost, sir.

5 Q. Okay. And Mr. Neigum said that when the
6 wind is blowing and it's generating, it's
7 displacing the highest marginal cost of either the
8 company's own production or the market cost of
9 production, whichever is applicable at that time.

10 A. I accepted that, but I'm saying that when
11 the wind is not -- when the wind is blowing at the
12 time -- or not blowing at the time when the energy
13 is needed, you pay higher.

14 Q. You pay higher because you don't have wind
15 available at that time to displace the other fuel?

16 A. Right.

17 Q. So if we're blowing a hundred percent of
18 the time, it would reduce fuel costs even more;
19 correct? It would displace even more purchased
20 power?

21 A. But I'm saying it is not happening in
22 reality.

23 Q. I understand wind doesn't blow a hundred
24 percent of the time.

25 A. Not even 30 -- your calculation is about

1 39 percent of the time.

2 Q. Correct. And when it is blowing, it's
3 displacing more expensive fuel than the wind?

4 A. I said yes.

5 Q. If there were fuel savings to customers
6 since Diamond Willow I and Diamond Willow II and
7 Cedar Hills came on line, is it part of your
8 recommendation, if the Commission were to adopt
9 your recommendation to exclude those facilities
10 from the company's revenue requirement, that the
11 company then be able to recover from its customers
12 those fuel savings over the last two and a half
13 years since those facilities have been on line?

14 A. No.

15 Q. In your recommended adjustment for the
16 cost of wind generation, did it include an
17 offsetting adjustment for higher fuel cost that
18 would be associated with the loss of wind
19 generation to North Dakota customers?

20 A. You can -- I addressed that issue in my
21 testimony.

22 Q. And where is that?

23 A. I had testified that there is -- at this
24 time there is not enough information to quantify
25 it, that when the Commission would make the final

1 decision, that it would be taken care of. Because
2 your proposed fuel recovery is a flow-through
3 method, so whatever the cost of the fuel when you
4 spend it, you will recover it.

5 Q. And you haven't made any kind of estimate
6 of what that extra fuel cost might be?

7 A. No. Well, I did not have to make that,
8 but, accordingly, you said it's about anywhere from
9 723,000 to \$2.5 dollars as of today.

10 Q. Are you aware that in 2007 the North
11 Dakota Legislature adopted an energy -- a renewable
12 energy objective?

13 A. Yes, I'm aware of it.

14 Q. That 10 percent of all electricity sold at
15 retail in this state by 2015 be obtained from
16 renewable or recycled energy sources?

17 A. Would you repeat that for me?

18 Q. The objective is that 10 percent of all
19 electricity sold at retail within the state by the
20 year 2015 will be obtained from renewable or
21 recycled energy sources. Are you aware of that
22 objective?

23 A. Yes.

24 Q. And the legislature provides that the
25 renewable energy should be cost-effective when

1 considering other electricity alternatives?

2 A. Right. The economic studies.

3 Q. Right. It doesn't say least cost. I
4 looked in that legislation, Mr. Mathai, and I
5 didn't see "least cost" anywhere in that
6 legislation. Did you?

7 A. I'm not talking about least cost. I said
8 the company has an obligation to provide the
9 economic studies of it.

10 Q. Is that in the legislation?

11 A. Yesterday we established that it was the
12 testimony of one of your witnesses.

13 Q. The witness testified that the company do
14 an analysis. Was there any obligation to provide a
15 study?

16 A. Economic analysis, you want to define it
17 as a study or analysis, it doesn't make any
18 difference to me. All I need is this information
19 to analyze it.

20 Q. And you heard the testimony of Ms.
21 Stomberg, Mr. Neigum and Mr. Goodin; correct?

22 A. Mm-hmm. Yes.

23 Q. And you're aware that the company knew
24 what its alternatives were and the cost of those
25 alternatives at the time that it made a decision to

1 invest in these wind farms?

2 A. I heard the testimony, but I'll say a
3 representative of this Commission who is assigned
4 to make a recommendation on this wind, I did not
5 have that information, what they had. So I cannot
6 make a recommendation based on what they had when I
7 don't have it.

8 Q. So is it your testimony that those
9 witnesses were lying in terms of the information
10 that they had?

11 A. I have no idea what their intent or what
12 they were doing.

13 Q. So you have no reason to dispute what they
14 said then, either, do you?

15 A. Yes, I do, because I don't have the
16 information.

17 Q. You don't have the information they had at
18 the time?

19 A. Yes.

20 Q. Other than the testimony that they had,
21 under oath gave to this Commission as to the
22 information that they had available to them as to
23 the cost of other alternatives?

24 A. That is their testimony that they
25 provided. My testimony is saying that I did not

1 have that information to make my judgment.

2 Q. And that's fine. You weren't making the
3 judgment at the time, were you?

4 A. I was not, no. I was reviewing the
5 judgments that they made, and my job is to analyze
6 what are the factors the company put into making
7 the final decision, but I did not have that
8 information.

9 Q. Do you believe if the Commission -- the
10 North Dakota Legislature had intended that its
11 renewable energy objective would only be complied
12 with if the renewable was least cost, that it would
13 have said least cost in that legislation somewhere?

14 A. Sir -- Mr. Kuntz, maybe I can help in
15 speeding up this questioning, because you keep on
16 asking me about the least cost. If you look at the
17 reasons why I recommended not to allow this, least
18 cost is not the only reason. If you go back and
19 look at the reason I said, there is no reliable
20 information provided to the staff that the staff
21 can make an educated, informed decision and
22 recommend it to the Commission. That's one of the
23 major reasons.

24 If you look over here in my testimony
25 summary, the first question that I asked to provide

1 a revenue requirement calculation was on July 15th
2 and then I asked that same question in August in
3 writing. There are 50, 51, 52, 53, 54, 58, 61, 74,
4 75, 80, 81, 82, 91, then on-site number 2 and
5 on-site number 3. All these requests that I made,
6 in none of them the company did not provide what
7 Ms. Mulkern provided as revised Monday morning.
8 That is the first time we are seeing the final
9 number of the company.

10 So my reason for disallowing, as I said
11 even in my summary, the company had a great
12 difficulty in identifying the total dollar amount
13 applicable to wind included in the current filing.
14 There had been several discovery requests on this
15 subject and we received differing answers for the
16 same components in different discovery requests.
17 One filed even as late as last Friday, one business
18 day before this hearing, is brand-new information
19 on wind-related investment and expenses. We did
20 not have the time or we did not have the
21 information on a timely basis to make a
22 determination. So my reason for disallowing is not
23 just based on least-cost principle.

24 Q. The two reasons that you gave in your
25 testimony repeatedly, Mr. Mathai, for disallowing

1 the wind generation was, number one, it was not
2 least cost and, number two, there was no showing of
3 need. Those are the reasons that you repeat time
4 and time again in your testimony, are they not?

5 A. No, because after -- after seeing the
6 testimony -- rebuttal testimony and after working
7 and I'm seeing the differing, differing, differing
8 numbers on every request or every presentation by
9 the company, I came to the conclusion I cannot make
10 a decision -- an informed decision what to
11 recommend to this Commission as a public
12 policymaking body.

13 Q. Despite hearing all the testimony that
14 you've heard over the last three days, you still --

15 A. Yes, still I cannot recommend it.

16 Q. And you heard Ms. Mulkern explain the
17 reasons for the adjustments that she made over the
18 time of the filing request to this Monday in terms
19 of why there was an adjustment with respect to the
20 cost of the wind, did you not?

21 A. She said that, but she did not tell why
22 she was -- had differing numbers prior to that in
23 several data requests.

24 Q. Did the company respond to your data
25 requests? You list all those data requests that

1 you made requests to. Every data request that's
2 been handed out in this proceeding so far has had a
3 response to it?

4 A. Yeah, the first response -- my most
5 important data request that would have made me
6 comfortable and allowed me to make a decision was
7 number 51, which I asked for the revenue
8 requirement calculation of each wind project, and I
9 asked that on July 15th, and the answer was, the
10 company does not keep one like that. The company
11 did not give an alternative, either.

12 Q. And Ms. Mulkern testified this morning the
13 reason the company didn't give one is because they
14 didn't have one on July 15th, they didn't keep them
15 on that basis, didn't she?

16 A. Mr. Kuntz, my experience has been that a
17 company doesn't keep something when a regulatory
18 body asks for something to make a decision, their
19 representative asks for something, they provide
20 that information in a timely fashion when they have
21 the opportunity to review the correct information.
22 In this case it was not there.

23 Q. It didn't exist at that time?

24 A. It did exist. The company didn't take the
25 -- it didn't exist in one thing just as she said.

1 In September of 2010, there was some changes, but
2 except for those changes, all the information, the
3 company had it, but in July they said, we don't
4 have it, we are not going to do it, you go find it.

5 Q. The company had to create Ms. Mulkern's
6 schedule in response to your recommendation to
7 exclude wind generation in this case; isn't that
8 correct?

9 A. No.

10 Q. No, you're saying that Ms. Mulkern's
11 information was not -- existed for each of these
12 wind farms back in July in terms of a revenue
13 requirement for each wind farm?

14 A. If a company had booked those expenses in
15 their books, they were available for the company in
16 their records.

17 Q. But they weren't done on a
18 project-by-project basis, were they?

19 A. It was not done on a project-by-project
20 basis or it was not done on a combined basis. All
21 the wind projects I said. I didn't care whether it
22 was a project-by-project basis. I said all wind
23 projects.

24 Q. You said each of the wind projects you
25 wanted a cost of service study for.

1 A. I said revenue requirement.

2 Q. For each of the projects?

3 A. Yeah, but I also said can you give me --
4 in other rate case -- other discovery I asked for
5 all of them.

6 Q. And what discovery request is that?

7 A. That's 81. You may look at the -- I think
8 it is 81. Let me look. I'll tell you in a minute
9 if you give me a second. Okay. It's 82, sir.
10 Please provide a detailed schedule of all wind
11 power related investments, expenses, ADIT, tax
12 impact items, and any other revenue requirement
13 components included in the current MDU North Dakota
14 electric operations rate case filings.

15 Q. And what is the response to that?

16 A. The response to that I got -- it is -- it
17 is an income statement which is -- which on the
18 face has an operating income of 62 and it has got a
19 few numbers. That is what I presented over here as
20 82 before. If you want, we can go again what is
21 provided. It has the page 1 of 6 pages, operating
22 revenue, sales \$1.5 million; cost of fuel, 1.567,
23 other O&M, 473, which is very different from what
24 Miss Rita provided as the latest in her filing. It
25 says depreciation of 2 .421. That is way different

1 than what she provided today -- or in the record.
2 Current income taxes that is very different. Taxes
3 other than income is different. Total operating
4 was only 62, but my understanding is 7.1 million is
5 what she's asking today as a revenue requirement
6 instead of 62,000.

7 Q. And Ms. Mulkern went through this morning
8 with Mr. Savelkoul in explaining those changes, did
9 she not?

10 A. She did. That doesn't help me, sir, in my
11 filed testimony. You are questioning me on my
12 filed testimony.

13 Q. What was the company's least-cost
14 alternative back in 2007 when it decided to proceed
15 with Diamond Willow II if it wasn't Diamond Willow
16 II -- or Diamond Willow I?

17 A. I have no idea. No information was
18 provided to me.

19 Q. And you don't have an opinion then what
20 the least-cost alternative was in 2008, 2009 when
21 it decided to proceed with Cedar Hills or Diamond
22 Willow II, do you?

23 A. If I can answer and maybe we could save
24 some time, I was not given any feasibility study or
25 cost-benefit analysis or any economic studies of

1 any one project. Therefore, I don't have any
2 information and I made my recommendation based on
3 the information that I had.

4 Q. So your recommendation was based upon a
5 lack of information?

6 A. If you admit that, I agree with you.

7 Q. I'm admitting to what you're saying.

8 A. No, no.

9 Q. You're saying your recommendation is based
10 upon a lack of information?

11 A. Provided by -- lack of information
12 provided by the company, yes, I said that.

13 Q. Are you aware that the Public Service
14 Commission approved an application by Xcel Energy
15 in August of 2009 for a certificate of public
16 convenience and necessity and advance determination
17 for a 150 megawatt wind farm?

18 A. Am I aware? Can you provide me what that
19 CCN is for the record?

20 Q. Are you aware that in 2009 the Commission
21 approved a certificate of public convenience and
22 necessity and advance determination for a 150
23 megawatt wind for Xcel Energy? Are you aware of
24 that or not?

25 A. I am not.

1 Q. You didn't review any of those orders or
2 applications prior to making your recommendation in
3 this case?

4 A. Not that particular one, no.

5 Q. Did you ask the other staff members for
6 what the Commission's precedent was with respect to
7 the treatment of wind projects in North Dakota
8 prior to making your recommendation?

9 A. Yes. My recommendation in this case is in
10 consultation with the same staff who had
11 involvement in that, so I took their judgment on
12 it.

13 MR. KUNTZ: We would mark this, Your
14 Honor, as MDU Exhibit -- what are we at?

15 JUDGE WAHL: I was just looking. You kind
16 of got ahead of me, Mr. Kuntz. I'm guessing -- it
17 looks to me like it's 17.

18 MR. KUNTZ: Okay.

19 JUDGE WAHL: That appears to be the last
20 -- or the highest number I have -- that is, 16 is
21 the highest number I have. I believe it's 17. I'd
22 like to be able to say subject to check. 17.

23 Q. (MR. KUNTZ CONTINUING) Mr. Mathai, I have
24 handed you what is MDU Exhibit 17. Do you see that
25 document?

1 A. Yes.

2 Q. And do you see that this is an application
3 by Northern States Power Company, a Minnesota
4 corporation, for a certificate of public
5 convenience and necessity and advanced
6 determination of prudence for the 150 megawatt
7 Merricourt wind farm?

8 A. Yes. That's what the title reads, yeah.

9 Q. And do you see it was received on December
10 3, 2008, by the Public Service Commission?

11 A. Yes.

12 Q. Would you turn to page 5 of that
13 application?

14 A. Okay.

15 Q. Do you see at the last paragraph of that
16 page it says, by 2008, Xcel represented that
17 approximately 4,372,983 megawatt hours or 10.3
18 percent of the electricity of all its customers'
19 use comes from renewable based generation sources?
20 Do you see that?

21 A. Yes.

22 Q. And by 2015, Xcel was projecting that
23 approximately 16 percent of its electricity we
24 produce will come from renewable based generation
25 based upon current statutes?

1 A. Okay.

2 Q. Do you see that?

3 A. Yes.

4 Q. And also looking at page 5, would you read
5 the first sentence under -- or the first sentence
6 of the paragraph under the heading "The Project is
7 needed to meet States' renewable energy policies"?

8 A. You want me to read the first sentence?

9 Q. Right.

10 A. "The Merricourt Wind Project is needed to
11 meet the renewable energy policies established by
12 the five upper Midwest states we serve."

13 Q. And that was one of the justifications
14 given for this project in this application, isn't
15 it?

16 A. Which application are you talking about?

17 Q. By NSP.

18 A. Yes. I mean, it's a statement there, yes.
19 I don't think it's one of the reasons, but that's
20 what they say here.

21 Q. Are you aware that this particular project
22 that NSP submitted was based on a cost comparison
23 of other renewable wind projects?

24 A. I haven't read this whole document over
25 here so I cannot make an opinion on it.

1 Q. So you don't know whether there was an
2 analysis done of the wind project for NSP in
3 comparison to nonwind projects?

4 A. I haven't done it. I haven't had this
5 document to do that or I don't know what the
6 relevance of what the analysis they did versus what
7 analysis that I have not seen that you made.

8 Q. All I know is what's in this particular
9 application, Mr. Mathai.

10 A. So I don't understand your question, sir.

11 Q. My question is: Do you know the fact that
12 the only analysis done by -- provided to the
13 Commission in this particular application compared
14 the cost of this project with the cost of other
15 renewable projects?

16 A. This is a CCN or a convenience and
17 necessity application. That's what you said that
18 is; right?

19 Q. It's both that and an advance
20 determination of prudence.

21 A. Advance determination of prudence. So in
22 that I do not know whether this is the only
23 information that was provided. I do not know what
24 all the testimony was or how many people provided
25 what type of testimony. I do not know how many

1 other financial cost-benefit analysis was given.
2 In my experience, any time a preapproval of a
3 project has to be done, there has to be given a lot
4 of analysis and cost analysis or different economic
5 analysis has to be provided. So if you're telling
6 me that this is all what -- all the documentation
7 that was there and the Commission approved it, I
8 cannot say yes or no or why they did it or why they
9 didn't do it.

10 Q. When you talk about all your experience,
11 that's all your experience before the Oklahoma
12 Commission, isn't it?

