

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Northern States Power Company :
2013 Electric Rate Increase : Case No. PU-12-813
Application :

TRANSCRIPT OF
HEARING

VOLUME III

Taken At
State Capitol
Bismarck, North Dakota
August 27, 28 & 29, 2013

BEFORE THE HON. BONNY M. FETCH
-- ADMINISTRATIVE LAW JUDGE --

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1 (The proceedings continued, commencing at
 2 8:37 a.m., Thursday, the 29th day of August, 2013,
 3 as follows:)
 4 JUDGE FETCH: Good morning, everyone.
 5 COMMISSIONER KALK: Good morning, Your
 6 Honor.
 7 JUDGE FETCH: For the record, today is
 8 August 29th, 2013, and this is the third day of
 9 hearing in this matter, and this is a rate
 10 application from Northern States Power.
 11 My name is Bonny Fetch. I'm the
 12 administrative law judge. And present are the
 13 three Commissioners, Commissioner Julie Fedorchak,
 14 who holds the portfolio in this matter;
 15 Commissioner Chairman Brian Kalk, and Commissioner
 16 Randy Christmann.
 17 And as of yesterday we concluded the case
 18 for NSP and today we will move to the advocacy
 19 staff case. Before we call the first witness,
 20 though, I'll ask counsel whether there are any
 21 preliminary matters we need to take care of this
 22 morning.
 23 MR. JOHNSON: None that I'm aware of, Your
 24 Honor.
 25 JUDGE FETCH: Thank you, Mr. Johnson.

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1 MR. NORRELL: None that I'm aware of, Your
 2 Honor.
 3 JUDGE FETCH: All right. Thank you, Mr.
 4 Norrell. Ms. Jeffcoat-Sacco?
 5 MS. JEFFCOAT-SACCO: Nothing for me.
 6 Thank you.
 7 JUDGE FETCH: All right. Then if we're
 8 ready to proceed, I will call on Mr. Norrell for
 9 presentation of the staff advocacy case.
 10 Have you prepared an opening statement
 11 that you wish to give, Mr. Norrell, or do you want
 12 to waive?
 13 MR. NORRELL: Your Honor, advocacy staff
 14 would respectfully waive any opening statement at
 15 this point and we look forward to a vigorous
 16 discussion of our side of the case.
 17 JUDGE FETCH: All right. And how are you
 18 proceeding? Did you have prepared witness
 19 statements or --
 20 MR. NORRELL: Yes, Your Honor, we do have
 21 a couple prepared witness statements. We would
 22 like to call Mr. Mike Majoros first and I would
 23 like to hand out his statement too.
 24 JUDGE FETCH: Please do. Okay. Mr.
 25 Majoros, I think you were present yesterday and

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1 heard -- he's already got his hand in the air. All
 2 right.
 3 (Witness sworn.)
 4 JUDGE FETCH: All right. Thank you.
 5 And by stipulation this exhibit, as soon
 6 as I see how it's numbered, will be admitted into
 7 the record.
 8 MR. NORRELL: It will be number 16.
 9 JUDGE FETCH: All right. This is PSC
 10 Exhibit 16.
 11 All right. Mr. Norrell.
 12 MR. NORRELL: Thank you, Your Honor.
 13 I would like to note that Mr. Majoros will
 14 be -- we admitted all the PSC exhibits, 1 through
 15 7, on first day; is that correct?
 16 JUDGE FETCH: Yes, we did.
 17 MR. NORRELL: So Mr. Majoros will be
 18 testifying to PSC Exhibits 1 and 2.
 19 **MICHAEL J. MAJOROS, JR.,**
 20 being first duly sworn, was examined and testified
 21 as follows:
 22 **DIRECT EXAMINATION**
 23 **BY MR. NORRELL:**
 24 **Q.** And with that, Mr. Majoros, if you would
 25 like to make your opening statement.

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1 **A. Yes. My name is Michael J. Majoros, Jr.**
 2 **I'm the advocacy staff's witness on depreciation.**
 3 **I have testified before this Commission on several**
 4 **occasions, the last time in Case No. PU-07-776. I**
 5 **was staff's revenue requirement witness in that**
 6 **case which included a discussion of depreciation.**
 7 **Depreciation was one of the primary issues in Case**
 8 **No. PU-07-776.**
 9 **The thrust of my direct and supplemental**
 10 **testimony in this case is to obtain the**
 11 **transparency and accountability North Dakota**
 12 **ratepayers deserve regarding the cash flow they**
 13 **provide to the company through depreciation**
 14 **charges.**
 15 **Depreciation is a ratemaking mechanism**
 16 **used to transfer cash from ratepayers to a utility**
 17 **to pay for the investment it made in property plant**
 18 **and equipment. Depreciation is an after-the-fact**
 19 **return of capital, accomplished using a constant**
 20 **depreciation rate over the life of the property**
 21 **plant and equipment.**
 22 **When a utility includes depreciation in**
 23 **its revenue requirement, it provides cash flow to**
 24 **the utility, since there is -- since it is a**
 25 **noncash expense, i.e., it is a return of a previous**

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1 expenditure. The higher the depreciation rate, the
 2 greater the cash flow. Yesterday Mr. Tyson
 3 discussed investor expectations. He explained that
 4 cash flow is an important factor to investors since
 5 the greater the cash flow, the less the future
 6 dilution of stock prices.

7 I have prepared an example to show the
 8 difference between the company's accrual basis
 9 return, which Ms. Heuer discussed, and its cash
 10 basis rates of return for 2011 and '12. The cash
 11 basis rates of return far exceed the accrual basis
 12 returns, and depreciation is one of the primary
 13 contributors to this cash flow.

14 Getting back to depreciation rates,
 15 somewhere along the line, utilities were successful
 16 in increasing depreciation rates to account for
 17 future cost of removal on the grounds of
 18 intergenerational equity. That is, current
 19 ratepayers should pay more to protect future
 20 ratepayers from overpaying.

21 As a result, depreciation rates were
 22 increased to account for future costs and then
 23 increased again using inflated future costs, thus
 24 increasing the cash transfer from ratepayers to the
 25 utility.

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1 In 2002, the professional accounting
 2 community and the Securities & Exchange Commission
 3 expressed their displeasure with this practice.
 4 Normal companies are not allowed to include future
 5 cost estimates in current depreciation rates,
 6 inflated or otherwise. The professional
 7 accountants determined that it was folly to charge
 8 current periods for future costs that would not be
 9 incurred. Thus, if a company has a legal
 10 obligation to incur a future removal cost, it is
 11 required to capitalize that cost at its present
 12 value and charge it to expense over the life of the
 13 asset, just as any other expenditure.

14 Not only did the professional accounting
 15 community reaffirm that normal businesses were not
 16 allowed to include future cost estimates in current
 17 depreciation rates, it demonstrated its disdain for
 18 the practice by requiring regulated utilities to
 19 report the excess nonlegal collections as
 20 regulatory liabilities; specifically, as amounts
 21 owed to ratepayers if they were not spent on their
 22 intended purpose.

23 As a result of these GAAP changes, the
 24 company has reported a \$432 million regulatory
 25 liability in its 2012 Form 10-K and its annual

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1 report to its shareholders. This company owes its
 2 ratepayers 432 million for cash it has collected
 3 for cost of removal that it has not incurred. That
 4 is, 432 million over and above the actual money it
 5 has spent for cost of removal. The excess 432
 6 million is not in a bank account somewhere as is
 7 the case with the nuclear fund. Instead, it went
 8 somewhere else, and we don't know where. It is
 9 part of the cash flow embedded in ratemaking
 10 service rates as I explained earlier.

11 The only thing North Dakota ratepayers
 12 have by way of transparency and accountability is
 13 that regulatory liability reported in GAAP
 14 financial statements, but not in reports to this
 15 Commission.

16 In Case No. PU-07-776, the staff and the
 17 company reached an agreement which staff thought
 18 would provide such accountability and transparency.
 19 We believe the company has failed to comply with
 20 the Case No. 07-776 stipulation.

21 So, again, the primary thrust of my
 22 testimony is to obtain, by Commission recognition
 23 and order, the transparency and accountability that
 24 North Dakota ratepayers deserve regarding the
 25 additional free cash flow they have provided to the

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1 company for unincurred.