13 A. No.

14 Q. What other experience -- what other
15 commission have you had experience regarding?

16 A. The City of New Orleans and the FERC,
17 Federal Energy Regulatory Commission, I have
18 testified.

19 Q. And those were public convenience and
20 necessity proceedings?

21 A. It's not public service and -- public
22 service and convenience is not a major issue to
23 have in 20 years of experience in jurisdictions.
24 Each jurisdiction has got its own, its own
25 requirements. As I said, based on my experience,

1 any time an advance requirement or an ADP has to be
2 provided for a project, it has to be justified
3 before the Commission so that they can make
4 informed information about it. And also those
5 certificates does not prevent a public body from
6 questioning after the completion of the project
7 what was spent and why it was spent the way that it
8 is.

9 Q. And your experience with these project
10 approvals is limited to the Oklahoma Corporation
11 Commission, is it not, Mr. Mathai? You're under
12 oath. That is the extent of your experience with
13 certificate of public convenience and necessity
14 projects?

15 A. Yes.

16 Q. Would you turn to page 16. Do you see the
17 heading there, "Project Provides Diversification
18 and Fuel Price Hedges"? Do you see that?

19 MR. SAVELKOUL: I'll object. I don't see
20 the relevance of Xcel's system to the system that
21 we're dealing with here.

22 JUDGE WAHL: I thought maybe it was
23 because I didn't understand. Mr. Kuntz.

24 MR. KUNTZ: The relevance, Your Honor, is
25 that the same justifications that Xcel made in this

1 particular application, which we will get to next,
2 is an order that was approving it, are exactly the
3 same justifications that the company has provided
4 in this hearing for its wind projects.

5 JUDGE WAHL: Based on that documentation?

6 MR. KUNTZ: Based upon this documentation.

7 JUDGE WAHL: But what about all of the
8 underlying -- what about all of the underlying
9 testimony that was offered?

10 MR. KUNTZ: I don't know that there was
11 any underlying testimony, Your Honor. The point is
12 this application was based upon the fact that this
13 project was justified to meet state renewable
14 mandates.

15 JUDGE WAHL: Okay. This is argument.
16 Let's proceed. The objection is overruled.

17 Q. (MR. KUNTZ CONTINUING) Again, would you
18 turn to page 16? Do you see the heading there, the
19 discussion begins, "Project Provides
20 Diversification and Fuel Price Hedges"?

21 A. Yes.

22 Q. And would you agree with me that that was
23 one of the justifications that Mr. Neigum and Ms.
24 Stomberg and Mr. Goodin testified for its wind
25 projects is it provided diversification for its

1 generation portfolio and a hedge against fuel
2 prices?

3 A. I don't remember that. I don't know.

4 MR. KUNTZ: Mr. Examiner, I would ask this
5 be marked as MDU Exhibit 18.

6 JUDGE WAHL: It may.

7 MR. KUNTZ: And we would move the
8 admission of MDU Exhibit 17.

9 JUDGE WAHL: Mr. Savelkoul?

10 MR. SAVELKOUL: No objection.

11 JUDGE WAHL: Mr. Roaché?

12 MR. ROACHÉ: No objection.

13 JUDGE WAHL: Mr. Skokos?

14 MR. SKOKOS: No objection.

15 JUDGE WAHL: Ms. Jeffcoat-Sacco?

16 MS. JEFFCOAT-SACCO: No objection.

17 JUDGE WAHL: Exhibit MDU 17 is received.

18 Q. (MR. KUNTZ CONTINUING) Mr. Mathai, I'm
19 showing you what's been marked as MDU Exhibit 18.
20 Do you see that particular exhibit in front of you?

21 A. Yes.

22 Q. And do you recognize that as an Order on
23 Application for Advance Determination of Prudence
24 and Certificate of Public Convenience and Necessity
25 issued August 12th, 2009, for Northern States Power

1 Company?

2 A. Yes.

3 Q. And do you recognize this as an order with
4 respect to the application identified as MDU
5 Exhibit 17?

6 A. Yes.

7 Q. And do you see on page -- the second page
8 of that order that there was a presumption there
9 that this project is prudent?

10 A. Can you direct me where you're reading?

11 Q. On the second page it says, "The
12 presumption that the Merricourt Wind Project is
13 prudent has not been rebutted." Do you see that?

14 A. Okay.

15 Q. And do you see the order and the
16 Commission determined that the resource addition
17 was reasonable and prudent?

18 A. Where are you looking at, sir?

19 Q. Ordering paragraph number 1.

20 A. Okay.

21 Q. And the Commission approved the issuance
22 of Certificate Number 5403 for the construction of
23 the Merricourt wind project?

24 A. Yes.

25 Q. And you never examined this particular

1 order before making your recommendations with
2 respect to the treatment of Montana-Dakota's wind
3 farm, did you?

4 A. I did not look at this. Even after seeing
5 this, my recommendation will not change because my
6 recommendation is based on the facts that are
7 available after the construction of this project.
8 I am contesting on the information provided about
9 the construction, not about the convenience and
10 necessity certificate. A convenience and necessity
11 certificate is more of a courteous service to the
12 company to expedite their process of building
13 projects, in this case a generation project. So it
14 is not an okay or a blank check to the company to
15 say that because we give you a certificate of
16 convenience and necessity approval, we will approve
17 everything. It is not a blanket certificate.

18 What we are taking exception over here is
19 not to this. What we are taking exception to is
20 the documentation that is provided after the fact
21 of building this unit and asking to be included in
22 the rate case to be paid for by the ratepayers.
23 There is not supportive documents and reliable
24 documents there. That's what I'm taking exception
25 to.

1 Q. And I understand you're not going to
2 change your recommendation, are you, Mr. Mathai?

3 A. I'm not.

4 Q. And your recommendation, as you testified
5 earlier, was based upon a lack of information?
6 That's what you testified to, wasn't it?

7 A. I said based on the information that I
8 received.

9 Q. And your lack of information included your
10 failure to review the Commission's treatment of
11 prior wind farms for other utilities, didn't it?

12 A. You used the word lack of information. I
13 say available information.

14 Q. You did not review the Commission's
15 treatment of Xcel Energy's wind farms, did you?

16 A. I did not personally review it, but Mr.
17 Mike Diller, who worked with me, had been the
18 person in charge of it. He had done it. And the
19 decision what we made about the wind is a combined
20 decision of the staff.

21 Q. And Mr. Diller didn't tell you about these
22 Xcel applications and order, did he?

23 A. Because I did not have to know that
24 because he had a partial responsibility of
25 organizing all this information and he had the

1 institutional knowledge about how the Commission
2 had done in the past and he had been here for
3 23-some years, he had the institutional knowledge
4 about it and I'm sure he's aware of it and he,
5 along with my analysis, made a combined decision to
6 recommend to the Commission to disallow the wind
7 project as you presented.

8 MR. KUNTZ: Mr. Hearing Officer, I think
9 this might be a good time to take a break.

10 JUDGE WAHL: We'll be in recess until
11 1:25, 1:25, which means 1:30.

12 (Recess taken at 1:15 p.m. to 1:31 p.m.)

13 JUDGE WAHL: All right. Let's be in
14 order. Mr. Mathai. Mr. Kuntz.

15 MR. KUNTZ: Your Honor, we would like to
16 mark this as Exhibit 19 -- MDU 19.

17 JUDGE WAHL: Now, Mr. Kuntz, let's just so
18 we don't -- so we're not in trouble here, I was not
19 given copies of MDU's 17 and 18 if you want me to
20 mark them and handle them.

21 MR. KUNTZ: We can give them to the court
22 reporter.

23 JUDGE WAHL: Either way, but we need --
24 that's fine. I don't think the court reporter --
25 otherwise we'll lose them.

1 MR. KUNTZ: I recall I offered 17. I
2 don't know about 18.

3 JUDGE WAHL: No, 18 was not offered.

4 MR. KUNTZ: I offer 18 at this time.

5 JUDGE WAHL: Well, just a minute, please.
6 So the application -- for the record, the
7 application is marked MDU 17.

8 MR. KUNTZ: Right.

9 JUDGE WAHL: And then the order, the order
10 is -- must be a combined or consolidated PU-08-908
11 or PU-08-910?

12 MR. KUNTZ: That is correct.

13 JUDGE WAHL: That is MDU 18.

14 MR. KUNTZ: Correct.

15 JUDGE WAHL: Now, Mr. Savelkoul, MDU 18?

16 MR. SAVELKOUL: No objection.

17 JUDGE WAHL: Mr. Roaché?

18 MR. ROACHÉ: No objection.

19 JUDGE WAHL: Mr. Skokos?

20 MR. SKOKOS: No objection.

21 JUDGE WAHL: Ms. Jeffcoat-Sacco?

22 MS. JEFFCOAT-SACCO: No objection.

23 JUDGE WAHL: MDU 18 is received.

24 Q. (MR. KUNTZ CONTINUING) Mr. Mathai, do you
25 have in front of you what's been marked as MDU

1 Exhibit 19?

2 A. Yes.

3 Q. And do you recognize that as an order
4 issued by the Public Service Commission?

5 A. Yes.

6 Q. On May 21, 2008, in Case No. PU-06-466?

7 A. Yes.

8 Q. And do you see from that order, the first
9 sentence references that it was a request on
10 November 2, 2006, by Otter Tail Corporation, filed
11 a letter with the North Dakota Public Service
12 Commission indicating it was considering investing
13 in a wind farm in North Dakota? Do you see that?

14 A. Yes.

15 Q. And then in the second paragraph it says
16 that on November 8, 2006, the North Dakota Public
17 Service Commission staff responded by letter
18 indicating that under North Dakota Century Code
19 Section 49-05-16 there is a rebuttable presumption
20 that such a project located in North Dakota is
21 deemed prudent. Do you see that?

22 A. Yes.

23 Q. Have you reviewed that letter by staff of
24 November 8, 2006?

25 A. Yes, I had seen this letter, but I don't

1 remember all the contents. This was one of them
2 that I seen before.

3 Q. You'd seen the order or have you seen the
4 letter that's referenced therein of November 8,
5 2006?

6 A. I'm talking about this order.

7 Q. You have not seen the letter then?

8 A. No, I have not seen the letter. I don't
9 remember. I seen some information on this, but I
10 don't remember what all things I saw on it.

11 Q. I asked because in your testimony, if I
12 understood you correctly, you were saying that MDU
13 is not entitled to a presumption of prudence for
14 its Cedar Hills application because it had not
15 applied for an advance determination of prudence;
16 is that correct?

17 A. Yes.

18 Q. And you don't know whether you reviewed
19 the letter of November 8, 2006, prior to making
20 that recommendation?

21 A. No, I don't remember.

22 MR. KUNTZ: We would ask, Your Honor, that
23 the staff produce and have marked in this
24 proceeding as MDU Exhibit 20 the letter that's
25 referenced therein on November 8, 2006.

1 JUDGE WAHL: Mr. Savelkoul.

2 MR. SAVELKOUL: I'm sorry. The letter
3 that's referenced in here? Do you have a copy of
4 that?

5 MR. KUNTZ: I do not have a copy, no. I'm
6 asking that a copy be produced and marked as an
7 exhibit in this proceeding.

8 MS. JEFFCOAT-SACCO: We'll get it.

9 MR. SAVELKOUL: No objection.

10 JUDGE WAHL: All right. The staff will
11 produce the document requested.

12 Q. (MR. KUNTZ CONTINUING) Do you recognize
13 this order with regard to an application by Otter
14 Tail for a renewable rider with respect to its
15 Langdon wind energy project?

16 A. Yes.

17 Q. And do you know whether Otter Tail applied
18 for an advance determination of prudence for its
19 Langdon wind project?

20 A. I do not know.

21 Q. And would you turn with me on page 3, and
22 I'm going to read for you the first paragraph at
23 the top of page 3. "The Commission finds that
24 Otter Tail has responded appropriately to the
25 desires of the North Dakota Legislature encouraging

1 investment in energy conversion facilities in North
2 Dakota. Besides declaring that there is a
3 rebuttable presumption that an energy conversion
4 facility built in North Dakota is prudent, the
5 State of North Dakota offers a significant
6 investment tax credit for wind energy development
7 of 5 percent per year for three years of dollars
8 invested in North Dakota. Further, the legislative
9 assembly has established a state renewable and
10 recycled energy objective that ten percent of all
11 electricity sold at retail within the state by the
12 year 2015 be obtained from renewable energy and
13 recycled energy sources." Do you see that?

14 A. Yes.

15 Q. Did I read that correctly?

16 A. Yes.

17 Q. Did you review that paragraph prior to
18 making your recommendations in this proceeding?

19 A. I have read this paragraph before, yeah,
20 but my -- as I said -- I think I might have said it
21 more than one time -- my determination is not based
22 on -- solely on the fact that there was an ADP or
23 not, nor whether something that had been approved
24 by the Commission as on a CCN has -- I guess you
25 are trying to lead me to the conclusion that

1 because it was -- a CCN was given and, therefore,
2 the investment is prudent, that we had to
3 automatically allow what you are requesting. And I
4 am taking exception to the amount that is included
5 in this rate case related to the investments.
6 There is a difficulty in verifying those numbers
7 which number is reliable and that is the --
8 probably the primary focus of my reason for the
9 rejection.

10 If a CCN is approved or a pre-ADP was
11 approved, those are not the main reasons that I am
12 objecting to it, because I don't have any of the
13 studies as a person, as a consultant to evaluate
14 what are the reasons that you made when you made
15 it. I don't have any information before me. And
16 I'm also saying that the dollar figures that you
17 are requesting in this rate case are not supported
18 by evidence in this case. We don't have that
19 information.

20 Q. And did you take into consideration what
21 the Commission had stated at the top of page 3 in
22 your recommendation that the company not be allowed
23 to recover its investment in Cedar Hills?

24 A. You're mixing it up. I'm not sure what
25 you're asking.

1 then.

2 Q. (MR. KUNTZ CONTINUING) Did you take into
3 consideration the Commission's statement at the top
4 of page 3 of MDU Exhibit No. 19 in making your
5 recommendation with respect to the exclusion of
6 Cedar Hills investment by Montana-Dakota in this
7 rate proceeding?

8 A. Yes. The concept of it, yes, I did take
9 into consideration, because what you are saying is
10 the objective established by the state, yes, I did
11 take into consideration.

12 Q. You took into consideration this
13 statement. Let me turn back to page 1 and, again,
14 referencing the staff letter of November 8, 2006, I
15 want to read for you the second sentence of that
16 paragraph. It says, "The law transfers the burden
17 of proof from Otter Tail proving prudence to an
18 environment where staff or another party to the
19 case must prove the project is imprudent." Did you
20 take that into consideration in making your
21 recommendations in this case?

22 A. Yes.

23 MR. SAVELKOUL: Objection. Is he asking
24 for a legal conclusion in this case?

25 JUDGE WAHL: No, he's not. Overruled.

1 THE WITNESS: Yes, took that concept.

2 Yes.

3 Q. (MR. KUNTZ CONTINUING) But you,
4 nonetheless, believe there's no burden on staff to
5 prove that the project is imprudent?

6 A. That's what I -- I already proved that it
7 is imprudent.

8 Q. You did?

9 A. In the sense that you have not provided
10 any information to support what you did, therefore,
11 I cannot make a decision to approve it.

12 Q. And that's how you met your burden of
13 proof?

14 A. Yes. I think the burden of proof is to
15 the company to provide the appropriate information
16 for any dollar that has to be collected from the
17 ratepayers.

18 Q. Are you aware on November --

19 MR. KUNTZ: Or let me offer Exhibit MDU
20 19.

21 JUDGE WAHL: Mr. Savelkoul?

22 MR. SAVELKOUL: No objection.

23 JUDGE WAHL: Mr. Roaché?

24 MR. ROACHÉ: No objection.

25 JUDGE WAHL: Mr. Skokos?

1 MR. SKOKOS: No objection.

2 Q. (MR. KUNTZ CONTINUING) Before we leave
3 that exhibit, are you aware and if you look at
4 ordering paragraph number 2 that the cost of that
5 wind facility will be allocated based upon energy
6 consumed by Otter Tail's North Dakota customers
7 compared to total energy consumed by all of Otter
8 Tail's customers or what is referred to as the E2
9 allocation factor in the company's cost of service
10 study?

11 A. When you are disallowing for various
12 reasons an investment, then the allocation issue
13 doesn't come in the picture.

14 Q. But -- so since it's disallowed, there's
15 not a question as to whether or not how you
16 allocate it?

17 A. When something is not in the cost of
18 service, then you don't have to worry about it, how
19 it is allocated. When it is there, we will worry
20 about how to allocate it.

21 Q. Well, let's ask this question. Let's
22 assume for a moment the Commission determines that
23 the staff did not meet its burden to prove that the
24 Cedar Hills project was imprudent. Are you also
25 objecting to the manner in which the company has

1 allocated the cost of that facility among its
2 jurisdictions?

3 A. No. I have not reached that state yet.

4 Q. Are you aware that November 29, 2009,
5 almost a year ago, in Case No. PU-08-742 and
6 PU-08-862, the Commission approved a settlement
7 agreement for Otter Tail that included recovery of
8 two wind farms totaling 88 megawatts?

9 A. I had looked at some -- I had the
10 knowledge about the Otter Tail's -- I don't
11 remember the case numbers that you're saying, but
12 I'm aware of the fact that the Commission had made
13 a decision on Otter Tail wind projects and how to
14 recover it through a rider. That I'm aware of.

15 Q. And the cost of those projects was
16 allocated among all of Otter Tail's jurisdictions,
17 was it not?

18 A. Specifically, I have not looked at it.

19 Q. Are you aware of how the other utilities
20 have treated renewable energy credits with respect
21 to their North Dakota facilities -- renewable
22 facilities?

23 A. Say it again.

24 Q. Are you aware of how the other
25 utilities -- the other investor-owned utilities

1 have treated their renewable energy credits created
2 by their North Dakota wind projects?

3 A. Which one are you specifically talking
4 about?

5 Q. Any of the -- either Otter Tail or NSP.

6 A. Otter Tail, my understanding from
7 conversations -- again, this is just based on my
8 memory -- that it was proportionately allocated.
9 Everything was proportionately allocated is what I
10 understand.

11 Q. You understand that renewable energy
12 credits aren't required to be retired under the
13 North Dakota energy objective, are they?

14 A. That I do not know.

15 Q. So the company could use -- to the extent
16 they're not required to be retired in North Dakota,
17 they could sell those credits or they could use
18 them to meet mandates in other states?

19 A. I don't believe so. I think that if
20 something that is generated from the state, the
21 customers in North Dakota proportionately, that
22 should be allocated to that -- that customers, too.

23 Q. But if they're not required to retire
24 those credits, they could sell them, couldn't they?

25 A. If you use the word "required," I can tell

1 you there is nothing in the -- that I am aware of
2 in the State of North Dakota that -- about -- that
3 it is required of MDU to build a wind plant. It
4 was strictly an objective. So the use of
5 required -- equivalent to required, then asking me
6 whether the fairness issue -- under the fairness
7 issue, those benefits that is derived by two
8 states, if they are, it should be proportionately
9 allocated.

10 Q. So back to the question, if RECs aren't
11 required to be retired in North Dakota under the
12 energy policy objective, you don't have any problem
13 with utility companies being able to sell those
14 RECs and obtain some value for them, do you?

15 A. If you obtain some value, it should be
16 shared with the -- for the benefit of the Oklahoma
17 -- to the North Dakota customers, also. Then I
18 don't have a problem.

19 MR. KUNTZ: Thank you. I have been handed
20 the November 8, 2006, letter. I believe we were
21 going to mark that MDU Exhibit 20.

22 JUDGE WAHL: If you wish, Mr. Kuntz,
23 unless you were going to -- unless you wish to make
24 it part of MDU 19, which is not --

25 MR. KUNTZ: No, I think it should be

1 separate.

2 JUDGE WAHL: All right. That's fine.

3 Okay. Before we proceed to MDU 20, Ms.
4 Jeffcoat-Sacco, you have in front of you what I
5 think is marked MDU 19 or may be a document which
6 is an order dated May 21, 2008, in Case No.
7 PU-06-466. Do you have any objection to that
8 exhibit?

9 MS. JEFFCOAT-SACCO: I have no objection.

10 JUDGE WAHL: MDU 19 is received.

11 Now, Mr. Kuntz, you're offering at this
12 time MDU 20?

13 MR. KUNTZ: Yes.

14 JUDGE WAHL: Mr. Savelkoul?

15 MR. SAVELKOUL: No objection.

16 JUDGE WAHL: Mr. Roaché?

17 MR. ROACHÉ: No objection.

18 JUDGE WAHL: Mr. Skokos?

19 MR. SKOKOS: No objection.

20 JUDGE WAHL: Ms. Jeffcoat-Sacco?

21 MS. JEFFCOAT-SACCO: No objection.

22 JUDGE WAHL: Exhibit MDU 20 is received.

23 Q. (MR. KUNTZ CONTINUING) Mr. Mathai, with
24 respect to the Cedar Hills project, you stated the
25 company had not met its burden of proof to prove or

1 show the project was necessary; isn't that correct?
2 And I would refer you to page 13 of your testimony.

3 A. Are you referring to lines 7 and 8?

4 Q. That's correct.

5 A. Okay. It reads, "With regard to Cedar
6 Hills"?

7 Q. Right.

8 A. "MDU likewise has not met its burden of
9 proof as to whether the wind farm was necessary or
10 in fact is a least cost alternative."

11 Q. And when you made that statement, were you
12 aware that Montana-Dakota had applied for and
13 received a certificate of public convenience and
14 necessity for the Cedar Hills wind project?

15 A. I personally wasn't aware of what all
16 information was done on it, but my work on this
17 project is along with the director, Mr. Mike
18 Diller, who had been involved in all of this, and
19 from that I'm sure that he was aware of it and it
20 was a combined effort. Therefore, I -- even though
21 I personally did not review those things, staff had
22 reviewed it.

23 Q. This is your testimony; correct, Mr.
24 Mathai?

25 A. It is on behalf of the advocacy staff.

1 Q. And since you made that testimony, the
2 company has provided you with a copy of its
3 certificate of public convenience and necessity for
4 the Cedar Hills project, has it not?

5 A. Yes.

6 Q. And is it still your testimony the company
7 has not shown that the project is necessary?

8 A. It is not -- again, I'm going back to what
9 I testified at least three or four times. It's not
10 one factor. The fundamental reason that I'm
11 objecting to the inclusion of the wind investments
12 and related expenses in this rate case is we do not
13 have reliable information provided by the company
14 yet where the staff can make that determination.

15 Q. Yeah, but --

16 A. So, therefore --

17 Q. We're talking about need now, Mr. Mathai.

18 A. Sir, I said I cannot even understand about
19 the need unless I have further information.

20 Q. Well, the Commission had information in
21 the certificate of public convenience and necessity
22 proceeding, did it not?

23 A. I don't think they had the full
24 information. As I said earlier, a certificate of
25 convenience and necessity is more or less a way to

1 expedite the process. It is not a way to determine
2 the reasonableness of the cost involved in a
3 project.

4 Q. We're not talking about the cost, Mr.
5 Mathai. We're talking about the need for the
6 project.

7 A. Even the need once it is constructed only
8 will you know whether all that capacity that the
9 company preliminarily said is going to be used or
10 useful. There is a process through the certificate
11 of convenience and necessity where it's a two-stage
12 process. First you get the certification. After
13 that all the information has become available, you
14 get an opportunity to see the completion whether
15 all of it is used and useful or part of it is used
16 and useful or all the costs are justified or part
17 of the cost is justified. We are in that process
18 in this case and the information is not provided.

19 Q. And isn't it true that in order to get a
20 certificate of public convenience and necessity,
21 Mr. Mathai, the company has to show to the
22 Commission's satisfaction that there's a need for
23 the facility; yes or no?

24 MR. SAVELKOUL: Objection, Your Honor.
25 He's asking for a legal conclusion.

1 MR. KUNTZ: Well, he's been giving legal
2 conclusions.

3 JUDGE WAHL: First of all, he's an expert,
4 Mr. Savelkoul. Secondly, it's not an answer -- not
5 a question for the application involved. The
6 objection is overruled.

7 THE WITNESS: Would you repeat it?

8 Q. (MR. KUNTZ CONTINUING) In order to obtain
9 a certificate of public convenience and necessity,
10 is it not a requirement that the company provides
11 sufficient proof to the satisfaction of the
12 Commission that there is a need for the facility?

13 A. Take your first sentence, yes. Exactly,
14 yes.

15 Q. And in this case the Commission issued
16 Certificate Number 5392 which specifically states,
17 This is to certify that public convenience and
18 necessity require and permission is granted for
19 Montana-Dakota Utilities Co., a division of MDU
20 Resources Group, to construct, own and operate a
21 19 and a half megawatt wind energy facility known
22 as the Cedar Hills project in Sections 23 and 24,
23 Township 132 North, Range 105 West, Bowman County,
24 North Dakota. The Commission made that
25 determination, did it not?

1 A. The Commission -- what you're reading,
2 yes, but then I do not know what are the supporting
3 documents with that, if there was a supporting
4 document of a letter like this, which you provided
5 us as MDU 20.

6 I want the Commission to know that in this
7 particular case what was the circumstances that it
8 was approved is here it says -- I'm talking about
9 the letter that is given by the staff or that you
10 asked to produce in this one, the November 8, 2006,
11 letter. It says, "In your letter you request
12 confirmation that the project is considered prudent
13 under the law due to its location, confirmation of
14 the March 8, 2005 memo indicating that North Dakota
15 has the authority to implement a renewable
16 generation rider, and reasonable assurance the
17 Commission would approve such an application
18 assuming merits of the project can be shown and a
19 reasonable recovery mechanism can be developed."
20 It is not a blanket one.

21 Q. We're not talking about --

22 A. Let me finish, sir. And then later it
23 says, "However, before the Commission can determine
24 prudence, the same law requires that Otter Tail
25 file a projection of the costs associated with the

1 electric resource addition and that the Commission
2 issue a notice of hearing, including holding a
3 hearing if necessary." In your case you did not
4 provide any such thing even though repeatedly I
5 asked for information.

6 Q. We're talking about a certificate of
7 public convenience and necessity now.

8 A. You did not provide that. As a reasonable
9 company that I dealt with over the years, when you
10 ask for information, they will provide all the
11 information that will help their case.

12 Q. So we were supposed to anticipate what you
13 might want?

14 A. I asked for all the related information,
15 sir.

16 Q. You made a determination that the
17 Commission -- the company had not shown a need for
18 this facility; is that correct?

19 A. Sir, based on the information that I had,
20 what is provided by your company.

21 Q. You were aware that the company had filed
22 an application for this certificate. Did you
23 review that application?

24 A. I didn't review that particular
25 application because in this particular case we are

1 not talking about the used and useful concept
2 alone, nor are we using -- talking about the ADP
3 alone. We are talking about what you are asking
4 the ratepayers to pay in this rate case for these
5 projects and we are questioning the prudence of
6 those expenditures.

7 Q. You're aware that this particular project
8 is entitled to a presumption of prudence?

9 A. The project might be, but the numbers
10 inside -- the final numbers is still subject to the
11 review of this Commission unless the Commission
12 says it is not.

13 Q. Do you know whether there were numbers
14 included within the certificate of public
15 convenience and necessity application?

16 A. I have seen some broad estimated number --
17 one-line number I had seen in your file that you
18 showed during the settlement time.

19 Q. And are you aware there was a notice for
20 opportunity for hearing given with respect to the
21 company's application for a certificate of public
22 convenience and necessity?

23 A. I don't want to speculate why a hearing
24 took place or didn't take place or what was the
25 reason. I wasn't here.

1 Q. And do you know whether indeed an informal
2 hearing was held on the application?

3 A. Again, like I said, I wasn't here.

4 Q. But yet you have made the determination
5 that the company hadn't shown a need for this
6 facility?

7 A. Based on the information that I requested
8 and your responses, yes.

9 Q. And now that you've even got the
10 information of the application, you've looked at
11 it, you've looked at the Commission's order, but
12 you're not changing your recommendation?

13 A. I am not changing the recommendation
14 because there is no basis, reliable, dependable
15 evidence that you have provided in order to include
16 this as a part of rate base or expenses.

17 Q. You're aware that a company is not
18 required to obtain an advance determination of
19 prudence, aren't you, in North Dakota?

20 A. Again, you're using the word "required."
21 I'm not a lawyer, so I don't know. I haven't
22 looked at all the law to see and I'm not a lawyer.
23 I cannot answer you that question.

24 Q. Well, then maybe you want to withdraw your
25 testimony on page 14 because it seems to draw a

1 legal conclusion that because the company did not
2 seek an ADP, quote, it can be concluded that MDU
3 proceeded to build these facilities to meet its
4 Montana renewable energy standard?

5 A. It's not a legal opinion. It's a layman's
6 opinion.

7 Q. Oh, okay. But you're aware then -- you
8 must be aware that the company is not required to
9 file for an advance determination of prudence?

10 A. It is an option again. I believe we would
11 not be in this conversation today if the company
12 had taken the time, even under not a requirement,
13 but under a good objective, if you had gone to the
14 Commission and came to the Commission and asked for
15 it and gave a little more information to them so
16 that it would have made this case much more easier.

17 Q. It might have made it easier, but it
18 doesn't mean the fact that this project isn't used
19 and useful, does it?

20 A. I don't know.

21 JUDGE WAHL: Mr. Kuntz, I hesitate, and I
22 do not -- I do not run your case, but it seems to
23 me you've made your point across this whole
24 spectrum of what your argument will be here, have
25 you not?

1 MR. KUNTZ: Well, these are different
2 points with respect to the advance determination of
3 prudence and his conclusion that because we didn't
4 apply for one, it can be presumed that the only
5 reason we built it was for a mandate.

6 JUDGE WAHL: I understand that, but
7 don't -- haven't you established -- more than well
8 established a foundation for the argument that you
9 will make for your brief?

10 MR. KUNTZ: I hope so, Your Honor, but
11 that doesn't necessarily mean that I'm through with
12 this witness.

13 JUDGE WAHL: You're the lawyer. You may
14 proceed, but I think -- I think you've established
15 a foundation -- more than a foundation for your
16 argument, but it's your case, Mr. Kuntz.

17 Q. (MR. KUNTZ CONTINUING) Turn to page 14 of
18 your testimony, CAS 17.

19 A. Yes.

20 Q. You make a statement there in the middle
21 of the page beginning on line 13, "It is cheaper to
22 build wind farms in North Dakota based on more
23 favorable economic benefits like the North Dakota
24 investment tax credits, higher property tax
25 reductions and laws that are not parochial in

1 nature like the ones in Montana." Do you see that
2 testimony?

3 A. Yes.

4 Q. What parochial laws are you referring to
5 that make it more expensive to build facilities in
6 Montana?

7 A. My understanding is that Montana has got
8 certain requirements of labor that has to be used
9 strictly from there. It's a general statement that
10 they have -- I don't have the -- the bill in front
11 of me, but my understanding with the discussion
12 with the North Dakota staff who had compared
13 both -- like I said, this testimony is in
14 consultation and in a joint effort of the knowledge
15 that I have by talking to the staff who has the
16 institutional knowledge of the issues and who had
17 been involved in this case over here.

18 So all of this opinion is an opinion based
19 on different knowledge, and here I say that my
20 understanding is that the law in Montana is more
21 stricter as far as the -- how a wind facility is to
22 be built, and so forth, compared to economic -- we
23 are mainly talking about the economic ones over
24 here. The investment tax credit, it is not there,
25 but North Dakota has got specific investment tax

1 credit. I say the higher property tax. My
2 understanding is that the property tax reductions
3 are higher here than in Montana.

4 Q. My question is which parochial laws are
5 you referring to and you're telling me there may be
6 laws in Montana that require the use of Montana
7 labor that may not apply in North Dakota; is that
8 what you're saying?

9 A. Yes. My understanding -- again, the word
10 "laws," I'm willing to cut that word out of there.

11 Q. And do you know for a fact whether those
12 parochial -- now they're not laws anymore --
13 whatever they are actually made it more expensive
14 to build wind farms in Montana than North Dakota,
15 or is that speculation?

16 A. No, it's not speculation. Based on some
17 of the calculations that you see on the same page
18 back over here, we see there's a premium that you
19 pay in Diamond Willow versus here. That's some
20 calculation that we -- we looked at some of the
21 numbers and came up with.

22 Q. But those are based upon tax credits that
23 may be available in North Dakota rather than
24 parochial laws in Montana; correct?

25 A. Well, again, I said the word "law," I

1 withdrew it. I can take it back. I can delete
2 that word "law" out of it.

3 Q. Why would North Dakota have an investment
4 tax credit for a wind project?

5 A. It's a public policy, sir.

6 Q. Public policy to encourage development of
7 wind; correct?

8 A. I don't know the intent of the law except
9 I know that laws are written based on whatever the
10 public policy that the legislature sees fit at the
11 time.

12 Q. Well, can we presume the fact if there's
13 investment tax credit for wind facilities, the
14 legislature has made a determination that they want
15 to encourage investment in wind facilities?

16 A. Yes.

17 Q. And that would be consistent with the
18 Commission -- or the state's renewable energy
19 objective, would it not?

20 A. Yes. I never -- I never questioned the
21 objective or any of those things in my testimony.

22 Q. On I believe it's page 15 of your
23 testimony -- it might have changed -- I'm not sure
24 if the pagination of your testimony changed from
25 what I had earlier, but basically I understand

1 you're not encouraging abandonment of the
2 integrated system approach; is that correct?

3 A. I am not.

4 Q. As a utility expert, are you familiar with
5 the benefit and fairness test regarding multi-
6 jurisdictional allocation of utility costs?

7 A. Yes, I have testified regarding that in
8 the FERC.

9 Q. And did you review the case law applicable
10 to North Dakota regarding the benefit and fairness
11 test?

12 A. No. But, again, staff might have.

13 Q. And so you're not aware whether the
14 benefit and fairness test has been adopted in North
15 Dakota with respect to the jurisdictional
16 allocation of costs, are you?