2 Ms. Perkett's testimony concerns me as she
 3 asserts the company reports the 432 million
 4 regulatory liability in its GAAP financial
 5 statements as a result of the settlement in Case
 6 No. PU-07-776. That is not true. The company
 7 reports the \$432 million regulatory liability in
 8 its GAAP financial statements because the
 9 professional accounting community and the SEC
 10 recognize that the company owes that money back to
 11 its ratepayers. It has nothing to do with net
 12 versus gross plant.

13 So my bottom line is given these facts,
 14 the least North Dakota ratepayers should be able to
 15 expect is that the company identify the rates and
 16 the amounts involved and properly report its
 17 regulatory liability to this Commission for further
 18 scrutiny.

19 JUDGE FETCH: Go ahead, Mr. Norrell.
 20 MR. NORRELL: Thank you, Your Honor. The
 21 witness is available for cross-examination.
 22 JUDGE FETCH: All right. Thank you. And,
 23 Ms. Valley, are you or Mr. Johnson?
 24 MR. JOHNSON: I will.
 25 JUDGE FETCH: Mr. Johnson. All right.

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1 Mr. Johnson, please proceed.
 2 MR. JOHNSON: Thank you, Your Honor.
 3 **CROSS-EXAMINATION**
 4 **BY MR. JOHNSON:**
 5 **Q.** Good morning, Mr. Majoros.
 6 **A.** Good morning.
 7 **Q.** We're going to have some questions here
 8 this morning, and whenever possible, I'm going to
 9 try to address my question to a specific reference
 10 point in your testimony so we talk about the same
 11 thing at the same time.
 12 Looking at your opening statement, you
 13 characterize the bottom line as being looking for
 14 transparency and accountability, I believe. Does
 15 that mean that you are no longer recommending that
 16 depreciation rates be limited to legal AROs, the
 17 retirement portion?
 18 **A.** No.
 19 **Q.** So you're still staying with that
 20 position?
 21 **A.** That's right.
 22 **Q.** Thank you.
 23 **A.** And I said my bottom line is, but I also
 24 said twice earlier that the primary thrust of my
 25 testimony was accountability and transparency.

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1 **Q.** Thank you. Directing your attention to
 2 page 12, line 28 of your testimony, you make a
 3 statement that the ratepayers should not be
 4 required to pay the company more than it expects to
 5 spend upon removal of its assets from service. Is
 6 there an inference there that ratepayers should pay
 7 what the company expects to spend when it retires
 8 assets?
 9 **A.** The inference is that the ratepayers
 10 should pay what the company spends in the provision
 11 of public utility service.
 12 **Q.** So you would agree that the ratepayers do
 13 need to pay for what the utility spends?
 14 **A.** Yes.
 15 **Q.** Okay. On page 12, lines 21 and 22, you
 16 comment that the company includes the cost of
 17 demolition of production facilities in depreciation
 18 rates, but it's not required to demolish the
 19 production facilities. Do you see that?
 20 **A.** Yes.
 21 **Q.** Should the company as a matter of utility
 22 practice demolish and remove its facilities or
 23 should it leave them abandoned in place when
 24 they're retired?
 25 **A.** It should do what it is required to do.

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1 **It should not do something that is not economically**
 2 **justified. If it's not required to demolish a**
 3 **plant, it shouldn't demolish a plant, at least and**
 4 **charge that cost to repairs. If you choose to**
 5 **demolish a plant as a matter of good faith, then**
 6 **you should charge that to your ratepayers -- I**
 7 **mean, shareholders.**
 8 **Q.** Let's shift to distribution and
 9 transmission facilities and I want to give you a
 10 specific situation to think about. As a matter of
 11 public policy, should the company be required to
 12 remove distribution and transmission lines and
 13 poles in North Dakota, or should the company simply
 14 leave them in place when they're retired and
 15 abandon them?
 16 **A.** I think that your obligation should be to
 17 provide service. If that requires replacement of a
 18 transmission or distribution pole, you should
 19 replace that pole, that's what you do, and the way
 20 it works is that -- and Ms. Perkett confirms this
 21 in her rebuttal testimony, that your planning
 22 department prepares an estimate for the total
 23 project cost of replacing a pole. A portion of
 24 that total project cost -- or that total project
 25 cost includes removing the old pole. That is the