17 A. I do not know.

18 Q. Would you agree with me that North Dakota
19 customers are deriving benefit from the electricity
20 generated from the Diamond Willow and Cedar Hills
21 projects?

22 A. Yes.

23 Q. Your testimony recognizes that if the wind
24 projects are excluded from consideration for
25 revenue requirement for Montana Dakota, there will

1 have to be a greater allocation of other resources
2 or purchased power costs; is that correct?

3 A. Earlier you asked me that question. Now
4 you found it. Okay. Yes.

5 Q. And you're not suggesting that the
6 Commission would reallocate existing resources
7 because of the fact that if your testimony is
8 correct that this facility be allocated to Montana
9 to meet a mandate there?

10 A. Would you repeat your question?

11 Q. Well, we're not going to -- we can't
12 reallocate legacy generation, can we, simply
13 because we built these particular wind farms? Is
14 that your position?

15 A. My position is to exclude the wind
16 projects until the company prove their burden
17 before this Commission that the costs that you want
18 to recover in this rate case or in rates is just,
19 fair and reasonable. You have a burden to do that
20 by providing the information associated with it.
21 My job was to review the information that you
22 provided to me. Based on that I made the
23 recommendation, and even in my summary I made the
24 alternative view, is that in the process that if
25 the Commission decides to do something with this, I

1 said, "The company has not established that the
2 proposed wind projects are the least cost options
3 for the energy needs of MDU. We have not been
4 privy to any economic studies conducted by MDU, if
5 they have done any at all. Staff needs additional
6 time and reliable information to make an informed
7 judgment concerning the level of wind investment
8 that should be the responsibility of North Dakota
9 ratepayers."

10 Q. My question --

11 JUDGE WAHL: Mr. Mathai, I think you can
12 more directly answer Mr. Kuntz's question. I think
13 we all understand the basis of your opinion. He's
14 really asking you direct questions as to what you
15 did or didn't do and I think that's probably more
16 susceptible of a shorter answer.

17 THE WITNESS: Okay.

18 Q. (MR. KUNTZ CONTINUING) I think we
19 established earlier that these wind farms are
20 currently being used to satisfy some of the energy
21 requirements of North Dakota customers?

22 A. Yes.

23 Q. And so if we exclude those wind farms from
24 the use of satisfying the energy needs of North
25 Dakota customers, we have to replace that with

1 something else, don't we?

2 A. Yes.

3 Q. And what is your recommendation that we
4 use to replace that wind energy?

5 A. Under the time that the Commission makes a
6 decision on -- regarding this, you do have
7 purchased power options available already.

8 Q. So is your recommendation then
9 Montana-Dakota would replace this wind energy with
10 greater reliance on purchased power?

11 A. I said right now until the Commission
12 decides what is the ultimate decision on it once
13 the company provides all the information.

14 Q. And so you don't have a recommendation
15 specifically of what that alternative generation
16 would be?

17 A. Well, the latest information that I have
18 is that you can get the MISO energy at the two
19 cents -- two to three cents a kilowatt-hour.

20 Q. And you believe it would be in the best
21 interests of North Dakota customers to be further
22 reliant on the MISO market for their energy needs?

23 A. I'm talking about the current situation,
24 sir.

25 Q. You recommended that 60 percent of the

1 company's incentive compensation be excluded from
2 rates; is that correct?

3 A. Right.

4 Q. But you recognize that performance-based
5 incentives are beneficial to both shareholders and
6 customers?

7 A. Yes.

8 Q. I'm going to take you back to Mr. Roaché's
9 lineman. Do you recall the testimony about Mr.
10 Roaché is familiar with the lineman who works in
11 Crosby?

12 A. Please refresh me.

13 Q. Mr. Roaché referred to an employee of
14 Montana-Dakota that works in Crosby that's a
15 journeyman lineman, I believe. Do you recall that
16 testimony yesterday?

17 A. I heard it. Go ahead.

18 Q. And would you agree with Mr. Goodin's
19 testimony that that lineman's compensation for
20 doing his job consists of his base salary, his
21 incentive compensation and his benefits? Would you
22 agree with that?

23 A. Yes.

24 Q. And he gets paid for doing that what --
25 that's his compensation for what he does on a

1 day-to-day basis to help keep the lights on at Mr.
2 Roaché's home.

3 A. Okay.

4 Q. And so why -- if part of his compensation
5 is incentive compensation, why should a portion of
6 that be excluded in the course of performing his
7 duties to keep the lights on as opposed to his base
8 salary or his benefits?

9 A. Rates are set up under the principle that
10 I said earlier, fair, just and reasonable. The
11 question that I would ask the company is that when
12 is enough is enough.

13 Q. Have you done any --

14 A. Let me finish.

15 Q. Oh, I thought you were finished.

16 A. No. The question is that. So when it
17 comes to the compensation, it is -- what we are
18 saying is that it is a limit that we are putting to
19 that so that what is the base. If that lineman is
20 performing to his fullest extent and outstandingly,
21 whatever the standards that you set up for the
22 safety under that scale he should be paid. What I
23 am saying is that he should not be getting paid
24 under the -- when you weigh -- more than the
25 safety, you weigh what the bottom line of the

1 company is and more emphasis is given to that. As
2 I said earlier, from a scale 4.5 to 7, 4 is weighed
3 for a person for like his employment, I think, to
4 4, which is financial. He is not being paid 30
5 percent. He is paid less than 6 percent. On the
6 other hand, the midlevel management person is paid
7 17 -- up to 18 percent. So your example here
8 doesn't even hold water.

9 Q. You're excluding 60 percent of incentive
10 compensation for everyone, aren't you?

11 A. No. It's a levelized. When you take all
12 of it, you have a different part to divide.

13 Q. So should the linemen and the
14 non-management people get a hundred percent of the
15 incentive compensation?

16 A. No, I'm not saying that.

17 Q. So basically, Mr. Mathai, it's your
18 testimony that the Commission should really go in
19 and change the incentive compensation system the
20 way that you would like to see it set up?

21 A. No, sir.

22 Q. That's not your testimony?

23 A. That's not my testimony.

24 Q. Is it your testimony that financial
25 incentives -- or objectives within the incentive

1 compensation program should be excluded?

2 A. No.

3 Q. Are you aware of any evidence that the
4 employees' compensation is above what's necessary
5 to attract employees?

6 A. Well, from the testimony, some of your
7 numbers are above median and some of them are below
8 median. And then based on my reading of the other
9 two companies in North Dakota, your salary level is
10 above -- I mean, theirs is much lower than the
11 median if you're looking at comparability, but my
12 understanding is that yours is pretty high.

13 Q. That's on the incentive comp fees or
14 total?

15 A. Overall compensation.

16 Q. Total compensation for Montana-Dakota
17 employees is higher than total compensation for
18 Otter Tail and NSP employees?

19 A. According to the survey and for -- it's
20 very interesting that your survey disappeared. We
21 cannot even see what was your survey.

22 Q. No, Mr. Mathai, that's not a correct
23 statement. The study -- the survey that wasn't
24 available was strictly a comparison to incentive
25 compensation. We provided you with a copy of the

1 study -- the base salary study that was done in the
2 last year during the settlement discussion.

3 A. And I haven't taken any exception to the
4 base salary.

5 Q. So do you know whether the company's total
6 compensation package is above or below median
7 contrary to what Mr. Goodin testified to
8 yesterday -- or Monday?

9 A. That's what I just said, compared to Otter
10 Tail and -- what is the other company -- NSP, both
11 of their testimonies, theirs is below the median
12 and your testimony was yours is above or below
13 median in most of the cases. In most cases it is
14 par with the median.

15 Q. And what testimony are you referring to
16 for Xcel and --

17 A. I heard --

18 Q. -- no, Xcel and Otter Tail that you based
19 your comparison on?

20 A. There were two testimonies. Do you have
21 copies of it?

22 MR. SAVELKOUL: I don't believe those have
23 been put in the record.

24 THE WITNESS: Yeah, they are not in the
25 record, but that is part of my review.

1 MR. KUNTZ: I would like to see copies of
2 what you're relying on to make that statement.

3 MR. SAVELKOUL: Is it your intention to
4 submit them as exhibits?

5 MR. KUNTZ: I haven't seen them yet.

6 MR. SAVELKOUL: This is the first request
7 we got.

8 Q. (MR. KUNTZ CONTINUING) Mr. Mathai, I'm
9 showing you a document that's been handed to me,
10 testimony of witness Peter Wasberg, employee
11 compensation. Is that one of the documents that
12 you looked at?

13 A. Yes.

14 Q. Can you find in there where -- the
15 information that you're relying upon for your
16 position?

17 A. Yes, I will. It's on page 4, there is a
18 statement. You can look at line 8.

19 Q. Okay. Page 4?

20 A. Page 4. It is a continuation from page 3,
21 question, line number 26, "In 2007, Towers Perrin
22 conducted a study of executive compensation for
23 OTP, which included the consideration of a number
24 of topics, including the following:

25 "Base salary levels were compared to

1 competitive market base salaries."

2 But I should go before that because this
3 is the executive pay, but there are areas on
4 regular -- other employees starting from --
5 starting from line -- page 2, line 13.

6 Q. Then I'm showing you what's been handed to
7 me as direct testimony and schedules of Marvin
8 McDaniel, I assume of Northern States Power
9 Company. Is this also a document --

10 A. Yes.

11 Q. -- you relied on?

12 A. Yes.

13 Q. Can you point to me the pages from that
14 document that support your position?

15 A. Okay. On page 2 it says -- it's about the
16 compensation plan -- "Xcel Energy's compensation
17 plan includes three components: Base salary,
18 annual incentive compensation, and long-term
19 incentive compensation.

20 "Which compensation components has the
21 company proposed for recovery in the revenue
22 requirement?"

23 And then it goes, "In this case, the
24 company is seeking recovery of base salaries plus
25 the 2008 target amount of annual incentive

1 compensation, which is subject to a recovery cap at
2 25 percent of all employees' salaries. The company
3 is not seeking recovery of any long-term incentives
4 paid to our executives or incentive compensation
5 amounts greater than 25 percent of an individual
6 employee's salary."

7 And then if you go farther, you'll see how
8 theirs is matched up with other -- and it says,
9 "Performance goals are set at the individual,
10 business unit, and corporate levels. The
11 weightings assigned to the various components are
12 determined by position level, with non-supervisory
13 positions weighted more heavily on individual and
14 business unit performance and executive positions
15 more heavily weighted towards corporate goals."

16 Let me see. If you go to page 6, line 6,
17 in which you see "Compensation Levels Compared to
18 the Competitive Market," you will see over there
19 that shows that Xcel Energy non-bargaining
20 compensation levels are comparable to those of
21 other utilities in the 2000 -- let me see -- "In
22 addition, the company has obtained a study" -- here
23 again, "the company has obtained a study from the
24 consulting firm of Towers Perrin comparing the
25 compensation levels of utilities (at both full

1 targeted annual incentive compensation levels and
2 subject to a cap of 25 percent of an individual
3 employee's base salary) for 2007, the most recent
4 year for which data was available. That study
5 shows that Xcel Energy's total compensation levels
6 are comparable to those of other utilities." This
7 is a 2007 study.

8 Q. So in that case --

9 A. One second. Let me -- I guess there's
10 more information that I seen. The reason why they
11 wanted to change --

12 JUDGE WAHL: I think you've answered the
13 question, Mr. Mathai.

14 THE WITNESS: Okay.

15 Q. (MR. KUNTZ CONTINUING) So in that case
16 Xcel was saying that its salaries were comparable
17 to other utilities based upon a study done by
18 Towers Perrin?

19 A. No. There are other study findings over
20 here. If you want me to read, I can read all of
21 them.

22 MR. KUNTZ: Well, I think maybe to
23 expedite this thing, we'll just mark these two for
24 the record.

25 MR. SAVELKOUL: Would you like us to hand

1 those out for you?

2 MR. KUNTZ: Yeah. All I've got is what
3 you gave me.

4 MR. SAVELKOUL: We'll get them.

5 THE WITNESS: Yeah, here is the statement
6 that I relied on.

7 JUDGE WAHL: Let's -- I would proceed, Mr.
8 Mathai.

9 THE WITNESS: Okay.

10 JUDGE WAHL: Once we mark them and put
11 them in the record, we've got them. Which do you
12 prefer first if it makes any difference, Mr. Kuntz?

13 MR. KUNTZ: Well, let's start with Mr.
14 Wasberg's testimony.

15 JUDGE WAHL: All right. For the record,
16 the testimony of witnesses: Peter Wasberg,
17 employee compensation, is marked MDU 21. And the
18 second one, direct testimony and schedules, Marvin
19 E. McDaniel, Jr., is marked MDU 22.

20 MR. KUNTZ: We would offer Exhibits 21 and
21 22.

22 JUDGE WAHL: Mr. Savelkoul?

23 MR. SAVELKOUL: No objection.

24 JUDGE WAHL: Mr. Roaché is out. Mr.
25 Skokos?

1 MR. SKOKOS: No objection.

2 JUDGE WAHL: Ms. Jeffcoat-Sacco?

3 MS. JEFFCOAT-SACCO: No objection.

4 JUDGE WAHL: Let's, for the record, get
5 Mr. Roaché's response when he returns. I'll try
6 and watch that, Mr. Kuntz.

7 Q. (MR. KUNTZ CONTINUING) I'm looking at
8 your summary of your direct testimony, CAS Exhibit
9 18, and you make a statement on the second page of
10 that statement, "When employees choose an
11 employment, they consider several known factors
12 other than an unknown and non-quantifiable item of
13 incentive pay"; is that correct?

14 A. Yes.

15 Q. That's based upon your experience as a
16 human resource expert?

17 A. That's based on my experience as an
18 employer or hiring people as well as an employee.

19 Q. How many employees do you have, Mr.
20 Mathai?

21 A. I have hired over the years hundreds of
22 employees for the -- on behalf of the -- well, I
23 don't know hundreds, but quite a few number of
24 employees at the Oklahoma Corporation Commission
25 for the public utility division.

1 Q. You weren't the employer in that
2 situation, were you?

3 A. I was the person in charge of hiring,
4 making the hiring decision -- or at least one of
5 them.

6 Q. And would you agree with me that the
7 employee is going to look at the total compensation
8 package in making their decision?

9 A. Yes, that is one of the considerations,
10 sir. Well, you know, I worked for the Corporation
11 Commission at Oklahoma for 27 years. Compensation
12 was not the only reason I worked over there. I
13 worked as a public service, so everybody has
14 different reasons.

15 Q. And in your summary you testified that you
16 recognize Mr. Goodin's testimony that the targets
17 under the new incentive plans of Montana-Dakota had
18 been changed in 2010, but you said you're not sure,
19 you don't know what the dollar amount under those
20 plans will be. Is that your testimony?

21 A. That's not what I said. That's not what I
22 said.

23 Q. That's what I understood you to say.

24 A. What I said is that Mr. Goodin said that
25 now it is going to be changed -- the measuring --

1 the metrics are going to be measured in a different
2 way than what was done in 2009. It is going to be
3 based on equal weighing for financial, safety and
4 customer service. That's the way I understood what
5 he said. When you make those changes, I do not
6 know what kind of dollar impact it would have on
7 the incentive pay that you have requested in this
8 rate case has to be paid by the ratepayers.

9 Q. I thought that was my question. Did you
10 hear Mr. Goodin also say that the dollar amount
11 targeted for incentive pay was set to stay the same
12 under the old and new plans and they were just
13 changing the objectives?

14 A. See, that to me is really hard to
15 understand. If your incentive pay is based on
16 performance, how can you predetermine what that
17 amount is?

18 Q. Based --

19 A. Dollar figure.

20 Q. Don't you determine that based upon
21 targets?

22 A. I'm saying that what you --

23 Q. You reach your targets.

24 A. But, however, what you pay out is based on
25 the research. It is based on the performance of

1 the employee. If you give 50 percent weight to the
2 performance of the employee, that is one portion of
3 the amount that you're going to pay. The other
4 portion is based on the 50 percent if it is -- on
5 financial, then you're going to base it on how well
6 the company performed and is it able to give that
7 incentive pay based on the financial performance.
8 So I don't understand how you can set that goal
9 today what is it going to be in 2010, 2011, 2012,
10 in the next three years, when you don't have that
11 information. But you could set a percentage, but
12 that is not going to be the actual.

13 Q. Wouldn't the company have historic
14 information that they could use in determining what
15 their expectations were with reaching those
16 objectives and what the payout would be under the
17 incentive compensation based upon their
18 expectation?

19 A. What would be the payout, that portion, I
20 disagree with you because it is not able to measure
21 accurately for ratemaking purposes. You can
22 estimate anything that you want. Then, again, let
23 me also bring out another interesting --

24 JUDGE WAHL: I think you've answered the
25 question, Mr. Mathai.

1 THE WITNESS: No. Okay.

2 Q. (MR. KUNTZ CONTINUING) You also said that
3 you're not against allowing a reasonable level of
4 expenses for board of directors, but then you
5 recommend excluding 50 percent of the fees and
6 expenses for MDU's board of directors; is that
7 correct?