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1 expenditure. That is what goes into the capital
 2 budget.
 3 **After the fact, the accountants take that**
 4 **original expenditure and allocate, according to Ms.**
 5 **Perkett, 10 percent of that expenditure to cost of**
 6 **removal. That allocation goes into accumulated**
 7 **depreciation as cost of removal. The company then**
 8 **-- this company, and most, takes that cost of**
 9 **removal in today's dollars and divides it by the**
 10 **original cost of the old pole, which may be 50**
 11 **years old, and that's different dollars. The**
 12 **result is an inflated cost of removal ratio. That**
 13 **is the ratio that the company seeks to use in this**
 14 **case to recover cost of removal, and that is the**
 15 **ratio that resulted in the \$432 million regulatory**
 16 **liability to ratepayers.**
 17 **Q.** So somewhere in there did you agree that
 18 the company should recover the cost of removing
 19 that?
 20 **A.** I think you should recover the cost of the
 21 replacement.
 22 **Q.** Should they recover the cost of removal,
 23 sir?
 24 **A.** They should recover the cost of the
 25 replacement, then -- the cost of the replacement

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1 **includes the removal.**
 2 **Q.** So they should recover the cost of
 3 removal?
 4 **A.** **They should recover the removal.**
 5 **Q.** Thank you.
 6 **A.** **Which includes the --**
 7 JUDGE FETCH: Wait for another question,
 8 please.
 9 **Q.** (MR. JOHNSON CONTINUING) Now, let's
 10 assume that we agree, and I think we do, that the
 11 company should recover the cost of removal. Which
 12 ratepayers should pay for that, the ratepayers that
 13 use the poles that are being replaced and removed
 14 or future ratepayers that did not use them?
 15 **A.** **The ratepayers should pay for the cost of**
 16 **the replacement. And my affirmation of that fact**
 17 **and that requirement in the FERC USOA that you use**
 18 **is in paragraph 32 instruction -- general**
 19 **instruction number 32 which says that a replacement**
 20 **includes the cost of the new pole and removal of**
 21 **the old pole. That is the cost of the replacement**
 22 **and that is how it is defined.**
 23 **Q.** Which ratepayers should pay for that, sir,
 24 current ratepayers that are using the facilities or
 25 future ratepayers that aren't?

1 **A.** **I don't see that statement on this page.**
 2 **Q.** Why don't you take a look at lines --
 3 excuse me -- lines 14 through 18. Why don't you
 4 read that sentence and you tell me what that means.
 5 **A.** **"I also recommend that the company be**
 6 **ordered to modify its FERC Form 1 language to state**
 7 **that North Dakota's share of the nonlegal ARO**
 8 **embedded in accumulated depreciation has been**
 9 **recognized as a regulatory liability."**
 10 **Q.** I infer from that that you agree that
 11 nonlegal AROs are reflected in accumulated
 12 depreciation; is that correct?
 13 **A.** **On the regulated books, yes.**
 14 **Q.** Thank you. If that is the case, do you
 15 agree that the North Dakota rate base has been
 16 removed by the nonlegal ARO costs?
 17 **A.** **Removed?**
 18 **Q.** Reduced, I should say. Let me rephrase
 19 the question.
 20 If we agree that it is included in
 21 accumulated depreciation, do you agree with me that
 22 the rate base in North Dakota has been reduced by
 23 the amount of nonlegal AROs that the company has
 24 collected?
 25 **A.** **Yes.**

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1 **A.** **The people that should pay for that**
 2 **expenditure are the people that use the pole, get**
 3 **service from the pole.**
 4 **Q.** That would be the current ratepayers?
 5 **A.** **No. You're replacing a pole.**
 6 **Q.** The pole that's being replaced is a pole
 7 that's now being used; correct?
 8 **A.** **I'm saying that the cost of that**
 9 **replacement is in the price of the expenditure, and**
 10 **the people that should pay for that expenditure are**
 11 **the people that get service from that expenditure.**
 12 **Q.** And those are current ratepayers, aren't
 13 they?
 14 **A.** **No. Well, if you made a replacement last**
 15 **year, a part of -- that total cost of that**
 16 **replacement would be charged to ratepayers this**
 17 **year, a pro rata share over the life of that asset.**
 18 **Q.** Over the life of the asset?
 19 **A.** **Yes.**
 20 **Q.** Thank you. I believe you agree with me
 21 that all of the costs of removal that the company
 22 has included in its depreciation rates are included
 23 in its depreciation reserve account; is that
 24 correct? I'll direct you to page 21 of your
 25 testimony, lines 16 and 17.