8 A. Yes.

9 Q. So is it your recommendation to exclude 50
10 percent regardless of what those fees and expenses
11 are?

12 A. No. What was included in this case is
13 what I -- I took I think \$140,000 was the total
14 amount that I identified based on the data request
15 response that I received, and I later found out
16 there are a lot more expenses for board of
17 directors in the book, a lot more than what she
18 provided, but I do not have the time to go and
19 chase it at the last minute, but I am not
20 representing that is the only amount of it. But
21 the concept is this: Board of directors expenses
22 have to be borne by both the stockholders and
23 ratepayers. That's the concept.

24 Q. That's your concept. And regardless of
25 what that level of expenses is?

1 A. Regardless of what the reasonable expenses
2 are.

3 Q. Would you agree with me that board of
4 director expenses are a legitimate cost of business
5 for a publicly traded organization?

6 A. Certainly. And I'm also saying that this
7 Commission has the authority to make the decision
8 how much of that should be borne by the ratepayers.

9 Q. What expenses does the company incur in
10 the course of running its business on a day-to-day
11 basis to keep it going that don't benefit
12 shareholders and customers?

13 A. Well, if you have a lavish vacation for
14 the board of directors meeting in Hawaii and you
15 decided to spend everybody's -- you know, reimburse
16 those directors for their travel and everything
17 where you could have it maybe in Bismarck.

18 Q. Well --

19 A. Let me finish your question. So I think
20 there is a discretion. Because it was planned by
21 the company does not mean that it has to be paid
22 for by the customers.

23 Q. I understand that piece, but what about --
24 if I look outside and I saw an MDU service person
25 repairing a line to serve a home, isn't that

1 person's duties, that work that's being done, the
2 cost of that material, the cost of the equipment,
3 the cost of that employee's salary are benefiting
4 MDU as an organization, both its customers and its
5 shareholders; correct?

6 A. Yes.

7 Q. Are you aware that the North Dakota
8 Supreme Court has stated with respect to regulated
9 utilities that the overall employment compensation
10 package between a utility and its employees is a
11 matter left largely to the deference in judgment of
12 management?

13 A. Largely, yes.

14 Q. You're aware of that opinion? Have you
15 read it?

16 A. I understood it during the settlement.
17 But there, again, the Commission has got -- has the
18 authority that is vested in them to set fair, just
19 and reasonable rates.

20 Q. And is it your position that management in
21 the case of Montana-Dakota has abused its deference
22 in judgment with respect to incentive compensation?

23 A. I don't know whether they abused it or
24 not, but I think the level that they propose to be
25 included in this is about -- in my opinion, is not

1 fair, just and reasonable.

2 Q. And is it your opinion that management has
3 abused its deference in judgment with respect to
4 the amount of fees and expenses incurred for boards
5 of directors?

6 A. It is not my opinion that they abused or
7 not abused, but my opinion is that it is not fair,
8 just and reasonable for ratemaking purposes, in my
9 opinion.

10 Q. Would you agree with me that a utility is
11 entitled to earn revenues that would allow it to
12 meet its expenses and earn a fair and reasonable
13 return for its investors?

14 A. Yes.

15 MR. KUNTZ: I have no further questions.

16 JUDGE WAHL: Mr. Roaché, questions for Mr.
17 Mathai?

18 **CROSS-EXAMINATION**

19 **BY MR. ROACHÉ:**

20 Q. Referring back to MDU Exhibit 18, 20 --
21 actually all of them that have been submitted.

22 A. Can you talk a little more louder, sir?

23 Q. Referring to the sheets that MDU had just
24 handed us, all of these things are based on North
25 Dakota Century Code 49-05-16 and where it is a

1 rebuttable presumption, and do you see -- do you
2 recognize what I'm talking about? Basically we're
3 talking about Century law and it's a rebuttable
4 presumption of either prudence or a rebuttable
5 presumption of need?

6 A. MDU 18, you said?

7 Q. MDU 18 or any of the utility company. Is
8 that there's a presumption of need or a presumption
9 of necessity but it's rebuttable.

10 A. My understanding is that the --

11 JUDGE WAHL: Let's stay with the question,
12 Mr. Mathai. If you were to refer to MDU 20, the
13 question is, he's asking you about simply whether
14 you're familiar with the rebuttable presumption
15 that was outlined in the letter which is MDU 20.

16 THE WITNESS: Okay. I was looking at the
17 wrong one.

18 JUDGE WAHL: Now proceed, Mr. Roaché, with
19 your question.

20 Q. (MR. ROACHÉ CONTINUING) In your opinion,
21 having previous decisions by the Public Service
22 Commission on applications that had been approved
23 that were not rebutted, using those for an
24 application that is being presented, is that
25 appropriate? Should I say it a different way?

1 A. I think I missed some word.

2 Q. Are we rebutting this application now?

3 A. Yes.

4 Q. And we're rebutting --

5 A. We are rebutting what the company included
6 as recoverable in the rate case -- in this rate
7 case. The amounts we are rebutting.

8 Q. So if we're rebutting this now, previous
9 cases that haven't been rebutted would carry no
10 weight, in your opinion?

11 JUDGE WAHL: Mr. Roaché, we're really --
12 what we're getting into is a principle of law which
13 was applicable in previous -- for previous
14 commission decisions which is not directly
15 applicable in this case, so in that respect we're
16 talking about apples and oranges although the
17 position that Mr. Kuntz has put forward, as I
18 understand it, is that the Commission's previous
19 actions in those cases establishes certain
20 principles which ought to apply in this case.

21 Now, I maybe didn't phrase that very good,
22 but what I'm telling you -- what I'm advising you,
23 when you start asking Mr. Mathai questions about
24 the application of rebuttable presumptions under
25 the statute, that's deep water and really ought to

1 be dealt with by lawyers. So what you and Mr.
2 Mathai are both getting into with your line of
3 questioning are questions of the application of
4 law, which is not -- that is, that's not -- I'm
5 searching for the word, but that's not evidence
6 unless it's offered by someone who is trained in
7 the law, a lawyer.

8 Q. (MR. ROACHÉ CONTINUING) Moving on, do you
9 agree that it's more expensive to produce
10 electricity with wind than with coal or oil at the
11 present time?

12 A. Yes.

13 Q. Do you agree that having Cedar Hills is
14 basically a duplication of facilities in that it
15 does not add energy when no wind is blowing?

16 A. I do not have sufficient information to
17 make a judgment whether it is duplicate or not at
18 this time.

19 MR. ROACHÉ: I have no further questions.

20 JUDGE WAHL: Mr. Skokos. Wait a minute.
21 I'm sorry.

22 Mr. Roaché, you have in front of you two
23 documents, I'm not sure that yours have been
24 marked, but one of them is the testimony of the
25 witness Peter Wasberg and the second one up on top

1 in the upper right-hand corner, direct testimony
2 and schedules, Marvin E. McDaniel, Jr. Those are
3 MDU, the first is MDU 21. The second is MDU 22.
4 Do you have any objection to those -- either of
5 those exhibits?

6 MR. ROACHÉ: No objection.

7 JUDGE WAHL: MDU 21 and MDU 22 are each
8 received. Now, Mr. Skokos.

9 **CROSS-EXAMINATION**

10 **BY MR. SKOKOS:**

11 Q. Yes. Mr. Mathai, in your testimony you
12 recommended that the wind -- if it's going to be
13 recovered, your recommendation was that it should
14 be recovered as a renewable rider; am I right?

15 A. Yes, if the Commission decides so.

16 Q. If the Commission decides. Okay. Would
17 you make a similar recommendation about a fossil
18 fuel source if we were discussing that?

19 A. I don't think so.

20 Q. You would have it as a general rate
21 increase. Okay. What are your reasons for that
22 versus wind?

23 A. Wind is in generation more now -- or an
24 investor makes a decision mainly to go with it, an
25 independent producer, because there are a lot of

1 government subsidies, I should say, or the tax
2 benefits out there. On that basis they are going
3 -- they're making it. But that fluctuates from
4 year to year as it goes. The maintenance of wind
5 goes -- has a year-to-year effect more than the
6 regular fossil project -- or a coal project or a
7 gas project. This is something which has got the
8 cost up front, a lot of it, so if you put it today
9 something of that nature with a hundred million
10 dollars in the rate base, it's going to earn the
11 same kind of rate of return without taking into
12 effect all the government subsidies that come year
13 after -- several years later. So that is why, when
14 you have a moving target, it is better to have a
15 rider. When you have a fixed target, straight.

16 Q. Okay. Just for the record, does it cost
17 -- you were discussing about fuel costs with wind
18 versus coal. Just for the record, does it cost
19 money for the wind to blow today?

20 A. The wind does its own way, yes. The wind
21 does its own way.

22 Q. So it's free; correct?

23 A. Yes. That wind -- the energy portion is
24 free in a sense.

25 Q. There's no fuel; right?

1 A. No.

2 Q. Will wind cost money in the future?

3 A. Wind -- wind, itself, will not cost any
4 money in the future, but what makes the production
5 of that wind turbine --

6 Q. That's not what I was asking.

7 A. Okay. Wind, itself, will not --

8 Q. I was just asking if wind is a free
9 resource.

10 A. Yes.

11 MR. SKOKOS: Okay. No further questions.

12 JUDGE WAHL: Ms. Jeffcoat-Sacco.

13 **CROSS-EXAMINATION**

14 **BY MS. JEFFCOAT-SACCO:**

15 Q. I was wondering if you had -- or what
16 basis you used for your 60-40 split on the
17 incentive compensation. How did you arrive at
18 60-40?

19 A. It was mainly to weigh the metrics that
20 they have used. They had a major weighing on the
21 financial portion of it. This is a practice that
22 is accepted by commission after commission.
23 Normally when you have more weighing to the
24 financial performance, you disallow more of it.
25 You allow normally the safety portion and the

1 customer service thing. In this case customer and
2 safety points were not even 40 percent. It's much
3 less than that, but I just did it on a fairness
4 basis that at least allows 40 percent.

5 Q. So you don't have it directly correlated,
6 you have it trending?

7 A. It's a trending because of how the metrics
8 are valued in this measurement.

9 Q. And do you have any commission decisions,
10 other jurisdictions, that you could point us to to
11 show us how a commission has done what you just
12 said?

13 A. Yes, I can.

14 Q. Can you provide those now?

15 A. Yes, I can provide you information where
16 it was completely excluded, I can provide you
17 information where 50-50 was allowed, and I can
18 provide you information where only the safety and
19 other things were allowed which was less than 50
20 percent.

21 Q. And you're speaking decisions of
22 commissions?

23 A. Yes.

24 Q. And they would then explain the
25 relationship back to the plan that shows why zero

1 or 50 --

2 A. Why it was disallowed or allowed.

3 Q. So when can we -- are we going to get
4 those in writing, perhaps, a late-filed exhibit or
5 something?

6 MR. SAVELKOUL: I have no objection.

7 THE WITNESS: Do you want the whole --

8 Q. (MS. JEFFCOAT-SACCO CONTINUING) We want
9 the orders so we have --

10 A. The orders will be hundreds of pages.
11 Most of the electric orders will be hundreds of
12 pages.

13 MS. JEFFCOAT-SACCO: That's okay. I can
14 handle 50 pages.

15 MR. SAVELKOUL: I'm just wondering if we
16 provide you with notice of the cases if the
17 Commission can take official notice of those
18 orders. Would that be sufficient?

19 MS. JEFFCOAT-SACCO: I was expecting a
20 list of citations.

21 THE WITNESS: Yes.

22 MR. SAVELKOUL: Oh. Oh, yeah.

23 THE WITNESS: I can provide a list of
24 citations without any problem, yes.

25 MR. SAVELKOUL: Certainly.

1 MS. JEFFCOAT-SACCO: Unless something is
2 so old that we can't find it any other way, then I
3 might need a copy.

4 MR. SAVELKOUL: Okay.

5 THE WITNESS: I can provide the citations.

6 MR. KUNTZ: For the record, I'm going to
7 raise an objection. There's testimony, there's
8 application and those orders underlying those
9 orders. The laws could be different. I don't
10 think that you can take official notice or that you
11 can rely upon a determination in another
12 jurisdiction based upon the record in that
13 jurisdiction to reach a determination of how
14 incentive comp should be treated in this particular
15 case.

16 JUDGE WAHL: Generally I think that's
17 true, Mr. Kuntz, but I do think that the Commission
18 can look to orders of other commissions for their
19 rationale for their reasoning for what the
20 Commission deems worthy for consideration.

21 MR. KUNTZ: Just so I note my objection.

22 JUDGE WAHL: It is. The objection is
23 overruled.

24 Q. (MS. JEFFCOAT-SACCO CONTINUING) I wanted
25 to follow up with your basis for the board of

1 directors split.

2 A. Yes.

3 Q. And can you provide -- do you have a
4 similar rationale for the split of the board of
5 directors costs?

6 A. Again, it's a sharing concept. In some
7 decisions -- I'll have to go back and look at that
8 specifically, but it's a small issue most of the
9 time. I dealt with them before. It's investor
10 relations and board of directors together, we have
11 disallowed it completely and allowed it some of the
12 time. So, again, I have to look at my old case
13 files.

14 Q. But from your recollection, what is it
15 tied to, the choice of zero percent or 25 percent
16 or 50 percent would be tied to what types of facts
17 in those other cases?

18 A. In this case it is simply a sharing
19 mechanism. It's arbitrary. If you want to call it
20 arbitrary. It's a 50-50 because it benefits both
21 ratepayers and the investors.

22 Q. But you don't have any specific rationale
23 for why it benefits both equally?

24 A. No. No. Again, sharing, you can do
25 equally or you can do proportionately.

1 Q. And I'm just trying to get to the reason
2 why you're choosing --

3 A. Most of the time the commissions when they
4 hear something like this, they just rule saying
5 that we go by the staff's recommendation. That's
6 all they say. They don't make any rationale saying
7 that's the way it is.

8 MS. JEFFCOAT-SACCO: Thank you. That's
9 all.

10 JUDGE WAHL: Questions from the
11 Commission? Commissioner Clark.

12 COMMISSIONER KALK: Do we have a
13 late-filed exhibit number? I missed that.

14 JUDGE WAHL: It's not going to be a
15 late-filed exhibit.

16 COMMISSIONER CRAMER: Just take notice.

17 COMMISSIONER KALK: Just take notice.

18 JUDGE WAHL: No. Listen. Let's clear
19 this up. I'm just assuming --

20 COMMISSIONER KALK: Because I don't know
21 what I'm supposed to look at.

22 JUDGE WAHL: I'm just assuming, Ms.
23 Jeffcoat-Sacco, that you're simply asking for
24 information of other commission action which you
25 and the commissioners can review to see what the

1 rationale was in those other cases only for their
2 thinking. That's not precedent or controlling.
3 It's simply what is the basis, what's the rationale
4 that you can consider applying.

5 COMMISSIONER KALK: My question was that's
6 a document Illona will give me as my legal person?

7 JUDGE WAHL: I don't know what she'll give
8 you.

9 COMMISSIONER KALK: Okay.

10 JUDGE WAHL: Yeah. No.

11 COMMISSIONER KALK: Just trying to figure
12 out what's coming.

13 MS. JEFFCOAT-SACCO: I might not even read
14 the cases. Who knows.

15 JUDGE WAHL: Right.

16 MS. JEFFCOAT-SACCO: But I do want cases
17 where there is some correlation between the
18 percentage ordered and the incentive comp plan
19 because I'm trying to get to whether there is a
20 relationship or correlation in this case.

21 THE WITNESS: Again, as I said earlier,
22 it's a sharing mechanism and the numbers are
23 arbitrary.

24 JUDGE WAHL: That's the word.

25 THE WITNESS: In this case -- in this case

1 I weighed the 60 percent because the financial
2 emphasis of this company for incentive pay was much
3 higher, over 50 percent.

4 MS. JEFFCOAT-SACCO: Okay. Thank you.

5 JUDGE WAHL: Yeah, I don't think it's a
6 late-filed exhibit or anything. It's simply
7 research that's going to be done for your
8 consideration.

9 COMMISSIONER KALK: Thank you.

10 JUDGE WAHL: Commissioner Clark.

11 **EXAMINATION**

12 **BY COMMISSIONER CLARK:**

13 Q. I just have one question. You recall in
14 Mr. Kuntz's questioning of you a discussion of
15 overhead lines versus underground lines --

16 A. Yes, sir.

17 Q. -- with the idea being that in some cases
18 overhead lines -- or, I'm sorry, underground lines
19 might be preferable even though they're not the
20 least cost?

21 A. Yes.

22 Q. But a commission might take lots of
23 factors into consideration when making that?

24 A. Yes.

25 Q. Okay. I just want to make sure you recall

1 the conversation.

2 A. Yes.

3 Q. My question is: Would it be advisable, in
4 your experience, for a utility in a case like that
5 to be able to lay out clearly and concisely for the
6 Commission the costs and benefits of both the
7 overground -- aboveground line and the underground
8 line so that the Commission can take all of those
9 things into consideration?