1 **Q.** On page 19 of your testimony, and I'm just
 2 going to give you a series of references so we get
 3 grounded here, lines 7 through 9, you indicate that
 4 the company has not recognized its recovery of
 5 nonlegal AROs as a regulatory liability. Do you
 6 see that statement?
 7 **A.** **Yes.**
 8 **Q.** Then at page 19, line 21, you say the
 9 company denies the regulatory liability in its FERC
 10 Form 1. And on page 20, you again -- line 1, you
 11 again assert that the company denies the existence
 12 of the nonlegal AROs in its regulatory and
 13 ratemaking financial statements.
 14 **A.** **Yeah. Yes, sir.**
 15 **Q.** Is it correct that FERC Form 1 does not
 16 have a separate category for nonlegal AROs?
 17 **A.** **FERC Form 1 has a separate category for**
 18 **regulatory liabilities.**
 19 **Q.** Right.
 20 **A.** **And that's what we're talking about here.**
 21 **Q.** So your grievance is that the FERC Form 1
 22 does not reflect nonlegal AROs -- let me rephrase
 23 that.
 24 Your grievance is that the FERC Form 1
 25 allows nonlegal AROs to be reflected in accumulated

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1 depreciation?

2 **A. That is one of them. That's one of my**

3 **grievances, yes.**

4 **Q.** And your grievance is with FERC on that

5 point?

6 **A. Well, my grievance is with FERC and my**

7 **grievance is with the company who said they were**

8 **going to recognize it as a regulatory liability in**

9 **the stipulation in PU-07-776.**

10 **Q.** Does "recognize" to you mean specifically

11 disclose? That's what it appears to be.

12 **A. Yes.**

13 **Q.** So it's not enough that it is reflected

14 appropriately in the cost of service, it should be

15 separately line item identified?

16 **A. Yes. And I would like to explain that**

17 **answer. When this company requests that a**

18 **regulatory asset be included in its revenue**

19 **requirement, under FAS number 71 and whatever the**

20 **newest number is of that, it requires the company**

21 **to seek your recognition of that regulatory asset,**

22 **your specific recognition before it would be**

23 **allowed to include that regulatory asset in its**

24 **revenue requirement. All I'm saying is you owe it**

25 **to ratepayers to give the same recognition to that**

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1 **regulatory liability.**

2 **Q.** Isn't that what's happened in this

3 proceeding, sir?

4 **A. No.**

5 **Q.** We have spent an awful lot of attention

6 talking about legal and nonlegal AROs. Could the

7 Commission be better informed than it is now?

8 **A. I don't know. Hope so. I'm trying to**

9 **inform them right now.**

10 **Q.** Now, on a number of places you have

11 indicated your belief, at least I think you have,

12 that the amount of nonlegal AROs that the company

13 has collected, I guess for lack of a better phrase,

14 is \$432 million.

15 **A. Yes.**

16 **Q.** It's in your opening statement and

17 throughout your testimony. Would you accept as a

18 correction that the real amount of nonlegal AROs

19 that is included in the regulatory liability is

20 \$377 million?

21 **A. Not without seeing the proof.**

22 **Q.** Fair enough.

23 MR. JOHNSON: Your Honor, may I have an

24 exhibit marked and then approach the witness?

25 JUDGE FETCH: Yes, you may. The next

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1 exhibit number for NSP would be 34, so I am

2 labeling this NSP Exhibit 34.

3 MR. JOHNSON: Thank you, Your Honor.

4 **Q.** (MR. JOHNSON CONTINUING) Mr. Majoros, I'd

5 like to direct your attention to NSP Exhibit 34 and

6 have you take a look at that for a few moments.