10 A. Yes, sir.

11 COMMISSIONER CLARK: Okay. Thanks.

12 JUDGE WAHL: Further questions from the
13 Commission? Commissioner Kalk.

14 COMMISSIONER KALK: Maybe a clarification
15 first between you and the counsel over there. When
16 you talked about your summary testimony, you made a
17 comment that -- the second page, number 2 and
18 number 3 had been covered in some settlement or
19 something. I didn't quite catch what that meant.

20 MR. SAVELKOUL: The company and staff in
21 the settlement agreement have agreed to dedicate
22 resources to reviewing MDU's accounting system,
23 jurisdictional allocations and various concerns
24 that staff had and jointly -- potentially jointly
25 retain -- or jointly choose an expert that could

1 come in and review the system and help determine
2 whether change is necessary.

3 COMMISSIONER KALK: I don't recall, was
4 there a timeline laid out on that how, or how are
5 we going to go about that? Is that all in the
6 settlement agreement? I don't remember all the
7 details.

8 MR. SAVELKOUL: It's to be concluded
9 before the next rate case.

10 COMMISSIONER KALK: The next rate case
11 could be 25 years.

12 MR. KUNTZ: Mr. Commissioner, we don't
13 intend to delay this. It won't be 25 years, I'm
14 afraid. We want to get this started as quickly as
15 possible. You know, it's going to be dependent
16 upon our ability to sit down with staff, define the
17 scope of this agreement, try to get a measure of
18 some independent consultants with experience in
19 this area, come to an agreement on consultants and
20 cost and get that study started. We want to get
21 this done sooner rather than later.

22 COMMISSIONER KALK: That's something I
23 guess we could hammer out in a work session for a
24 timeline.

25

EXAMINATION

1 **BY COMMISSIONER KALK:**

2 Q. This is kind of open forum here now, I
3 guess. The SEC reviews that are done, those are
4 completely different than -- than what you talked
5 about here?

6 A. The SEC has --

7 Q. I guess there is a question there.

8 A. The SEC has stopped doing the corporate
9 allocation transactions about two, three years ago.

10 Q. Okay.

11 A. They do not have -- they stopped that
12 review where they had a team and everything, there
13 was some consolidation and everything, because I
14 was involved in the CenterPoint Energy's SEC audit
15 from the staff.

16 Q. So I understand you probably haven't had a
17 chance to review, but would this be a
18 recommendation that you might make for all of the
19 investor-owned utilities that we have jurisdiction
20 over, that we do something similar based on recent
21 changes with the SEC?

22 A. Yes, I would say, because -- and also the
23 FERC start-up accounts had been -- used to be
24 audited by a team. That also stopped. So the FERC
25 start-up accounts, what goes in there, is it all

1 according to the compliance or not is very limited.

2 Q. Okay. Thank you. Then I did have just
3 two quick ones about the compensation business.
4 The board of directors, you said you initially had
5 documents that were totaling \$140,000 and you made
6 inference that maybe there was a lot more things
7 that you would have liked to look at if you had
8 more information and more time. Would you explain
9 that just a little bit?

10 A. There is -- at least I know there's
11 \$18,000 in one source account that I saw that was
12 related to investor relations I did not include in
13 this.

14 Q. Okay.

15 A. I only took the board of directors --
16 whatever I was able to get from Ms. Mulkern. But
17 then recently when I was looking through some of
18 the sources, I seen possible amounts that are
19 expended on behalf of investors as well as board of
20 directors.

21 COMMISSIONER KALK: Okay. Thank you.

22 That's all that I had, Your Honor.

23 JUDGE WAHL: Commissioner Cramer.

24

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EXAMINATION

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BY COMMISSIONER CRAMER:

Q. I had a bunch, but most of them have been answered, although I have first this one. In your experience in Oklahoma and perhaps other jurisdictions you worked in, have you ever seen a utility build a generation facility or ask for recovery of costs without some form of a cost-benefit analysis or economic evaluation that they could produce if asked?

A. No. I had been involved with the generation of now what is AEP subsidiary, the Public Service Company of Oklahoma's generation that they had with the St. Joseph's Electric and Kansas Power & Light together and also the DC 10 -- DC line and those things, I was involved in the '80s with them, and they -- even before that when PSO came to build a nuclear plant, they came to the Commission to ask for the approval. The Commission said, no, we are not going to give preapproval. This is 1980s now I'm talking. '78 is when they came and asked for it. So in 1982 it was abandoned. It was called the Black Fox nuclear project. I was involved with that.

The St. Joseph's -- the other project with

1 St. Joseph's Electric and Kansas Power & Light, I
2 think, joint generation plant for sub coal, which
3 is now bought out by AEP, I was involved in that,
4 but they came before the Commission and asked for
5 it. Now the latest case that I testified to Mr.
6 Kuntz was for the 2007 PSO case. I was a witness
7 for a preapproval of their joint plant with OG&E
8 and PSO and the associated cooperative, another
9 co-op through the OMPA, which is the municipal
10 association. Those three came together to build a
11 major coal plant over there. They came for
12 preapproval. And it was disallowed or it was
13 rejected. And I was involved in that. In fact, my
14 proposition was in favor of the company and I came
15 up with the recovery methodology called NGTR. It
16 is in my testimony on the same one Mr. Kuntz
17 referred. So I had been involved in several ones.
18 And they always came in for that.

19 And take the wind, itself, that I am
20 familiar with about three projects that had been
21 approved in Oklahoma. All of them they had to come
22 before the Commission and prove their case the
23 least cost and necessity and cost justification.

24 Q. Thank you. With regard to several data
25 requests and this whole issue of, you know, we've

1 got the most recent stuff late, you know, as
2 recently as Monday and always corrected, and Ms.
3 Mulkern's especially answers on the witness stand
4 that Mr. Kuntz asked you about, now that you have
5 heard all of that, everything -- I'm putting words
6 in your mouth -- would that change your opinion or
7 your recommendation? If you had another week to
8 look at all the background information that would
9 ideally back up Ms. Mulkern's most recent testimony
10 to all of that, would that change your -- could
11 that change your recommendation if in fact the data
12 was provided, the background information was
13 provided and all the numbers added up and you could
14 be -- you could be convinced -- not assuming now
15 that she lied on the witness stand, we're not
16 assuming that, but she could prove, because I think
17 the question was to you at one point, could you
18 prove that she was lying, could that possibly
19 change your recommendation if everything she said
20 could be verified with information?

21 A. I think, yes. Yes is the quick answer,
22 but then what I'm saying is that about the time, I
23 don't know how long would it take.

24 Q. That's fair. That's fair. I used a week
25 arbitrarily. Okay. A couple of other questions

1 then. The first one is, why might a utility
2 benefit from a reasonable arbitrary split of board
3 of director expenses? How might that actually help
4 a utility? Can you give us some --

5 A. How does it help the utility?

6 Q. How might it help the company?

7 A. Traditionally, based on my experience, the
8 board of directors and the investors expenses are
9 normally below the line. That means it is not
10 normally asked in a rate case to be paid for by the
11 ratepayers. Many companies, they just
12 automatically make that decision. But MDU made the
13 decision to keep it above the line and be part of
14 the rate case. In my younger days I used to say
15 board of directors -- the stockholders expenses,
16 they should pay for it. But I was just thinking
17 about the fact that there is a fiduciary
18 responsibility that the board of directors are
19 performing. If the company is well run, there's a
20 reliable electric service for the ratepayers, so
21 there's a benefit that is derived from that. So I
22 say let it be paid equally by both groups.

23 Q. Might there be some value to transparency
24 if it's all above the line? Is there a
25 transparency benefit?

1 A. Yes, transparency, of course, is a
2 benefit. That's what my whole recommendation is
3 based on, that I think there's more transparency
4 and more easiness to their expenses and their
5 accounting -- to know how you did what you did. It
6 helps a lot. And I really want to see that there's
7 a good relationship between the Commission and the
8 company on an ongoing basis because it helps both
9 parties.

10 Q. And I think in the settlement you've
11 agreed on that. I guess my question is aimed more
12 at the board of director expenses. If they were
13 all above line, then -- and regulators had access
14 then to those expenses and what they were, that
15 that could perhaps even add some confidence, if you
16 will.

17 A. Yes. Yes. But then again my experience,
18 many of the board of directors expenses are not
19 shown to the company. They would say that we are
20 not asking for it so you don't have to see it.

21 Q. Sure. Then one final question. What
22 might a consequence be for a lineman -- a
23 journeyman lineman in Crosby or anywhere else -- by
24 the way, my dad was a journeyman lineman my whole
25 life and he had to drive truck on the weekends and

1 evenings for beet farmers, all who made more money
2 than the superintendent of schools. What might a
3 consequence of a lineman in Crosby be of having
4 part of his incentive pay tied to -- a big part of
5 it perhaps tied to the bottom line or
6 profitability?

7 A. In this -- based on data number 38B, the
8 safety factor which is more for a lineman --

9 Q. Mm-hmm.

10 A. -- is weighed only half a point out of --
11 anywhere from 4.5 to 7 or one point. So you can
12 see the weight. So what he's going to get in real
13 money is that. That's the reason an average
14 non-management employee gets about 6 percent, where
15 if you're a midlevel management employee you get
16 about -- anywhere from -- in the three years that I
17 looked at it between 12 percent one year, 11
18 percent -- 10-point-some percent, another year 12
19 percent and the third year about 13 percent.

20 So I am -- I think the regulators should
21 pay the performance-based expenses that they have
22 when it comes to safety and customer relations. I
23 agree with it. So my 60-40 split is actually to
24 reflect that, for them to get that, and then for
25 the rest of them, because they're already -- the

1 percentage what the other management employees are
2 getting a higher pay and everything, so I'm saying
3 that they get a little less of the incentive pay.

4 Q. Well, is this illustration off the mark?
5 If a journeyman lineman in Crosby has in the back
6 of his mind that he can make -- he can earn more
7 money if he helps the company save money, is there
8 a chance he would be weighing that, depending on
9 its weight -- weighing that against a safety
10 decision and that it could actually skew his
11 judgment one way or the other and could have a
12 negative consequence?

13 A. As human beings, there's a good
14 possibility of that because, I mean, expediency is
15 in many people's mind whenever they do something.
16 Again, I am not so sure based on my experience,
17 regardless of what level you allow for incentive
18 pay, whether all of that money is going to be paid
19 to the employees or not because it is to the
20 discretion of the management what is to be really
21 paid out to the customers or how to be used to
22 that, because we are not mandating them item by
23 item how to spend it.

24 COMMISSIONER CRAMER: Well, and to be
25 fair, I hold out the possibility that I'm not

1 understanding this completely, but I throw out that
2 scenario so that somebody else could clarify it for
3 me if it needs to be, because that was my concern
4 as I listened to the heavy weight of bottom line
5 given to incentive pay for all employees and that
6 maybe it causes employees to make bad decisions and
7 I just want some clarification either in brief or,
8 you know, as we move forward.

9 But that's all I have. Thank you.

10 JUDGE WAHL: Any further questions from
11 the Commission? Mr. Savelkoul, followup?

12 MR. SAVELKOUL: Yes, Your Honor. Thank
13 you.

14 **REDIRECT EXAMINATION**

15 **BY MR. SAVELKOUL:**

16 Q. First, if you could, Mr. Mathai, turn to
17 MDU Exhibits 17 through 20.

18 A. Okay.

19 Q. And, first Exhibit 17, it's not just a
20 certificate of public convenience and need
21 application, is it? It is also an advanced
22 determination of prudence for that project, isn't
23 it?

24 A. It is.

25 Q. Did MDU bring an advanced determination of

1 prudence in the case of their wind projects?

2 A. Not to my knowledge. I do not -- no.

3 Q. With respect to Diamond Willow, did they
4 even bring a certificate -- or a certificate of
5 public convenience and necessity?

6 A. To my knowledge, not to this Commission.

7 Q. In your understanding of Xcel Energy's
8 system, does it serve a similar system to MDU's?

9 A. I know some of the territories that they
10 are serving, and based on that I think they are a
11 much bigger company than MDU and there is more
12 jurisdictions that they serve, so I don't know
13 whether you can really compare Xcel Energy except
14 that both serve electric service.

15 Q. Does Xcel Energy have a different
16 generation mix than MDU?

17 A. I'm sure they would because they have a
18 much bigger area to serve. I even think that they
19 have nuclear projects.

20 Q. Then turning to MDU 18, if I can direct
21 you to the third full paragraph down, it states,
22 "The presumption that the Merricourt Wind Project
23 is prudent has not been rebutted"; is that correct?

24 A. Where are we looking at it, sir?

25 Q. MDU 18 on page 2.

1 A. Page 2, okay.

2 Q. And it states, "The presumption that the
3 Merricourt Wind Project is prudent has not been
4 rebutted"; is that correct?

5 A. Yes.

6 Q. And in this case are you rebutting MDU's
7 investments in wind?

8 A. Yes.

9 Q. Do you think if appropriate discovery is
10 made to a company and adequate answers aren't
11 provided, that can contribute to overcoming a
12 rebuttable presumption?

13 MR. KUNTZ: Objection, calls for a legal
14 conclusion.

15 MR. SAVELKOUL: He's been answering
16 questions from counsel on his legal view of the
17 issues in this case and he's an expert.

18 MR. KUNTZ: No. My questions to the
19 witness were whether he had considered certain
20 things that the Commission had done in making his
21 recommendations.

22 JUDGE WAHL: The objection is sustained.

23 Q. (MR. SAVELKOUL CONTINUING) You also have
24 in front of you MDU 20.

25 A. Yes.

1 Q. I'd like to direct your attention to the
2 second paragraph up from the bottom and it states,
3 However, before the Commission can determine
4 prudence, the same law requires Otter Tail to file
5 a projection of the costs associated with the
6 electric resource addition and the Commission issue
7 a notice of hearing, including holding a hearing if
8 necessary, does it not?

9 A. Yes.

10 Q. Has the Commission yet made such a
11 determination of prudence in MDU's wind
12 investments?

13 A. To my knowledge, not on the costs that the
14 company provided, it has not done a hearing. In
15 fact, this is probably the first hearing on that.

16 Q. And Exhibits 19 and 20 are both related to
17 an investment in wind by Otter Tail Power, and are
18 you knowledgeable about Otter Tail Corporation's
19 system?

20 A. I'm not fully knowledgeable about their
21 system.

22 Q. Are you knowledgeable about their need at
23 the time of this letter?

24 A. No, I am not.

25 Q. Does this letter -- strike that.

1 Now, you were asked a few questions about
2 your testimony in front of other commissions. I'm
3 wondering if as the chief in the Oklahoma Public
4 Service Commission, part of your duties were to
5 monitor what was happening in other states with
6 respect to regulatory laws and electric companies?

7 A. Yes, I was the -- also the member of the
8 NARUC subcommittee of accountants since 1982 where
9 other commission staff and industry people who are
10 in regulation get together and talk about
11 accounting issues, and I have been attending that
12 since 1982 and I was the official member from the
13 Oklahoma Corporation Commission.

14 Q. So you are familiar with electric
15 regulatory proceedings?

16 A. Yes.

17 MR. KUNTZ: Objection. Okay.

18 Q. (MR. SAVELKOUL CONTINUING) Now, in this
19 case the company is seeking recovery for Diamond
20 Willow both I and II. Do you know if they produce
21 enough electricity to satisfy Montana's mandate?

22 A. I think they're almost there. I think it
23 is the 2010 requirement probably maybe. The
24 mandate for the year 2010, I think it is about
25 75,000 megawatts or so. I think they are.

1 Q. Okay. And it goes up in 2015, does it
2 not?

3 A. 2015, yeah, I think it will go up to a
4 hundred -- it's an increment of 35,000 or so, so
5 probably it will be about 105,000 megawatts.

6 Q. Now, you were asked a little bit about in
7 using the term used and useful. Now, counsel was
8 asking you if these wind farms were used and useful
9 for North Dakota ratepayers. Does that mean that
10 they necessarily should have recovery?

11 A. That is not the only factor that recovery
12 is decided on. Recovery is decided on, first of
13 all, whether it is used and useful and how much of
14 that is used and useful and how much of the cost is
15 reasonable or not. So there are different factors.

16 Q. Now, you testified to the extent of your
17 efforts to locate the cost analysis of these wind
18 farms and I believe your testimony was that you
19 didn't receive any.

20 A. Any --

21 Q. Is that correct?

22 A. Yes.

23 Q. Did you also look at the company's IRPs?

24 A. Yes, I did look at it.

25 Q. And this affected your recommendation to

1 exclude wind?

2 A. Yes. The IRP about the wind was a very
3 passing way of several statements over there. I
4 didn't see any emphasis given to wind in their IRP.

5 Q. In fact, your knowledge of the IRP, did it
6 ever select wind -- generic wind as the least-cost
7 resource?

8 A. I don't think so.

9 Q. And there were other things that you
10 looked at such as the Big Stone II proceedings?

11 A. Yes, I did review it. I only reviewed
12 that in relationship to the data requests that I
13 received on the deferred generation -- generation
14 costs that they included in this case.

15 Q. You were also asked some questions about
16 North Dakota's objective and whether that is a
17 signal. In that objective is there also a signal
18 that there should be a weighing of economic costs?

19 A. I believe so.

20 Q. Are there other North Dakota laws that
21 give signals to companies?

22 A. Yes.

23 Q. Is there a North Dakota law that gives a
24 signal that environmental externalities should not
25 be considered?

1 MR. KUNTZ: Objection. That's a
2 misstatement of the law.

3 Q. (MR. SAVELKOUL CONTINUING) What is your
4 understanding about the ability --

5 JUDGE WAHL: Just a minute. How is it a
6 misstatement of law?

7 MR. KUNTZ: The law prohibits a
8 quantification of environmental externalities. It
9 doesn't prohibit consideration of environmental
10 matters. It prohibits a quantification of matters.

11 JUDGE WAHL: All right. I agree. That's
12 a pretty fine distinction, but I agree. The
13 objection is sustained.

14 Q. (MR. SAVELKOUL CONTINUING) Do you believe
15 the North Dakota law about environmental
16 externalities also sends signals?

17 A. I would say that any law -- not
18 specifically talking about North Dakota because I
19 haven't paid -- I haven't read that bill, but any
20 law that restricts certain things, that has an
21 effect, yes.

22 Q. If North Dakota rejected recovery of these
23 wind farms, that doesn't necessarily mean that
24 Montana would pay for it, does it?

25 A. No.

1 Q. The company could, for example, sell this
2 power out to the system?

3 A. To MISO.

4 MR. SAVELKOUL: Nothing further.

5 JUDGE WAHL: Mr. Roaché. I'm sorry. Mr.
6 Kuntz?

7 **RECROSS-EXAMINATION**

8 **BY MR. KUNTZ:**

9 Q. You were asked a question of whether in
10 your role with the Oklahoma Corporation Commission
11 you monitored decisions in other jurisdictions. Do
12 you recall that question?

13 A. Yes.

14 Q. And then you answered that what you did
15 was you were on a board of some sort that got
16 together and discussed accounting issues; is that
17 correct?

18 A. I said that, but my role as the chief of
19 the accounting and financial department, which is
20 the ratemaking body, I have reviewed several
21 decisions by other commissions in order to come up
22 with my positions and understanding of the issues,
23 yes.

24 Q. And prior to your being retained in this
25 proceeding, what North Dakota decisions had you

1 reviewed?

2 A. I don't remember any particular one except
3 there was one case about three years ago that I
4 looked at North Dakota's. I don't remember. That
5 was in relationship to something else.

6 MR. KUNTZ: No further questions.

7 JUDGE WAHL: Mr. Roaché?

8 MR. ROACHÉ: I have no questions.

9 JUDGE WAHL: Mr. Skokos?

10 MR. SKOKOS: I have no questions.

11 JUDGE WAHL: Ms. Jeffcoat-Sacco?

12 MS. JEFFCOAT-SACCO: No questions.

13 JUDGE WAHL: Followup by the Commission?
14 Commissioner Clark.

15 **FURTHER EXAMINATION**

16 **BY COMMISSIONER CLARK:**

17 Q. One, Your Honor, just to clarify a
18 question Mr. Savelkoul asked with regard to MDU
19 being able to meet its requirement in Montana for a
20 certain percentage of power to come from
21 electric -- or from renewable sources. They only
22 meet that requirement, however, right now by
23 stripping any credits that would be allocated to
24 North Dakota into the -- and stripping them into
25 the Montana jurisdiction; isn't that your

1 understanding?

2 A. That's correct.

3 COMMISSIONER CLARK: Thank you.

4 COMMISSIONER CRAMER: I guess --

5 JUDGE WAHL: I'm sorry. Commissioner
6 Clark, you were finished?

7 COMMISSIONER CLARK: I'm done.

8 JUDGE WAHL: Commissioner Cramer.

9 COMMISSIONER CRAMER: I guess I wanted to
10 ask him if he believed that the rebuttable
11 presumption part of the prudence law applied to
12 prudence requested after the fact or if it only
13 applied to advance prudence, but he can't make that
14 legal distinction so I'll have to let a lawyer tell
15 me later.

16 JUDGE WAHL: I would be inclined to let
17 that be, Commissioner.

18 COMMISSIONER CRAMER: That's fine.

19 JUDGE WAHL: Any further questions from
20 the Commission? Mr. Savelkoul.

21 MR. SAVELKOUL: I believe we've got
22 letters filed with Montana's Public Service
23 Commission or the equivalent that would provide
24 detail about these renewable credits and their use
25 if the Commission would believe that to be helpful.

1 JUDGE WAHL: Commissioner Clark.

2 COMMISSIONER CLARK: It's up to you. I
3 mean, I think I understand the issue, but if you
4 feel that it's beneficial to have some
5 documentation, that's fine.

6 JUDGE WAHL: That's what I was going to
7 say exactly. If you wish to have it marked, that's
8 your decision, Mr. Savelkoul.

9 MR. SAVELKOUL: Why don't we so everybody
10 knows what the real numbers are.

11 JUDGE WAHL: Well, Madam Reporter, I hope
12 I'm right. I know you're counting on me. Mr.
13 Savelkoul, I think the next document is CAS 19.

14 MR. SAVELKOUL: That is what I have, Your
15 Honor.

16 JUDGE WAHL: Good. The document that's
17 been distributed which is -- is it more than one
18 here, it's a series -- well, you describe the
19 document, Mr. Savelkoul.

20 **REDIRECT EXAMINATION**

21 **BY MR. SAVELKOUL:**

22 Q. Mr. Mathai, in front of you is a group of
23 documents labeled CAS 19. The first one is dated
24 March 3rd, 2009, and it's regarding the renewable
25 resource standard annual report-compliance year

1 2008. The second one is October 7, 2009, renewable
2 resource standard annual report-compliance year
3 2008. The third one is March 26, 2010, renewable
4 resource standard annual report-compliance year
5 2009. And the last one is dated June 2nd, 2010,
6 regarding the renewable resource standard revised
7 annual report-compliance year 2009. Is it your
8 understanding that these letters address the use of
9 RECs by Montana-Dakota Utilities in and for the
10 State of Montana?

11 A. Yes.

12 MR. SAVELKOUL: I offer CAS 19.

13 JUDGE WAHL: Mr. Kuntz?

14 MR. KUNTZ: No objection.

15 JUDGE WAHL: Mr. Roaché?

16 MR. ROACHÉ: No objection.

17 JUDGE WAHL: Mr. Skokos?

18 MR. SKOKOS: No objection.

19 JUDGE WAHL: Ms. Jeffcoat-Sacco?

20 MS. JEFFCOAT-SACCO: No objection.

21 JUDGE WAHL: Exhibit CAS 19 is received.

22 Anything further, Mr. Savelkoul?

23 MR. SAVELKOUL: Nothing, Your Honor.

24 JUDGE WAHL: Mr. Roaché?

25 MR. ROACHÉ: Nothing?

1 JUDGE WAHL: Mr. Skokos?

2 MR. SKOKOS: No.

3 JUDGE WAHL: Ms. Jeffcoat-Sacco?

4 MS. JEFFCOAT-SACCO: No.

5 JUDGE WAHL: Commission. Go ahead.

6 COMMISSIONER CLARK: Sorry, Your Honor.

7 **FURTHER EXAMINATION**

8 **BY COMMISSIONER CLARK:**

9 Q. But it occurs to me, as well -- is it your
10 understanding then if -- based on this CAS 19 that
11 if Montana-Dakota has given all credit for
12 renewable energy credits to the Montana
13 jurisdiction and there are none available except
14 for the Ormat waste heat recovery plant, then
15 there's -- outside of that Ormat plant, there has
16 been no progress in North Dakota towards the
17 renewable energy objective?

18 A. That's my understanding.

19 COMMISSIONER CLARK: Okay. Thank you.

20 JUDGE WAHL: Mr. Savelkoul?

21 MR. SAVELKOUL: Nothing further, Your
22 Honor.

23 JUDGE WAHL: Mr. Kuntz?

24 MR. KUNTZ: I will address this with Ms.
25 Aberle.

1 JUDGE WAHL: Mr. Roaché?

2 MR. ROACHÉ: No.

3 JUDGE WAHL: Mr. Skokos?

4 MR. SKOKOS: No.

5 JUDGE WAHL: Ms. Jeffcoat-Sacco?

6 MS. JEFFCOAT-SACCO: No.

7 JUDGE WAHL: One last thing, Mr.

8 Savelkoul. I still have an open exhibit -- well,

9 I'm sorry. My notes show an open exhibit for CAS

10 18 --

11 MR. SAVELKOUL: Thank you, Your Honor.

12 JUDGE WAHL: -- which is Mr. Mathai's
13 summary testimony. That may have been offered by
14 you and received by me, but in case it has not, I
15 take it you've offered that exhibit.

16 MR. SAVELKOUL: I now do so if I had not
17 before.

18 JUDGE WAHL: Mr. Kuntz?

19 MR. KUNTZ: No objection.

20 JUDGE WAHL: Mr. Roaché?

21 MR. ROACHÉ: No objection.

22 JUDGE WAHL: Mr. Skokos?

23 MR. SKOKOS: No objection.

24 JUDGE WAHL: And Ms. Jeffcoat-Sacco?

25 MS. JEFFCOAT-SACCO: No objection.

1 JUDGE WAHL: Exhibit CAS 18 is received.
2 Now, I think, Mr. Mathai, thank you very much.

3 THE WITNESS: Thank you, sir.

4 JUDGE WAHL: I really think the next thing
5 on our agenda is a recess. Let's be in recess
6 until 3:40.

7 Recess taken at 3:28 p.m. to 3:47 p.m.)

8 JUDGE WAHL: It's a quarter to four. At
9 five o'clock it's going to be darker than it is
10 now. It's going to be dark. Those people who
11 should be on the road I think should get on the
12 road. So we're going to be here Friday, in any
13 event. Mr. Roaché says that his testimony is very
14 brief. He'd like very much to present his
15 testimony. He's not going to argue. He'll submit
16 a brief in the course of events here and he would
17 like to go home and not come back on Friday.

18 I have to say that I can certainly
19 appreciate that sentiment. So what I propose to
20 do, since we've got the order of procedure
21 thoroughly mixed up, anyway, we might as well
22 continue with that mixup. I would propose, subject
23 to any objection, to hear Mr. Roaché's testimony
24 and wrap it up for today and come back, get people
25 on the road that are driving, and then on Friday we

1 will resume back to really -- what I want to do is
2 pick up Mr. Neigum for Mr. Savelkoul, that one
3 question that he has on Friday, and then, Mr.
4 Kuntz, back to you to finish your order of
5 witnesses and then, Mr. Savelkoul, for you to
6 finish up and finally, Mr. Skokos, for you. That's
7 going to be the order on Friday.

8 So let me hear, have we got any
9 substantial objections to that procedure?

10 MR. KUNTZ: I just want to make sure that
11 Ms. Aberle and Mr. Neigum are going to be available
12 Friday. That will work for us.

13 JUDGE WAHL: Mr. Savelkoul?

14 MR. SAVELKOUL: I would have one request.
15 Our last witness has three or four pages of
16 comments, which he would prefer to appear
17 telephonically, if the company would be okay with
18 that.

19 MR. KUNTZ: Is that Mr. Diller?

20 MR. SAVELKOUL: Yeah.

21 MR. KUNTZ: Do we have some context of the
22 scope of his testimony? What is he going to
23 address?

24 MR. SAVELKOUL: Support of the settlement
25 agreement, two of the points, and --

1 MR. KUNTZ: I'm looking at the scope of
2 what you want to testify to by telephone, Mike, to
3 see if I have any concern about the telephone.

4 MR. DILLER: My outline is the cost of
5 capital settlement filed June 2010, support of the
6 settlement on various issues filed on Monday,
7 provide a couple of instances of direct assignment
8 of environmental costs that was something that was
9 raised and MDU couldn't answer it. I have a couple
10 of them, CIP and RDF, it's something for
11 discussion.

12 MR. KUNTZ: Okay.

13 MR. DILLER: That's about it.

14 MR. KUNTZ: We have no objection to Mr.
15 Diller appearing by telephone on Friday then.

16 MR. SAVELKOUL: And I would, likewise,
17 appear via telephone -- or request to.

18 JUDGE WAHL: Okay. That puts you on the
19 line constantly. We've had problems with that
20 before, but I've also done it before, but you
21 understand that may have problems and we're going
22 to have to fuss around with that, but I'm willing
23 to do that.

24 MR. SAVELKOUL: Appreciate that, Your
25 Honor.

1 JUDGE WAHL: Okay. And, Mr. Kuntz, you're
2 good with Mr. Savelkoul on the phone?

3 MR. KUNTZ: We have no objection.

4 JUDGE WAHL: Okay. Mr. Roaché, you
5 obviously don't have any objection. Mr. Skokos?

6 MR. SKOKOS: No, no objection.

7 MR. KUNTZ: Is there a problem with Mr.
8 Skokos's witness for Friday?

9 MR. SKOKOS: I can explain that. Do you
10 want me to explain?

11 JUDGE WAHL: He was going to appear by
12 phone, anyway, but go ahead, Mr. Skokos.

13 MR. SKOKOS: We may have our witness
14 appear by phone, but we may actually have a real
15 legal counsel on Friday, as well, so depending on
16 events.

17 MS. JEFFCOAT-SACCO: Savelkoul maybe
18 should come.

19 JUDGE WAHL: All right. Let's go. So
20 we'll do that. That's workable for me. Good with
21 the commissioners, so that works for me. I think
22 we can work that all out. So, Mr. Roaché, please.
23 Everybody has got Mr. Roaché's exhibits, I believe.

24 MR. KUNTZ: No, I haven't. Oh, this one.

25 JUDGE WAHL: Yeah, that packet, Dan. Mr.

1 Roaché, let me do a little preliminary. First, you
2 understand, of course, like everyone else, that
3 your testimony is required to be under oath and I'm
4 required by law to advise you regarding perjury
5 before administering the oath. Perjury is a false
6 statement of material fact which you do not believe
7 to be true. In North Dakota perjury is a Class C
8 felony, punishable by a fine up to \$5,000,
9 imprisonment for a period of up to five years, or
10 both. Will you raise your right hand, please, Mr.
11 Roaché?

12 **JAMES D. ROACHÉ,**

13 being first duly sworn, was examined and testified
14 as follows:

15 JUDGE WAHL: Please state your name,
16 occupation and residence for the record, Mr.
17 Roaché.

18 THE WITNESS: My name is James D. Roaché.
19 My residence is 707 First Street Southwest, Crosby,
20 North Dakota 58730.

21 JUDGE WAHL: And your occupation?

22 THE WITNESS: I'm retired.

23 JUDGE WAHL: Good for you. And, Mr.
24 Roaché, you are an intervenor in this case pursuant
25 to the order of the Commission; is that correct?

1 THE WITNESS: Yes, sir.

2 JUDGE WAHL: Mr. Roaché, I also understand
3 you have some exhibits which you would use in the
4 course of your testimony. Let's see if we can
5 offer them altogether. Very quickly would you tell
6 me, please, referring to Exhibit which is JR 1,
7 would you just -- what is that? It says a 2009
8 comparison of production output highs and lows.

9 THE WITNESS: That gives a count taken
10 from the next 12 pieces of paper, which are the
11 monthly reports from MDU on their wind generator.
12 It's just a count of the dots basically.

13 JUDGE WAHL: And you made a graph out of
14 it?

15 THE WITNESS: And I made a graph out of
16 it.

17 JUDGE WAHL: Okay. Then let's go all the
18 way then to, let me see, about 14 -- Exhibit No.
19 JR 14 and that is another graph. Is that a graph
20 that you prepared or is that taken from some MDU
21 document?

22 THE WITNESS: MDU supplied this. This is
23 a graph of their generation -- electrical
24 generation and by its source.

25 JUDGE WAHL: Okay. And Exhibit 15, that

1 appears -- is that also a graph prepared by MDU?

2 THE WITNESS: Yes, sir.

3 JUDGE WAHL: And, lastly, Exhibit 16 is a
4 graph that you prepared. Will you tell me, please,
5 what that graph purports to show?

6 THE WITNESS: That graph shows interest
7 rates paid by savings, checking, CDs, U.S.
8 treasuries, and the last one is the MDU request for
9 return on equity.

10 JUDGE WAHL: And these are numbers that
11 you obtained, 1 through 6, from BNC Bank in Crosby
12 as of October 29, 2010?

13 THE WITNESS: Yes, sir.

14 JUDGE WAHL: And 7 through 12 you obtained
15 from CNBC TV?

16 THE WITNESS: Yes, sir.

17 JUDGE WAHL: Is that what you saw?

18 THE WITNESS: Yes.

19 JUDGE WAHL: Is that something that's
20 displayed as a regular report?

21 THE WITNESS: I think they flash it every
22 minute or two.

23 JUDGE WAHL: So on at least -- those are
24 closing prices as of October 29 --

25 THE WITNESS: Yes, sir.

1 JUDGE WAHL: -- 2010? And number 13 is
2 from information from an MDU Resource?

3 THE WITNESS: Yes. It's actually the
4 settlement figure.

5 JUDGE WAHL: All right. Then I take it,
6 Mr. Roaché, you're offering Exhibits JR 1 through
7 JR 16 for the record as part of -- as supplemental
8 to your testimony?

9 THE WITNESS: Yes, sir.

10 JUDGE WAHL: Mr. Kuntz?

11 MR. KUNTZ: No objection.

12 JUDGE WAHL: Mr. Savelkoul?

13 MR. SAVELKOUL: No objection, Your Honor.

14 JUDGE WAHL: Mr. Skokos?

15 MR. SKOKOS: No objection.

16 JUDGE WAHL: Ms. Jeffcoat-Sacco?

17 MS. JEFFCOAT-SACCO: No objection.

18 JUDGE WAHL: Thank you, gentlemen.

19 Exhibits JR 1 through JR 16 are each received.

20 Mr. Roaché, you may proceed.

21 THE WITNESS: First, I'd like to thank the
22 Public Service Commission, staff at -- the Public
23 Service Commission staff and especially MDU. I
24 have been treated politely, cordially, with great
25 respect and professionalism by everyone, and I

1 truly appreciate it. It makes the world a good
2 place to live. And I recommend anyone that's
3 interested to become an intervenor, you'll be well
4 treated.

5 If you're looking at page 1 -- Exhibit 1,
6 I made this graph up myself and it doesn't do a
7 whole lot. I got these numbers by just looking at
8 the charts that were supplied by MDU, and what I
9 did is I took the top piece where you got near
10 maximum production and the lower section.

11 And what made me think of this is that
12 going back to my school days, I have three
13 averages, the mean, median and mode. And I believe
14 MDU uses the mean when they use their percentile
15 and they come up with 39 percent as the efficiency.

16 If you use the mode, which is the most
17 common amount, it would be zero percent. Of
18 course, more often than not it's producing no
19 energy. And compared to near maximum, it's two and
20 a half times more likely to be idle than actually
21 producing power.

22 MDU was kind enough to send me the monthly
23 reports, hourly reports per month on the
24 production. On the next page is January, which is
25 the best month that they had. But if you look

1 through, flip through them, you'll see it kind of
2 looks like a broken yo-yo, and what this fleshed
3 out to me was as to its reliability. When I look
4 at this, I see total unreliability. There's no way
5 that you can use this if this were the only source.
6 We need steady, dependable, reliable and affordable
7 electricity. And this just said to me it's not
8 dependable and it's not reliable.

9 And sometimes visually it works better.
10 For me I'm a visual person. So glancing through
11 that, that's what I found and I was just bringing
12 it to the attention of the Public Service
13 Commission.

14 Towards the back, if you look at Exhibit
15 14, again, this was supplied by MDU, it shows the
16 generation sources and, of course, the biggest one
17 being coal, purchased was next down, but way down
18 at the bottom is wind energy. It's, from what I
19 have been able to gather, about 3 percent maybe on
20 a good day.

21 What we've been discussing here is not
22 producing a whole lot of energy and it's unreliable
23 and, come to find out, it's extremely expensive.
24 From what I have been able to gather here, the cost
25 for fuel is about \$18 a ton -- a ton -- \$18 a

1 megawatt, maybe \$20 a megawatt, and it's \$96 a
2 megawatt to produce wind energy. Now, to spend \$96
3 to save \$20 to me just doesn't add up. And you
4 can't make it up with volume. It's just not
5 cost-effective for affordability.

6 And within all of the statutes I read and
7 the rules and regulations that I read, it always
8 speaks -- always speaks of reliability, everything
9 I've ever read on it, and most often talks about
10 affordability. And I see neither of that in wind.

11 And for the last chart, we're starting to
12 get into Main Street where I live. I saw the 10.75
13 percent return on equity, and I don't get anything
14 at the bank practically, so I went and got what my
15 bank said they pay. They pay .10 percent,
16 one-tenth of a percent, on savings. How do you
17 tell a guy on Main Street when he asks, well, MDU
18 gets a hundred times plus -- more than a hundred
19 times more for their money than I get for my money,
20 how do I explain it?

21 Now, I know there's other factors.
22 There's got to be return on investments, there has
23 to be consideration of shareholders, but when the
24 diversion is so great -- if you go to U.S.
25 treasuries, they get for two years -- you hold it

1 for two years and you get a third of a percent
2 return. Every day they get 10.75 percent. This is
3 a great imbalance. For getting a mortgage on your
4 home, banks are charging less than 4 and a half
5 percent. What I got was 4.35 percent. That's real
6 risk. They foreclose on houses, and yet they
7 manage to live with 4.35 percent and they have
8 risk. MDU has no risk. You guys guarantee that
9 they're going to make money. And yet another
10 company that has risk, they get 4.35 percent.

11 So these are the things you look at on
12 Main Street. I'm not an expert as we've had up
13 here before. For me this is just plain Joe Sixpack
14 stuff. You say how do you compare them? And the
15 comparisons don't match up. They're so far apart
16 you say there has to be something wrong here.

17 There were two things that truly affected
18 the people that I'm here for, and, again, I'm here
19 for the retirees, fixed-income people, live on
20 Social Security as I do, and we had no increase
21 this year, we'll get none next year, and also the
22 people that work for minimum wage and a little bit
23 more, all the people that you see every day. I
24 don't think we even see each other, but we see
25 them. It's the ones when you go cash out at the

1 convenience store and when you're in Walmart and
2 when you go pump your gas. These are the people
3 and there's a lot of us. We can only afford so
4 much.

5 As has come out, my payment on my electric
6 bill since the last rate increase hasn't increased
7 one percent. It's increased 20 percent. Without
8 adding any more on, without passing this thing,
9 we're already paying more than 20 percent, and
10 there's a reason, Big Stone II and a lot of other
11 things. But that's what we're paying. So
12 statistics don't matter. What matters is what I
13 got to write a check on. We're already paying 20
14 percent. If you add more on, it's going to really
15 hurt.

16 And people with limited income, something
17 else has to give. It gets shared. If they're
18 paying their electric bill and they need heat,
19 they'll keep the heat, but they'll do without
20 medicine. So there's a thing about base rate
21 increases. That affects the little guy more than
22 everybody else. So think about the little person.
23 Space heating. Nobody -- nobody lives in two rooms
24 and closes everything off because they're happy.
25 It doesn't make them feel good. It's out of

1 necessity. The lower costs for space heating is an
2 essential. If you take that away, how are they
3 going to afford it? They're doing it out of
4 absolute necessity now. So don't take that away.

5 The real world is a little different from
6 the world of accountants. We have to live with
7 what we've got and we have to make real adjustments
8 on 10- and \$20-a-month differences, and if you make
9 it a hundred- and \$150-a-month differences, you
10 devastate people, and that's who I'm talking about.
11 So when you're making these decisions, think of us
12 and that's what I'm here to ask for. I'm done.

13 JUDGE WAHL: Questions, Mr. Kuntz?

14 **CROSS-EXAMINATION**

15 **BY MR. KUNTZ:**

16 Q. Thank you, Mr. Roaché, and I appreciate
17 your involvement. I've just got a couple things I
18 want to explore with you. Would you turn to the
19 last page of your Exhibit 16 -- or page 16 of your
20 exhibit?

21 JUDGE WAHL: No, it's Exhibit --

22 MR. KUNTZ: Or Exhibit 16.

23 JUDGE WAHL: It's Exhibit JR 16.

24 Q. (MR. KUNTZ CONTINUING) Items 1 through 12
25 are all debt-type instruments, are they not?

1 A. Yes, sir.

2 Q. Whereas the number that you give for MDU,
3 you recognize that's a return on equity, not a debt
4 return?

5 A. Yes, sir.

6 Q. And then what's your average monthly
7 electric bill, Mr. Roaché?

8 A. We got four seasons basically. Summertime
9 I would guess it's in the neighborhood of 50 to \$70
10 without the air conditioner on. Fall, 90 now.
11 It's gone up. Wintertime, using electric heating,
12 the peak I had was 3,000 kilowatts and that was
13 about \$190.

14 Q. So do you have a -- I think you said --
15 you were telling us at one time you had
16 supplemental electric heat for your home; is that
17 correct?

18 A. We use space heating.

19 Q. And then what about your water heater, is
20 that electric?

21 A. That's propane.

22 Q. That's propane. And your air conditioner?

23 A. Electric.

24 Q. Electric. Do you have a cell phone, Mr.
25 Roaché?

1 too.

2 What do you think about programs that the
3 fellow from Steffes talked about where incentives
4 to -- ways to reduce your consumption, shaving your
5 peaks and those kind of programs where you get a
6 dishwasher that runs at night or you get a heater
7 that -- I know you may not use electric heat, but
8 what do you think about those kind of programs and
9 what do you think the role of the Commission could
10 be on those?

11 A. If it saves money, if it lowers your bill,
12 we're willing to do almost anything. That's why we
13 close off all of our houses.

14 Q. How long would you consider saving? Do
15 you think you have to save money in a year or is it
16 three years? I mean, what do you consider saving
17 money as a realistic time frame?

18 A. I'll give you an example -- a personal
19 example. Two years ago I needed to replace my
20 furnace. It's as old as the house, 50-some years
21 old. And I called MDU and I wanted -- I was hoping
22 to be able to go electric. I got propane. I found
23 out that it cost \$3,000 to get -- I only have a
24 100-amp house, and mine is one of the newer houses
25 in Crosby, and it's 50-some years old. That's what

1 we have, is a hundred amp. You need 200 amp to do
2 anything. Just like those furnaces that they were
3 talking about here, you couldn't do it with a
4 hundred-amp setup, I'm sure, because you draw too
5 much. Well, it was \$3,000 just to get it to the
6 house, and then it was another 3 to 5 thousand
7 dollars to rewire the house, and then you buy the
8 furnace. So it was a minimum of 8,000, it could go
9 10, 12, 15 thousand dollars to get an electric
10 furnace. I could never recoup it.

11 Q. Sure. Okay. What about the -- at the
12 federal tax level, and I'm not sure about the state
13 for sure, but the programs were if you insulate
14 your home, you can deduct a certain percentage of
15 that. Have you ever considered doing those kind of
16 programs?

17 A. Yeah. Well, I did my own and I did do my
18 own when I first moved here.

19 Q. Okay.

20 A. Those things are used, and I have seen it
21 done in Crosby. In fact, there's usually a waiting
22 list when they are available, and as money becomes
23 available, the people that are eligible have it
24 done. So it's taken advantage of when they're
25 available and people know about it.

1 Q. Okay. I guess the last theme, what do you
2 think about -- you know, I, personally, think a
3 balanced energy approach is good, meaning all types
4 of sources. It's the cost thing that I struggle
5 with. But when you sit back and think of the uses
6 of wind or natural gas or coal, I mean, are you
7 always going to be for the short-term, lowest cost
8 or back to that costing-out thing, what do you
9 think the role of wind and other sources might be?

10 A. I would love to have everything renewable
11 and perfect air. North Dakota has got pristine air
12 and it's wonderful to live here because of it. No
13 one wants to pollute. The question is, number one,
14 is it affordable and is it reliable, and I don't
15 see the reliability. Well, let me put it a
16 different way. Wind energy doesn't work. The
17 unreliability of it makes it only a marginally
18 supplemental source. So until we find another
19 technology or a technology that makes this thing
20 work, I don't think it's applicable ever for any
21 reason the way we need electricity.

22 So when it comes to how do we use wind, I
23 don't think we can actually use it in the sense
24 that it's a reliable source for the way we need
25 electricity 24 hours a day, seven days a week. It

1 could be put on the margin as this is being done,
2 but then the question is, is it worth a hundred
3 million dollars. You know, this is what we're
4 debating, but affordability -- affordability, if
5 you're broke, it's the only thing that counts.

6 COMMISSIONER KALK: Fair enough. Thank
7 you, sir. Travel safe.

8 JUDGE WAHL: Commissioner Cramer.

9 COMMISSIONER CRAMER: Just thanks, Jim,
10 for being an activist and I appreciate your
11 demeanor a great deal and you don't have me fooled
12 a bit. You're a lot smarter than most common
13 people, but it's very good to have you on their
14 team.

15 THE WITNESS: Thank you.

16 COMMISSIONER CRAMER: Thank you.

17 JUDGE WAHL: Followup, Mr. Kuntz?

18 MR. KUNTZ: None.

19 JUDGE WAHL: Mr. Savelkoul?

20 MR. SAVELKOUL: Nothing.

21 JUDGE WAHL: Mr. Skokos?

22 MR. SKOKOS: I have one.

23 JUDGE WAHL: Yeah, one only because I know
24 where you're going.

25 MR. SKOKOS: I can just not ask it. I

1 know what his answer is.

2 JUDGE WAHL: Well, you could just agree to
3 disagree.

4 MR. SKOKOS: I'll just agree to disagree.

5 JUDGE WAHL: All right. Ms.
6 Jeffcoat-Sacco?

7 **CROSS-EXAMINATION**

8 **BY MS. JEFFCOAT-SACCO:**

9 Q. Mr. Roaché, I should have asked this the
10 last time around, but Pat and I were just
11 double-checking it. The proposal for rate design
12 that the company proposed and the staff agrees to
13 includes a customer charge -- a basic customer
14 charge increase, a fairly substantial one,
15 recovering more in the base price as opposed to in
16 the kilowatt-hour price. Do you have an opinion on
17 that change?

18 A. You know, it's the overall cost for --
19 what is it -- Schedule 10 or Rate 10 or however
20 it's put. It's the residential cost. When you
21 raise the base rate for the little user, it's going
22 to hurt the most because what you've done is
23 basically doubled the base rate. And for the
24 person that's using minimal amounts of electricity,
25 that's the one it's going to hurt the most, and

1 most of the time that's the one that can least
2 afford it.

3 So, you know, we talk about social factors
4 and MDU spoke about social factors. When we're
5 talking about the low-income people and the
6 retirees, they're our people and they're the ones
7 we need to protect. Can the rest of us pay 50
8 cents a month more and not feel it? Yeah. How
9 about them? They can't pay \$5 a month more.
10 There's the difference. So I ask for -- the bill
11 has got to be paid by somebody, you know. MDU
12 needs to have sufficient income to run a good
13 business. We need a good, strong electric company.
14 Nobody is denying that. I'm for them in many
15 cases. But how do we share that load? And my
16 thing is that think about the little guy and who's
17 going to be most affected.

18 When the staff first proposed their first
19 proposal, they spoke about, well, let's do away
20 with the space heating as a conservation method
21 because it encourages use, which MDU had wanted to
22 do in order to balance the load for the wintertime
23 compared to the summer for peak load. But then
24 when I raised the issue about the space heating and
25 how important it is for the elderly, they had never

1 thought of it.

2 You folks don't live in that world. You
3 know, if you're living middle class, you don't see
4 it and you don't think about it, but when you find
5 out -- when you heard how meaningful it was, they
6 dropped it. They said, okay, yeah, we agree. So
7 that's the world that I'm trying to bring here.
8 For us that's extremely important. For me it would
9 have been a \$150-a-month rate increase for my
10 highest paid month and that would be -- that's two
11 medicines, maybe three. That's the way we balance
12 things, how much is this going to cost, do I do
13 away with this to have this. And when you've got
14 to make those kinds of choices, it matters.

15 JUDGE WAHL: Any further questions?

16 MS. JEFFCOAT-SACCO: No. Thanks.

17 JUDGE WAHL: Followup by the Commission?
18 Followup, Mr. Kuntz?

19 MR. KUNTZ: No.

20 JUDGE WAHL: Mr. Savelkoul?

21 MR. SAVELKOUL: No.

22 JUDGE WAHL: Mr. Skokos?

23 MR. SKOKOS: No.

24 JUDGE WAHL: All right. Mr. Roaché,
25 you're on your way. Have a safe trip, be careful.

1 THE WITNESS: Thank you.

2 JUDGE WAHL: All right. I don't have
3 anything further except what, 8:30 on Friday. 8:30
4 it is then. 8:30 Friday. Before those of you --
5 Mr. Kuntz, you're going to be okay, you're here,
6 but, Mr. Savelkoul, let's talk about -- give me
7 some phone numbers, and so on, so I'm all set or do
8 that by e-mail, but I would just as soon you do it
9 before you leave.

10 MR. SAVELKOUL: I would be happy to.

11 JUDGE WAHL: Is there anything else that
12 needs to be taken care of for the hearing -- to
13 resume the hearing Friday morning at 8:30.
14 Anything else?

15 MR. FAHN: I do want to mention the
16 Commission's special meeting.

17 JUDGE WAHL: No. We have that in mind.
18 Anything else? All right. We will be in recess
19 until 8:30 Friday morning.

20 (Recessed at 4:18 p.m., November 10,
21 2010.)

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