7 **A. Yes.**

8 **Q.** Does this appear to be an excerpt from the

9 company's 2012 Form 10-K which you've discussed?

10 **A. Yes.**

11 JUDGE FETCH: Are you asking to have this

12 admitted at this time, Mr. Johnson?

13 MR. JOHNSON: I am, Your Honor.

14 JUDGE FETCH: Mr. Norrell, you have a copy

15 of the exhibit. Do you have any objections?

16 MR. NORRELL: No, Your Honor.

17 JUDGE FETCH: Thank you. NSP Exhibit 34

18 is admitted.

19 Please proceed, Mr. Johnson.

20 MR. JOHNSON: Thank you, Your Honor.

21 **Q.** (MR. JOHNSON CONTINUING) Mr. Majoros, I

22 would like to direct your attention to the last

23 page of that excerpt, which is page 85 -- it's

24 marked page 85, I should say, and if you look at

25 the table at the top of the page, you see a

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1 notation total regulatory liabilities and a number

2 \$432,471,000, second column from the left. Do you

3 see that?

4 **A. That's correct.**

5 **Q.** And if you go up to the top of that row --

6 column, I should say, you see plant removal costs

7 of \$377 million?

8 **A. Yes, I do.**

9 **Q.** And would that correspond to the nonlegal

10 AROs?

11 **A. Yes.**

12 **Q.** So the 432 includes \$377 million of

13 nonlegal AROs and several other regulatory

14 liabilities, as well?

15 **A. That's correct. I stand corrected.**

16 **Q.** Now, on -- let's see. Bear with me for a

17 moment, please. On page 16 of your direct

18 testimony you rely on the size of the regulatory

19 liability to demonstrate that there's a huge amount

20 of inflation included. Do you see that passage?

21 Lines 15 through 18 if I did not give you the

22 reference.

23 **A. I see that, and I said that earlier.**

24 **Q.** Yes. So we should substitute 377 million

25 for the 432 per our earlier discussion?

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1 **A. Yes.**

2 **Q.** But even with that substitution, a number

3 is only significant in relation to another number;

4 would you not agree with me? Or you can't tell

5 anything from a single number standing by itself,

6 you don't know what it relates to; is that a fair

7 characterization?

8 **A. Not in my opinion. I don't even**

9 **understand the question.**

10 **Q.** Let me rephrase it then. The \$377 million

11 of nonlegal AROs that we're now referring to here

12 relates to a little over \$2 billion of underlying

13 assets, does it not?

14 **A. It relates to \$377 million of cash that**

15 **you have collected from your ratepayers to pay for**

16 **a cost you have not incurred.**

17 **Q.** Mr. Majoros, what plant accounts give rise

18 to the nonlegal AROs?

19 **A. What plant accounts give rise to it?**

20 **Q.** Yes.

21 **A. All plant accounts where you've used**

22 **negative net salvage to calculate a depreciation.**

23 **Q.** Would you agree with me or accept that the

24 company's transmission and distribution assets to

25 which these numbers relate is a little over \$2

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1 billion in total?

2 **A. I don't have that in front of me.**

3 **Q.** Do you have any basis to dispute that?

4 **A. No.**

5 **Q.** So that would be a little bit under 20

6 percent, assuming those numbers are correct?

7 **A. 20 percent?**

8 **Q.** \$377 million is a little under 27 -- 20

9 percent of 2 billion, is it not?

10 **A. A little, yes.**

11 **Q.** Thank you. On page 10 of your testimony,

12 lines 2 through 16, you have a discussion of a

13 portion of the 2007 settlement and you make some

14 comments with respect to whether the company did or

15 did not comply with that portion of the settlement.

16 Do you see that?

17 **A. Yes.**

18 **Q.** Is it correct that the settlement pertains

19 to the company's next electric rate case? I'm

20 looking at lines 4 and 5.

21 **A. Yes.**

22 **Q.** And this is not the company's next

23 electric rate case, is it?

24 **A. No.**

25 **Q.** And on lines 5 and 6, the company's

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1 obligation was to report to the Commission on, and

2 I quote, whether it intends to propose North Dakota

3 specific depreciable lives?

4 **A. Yes.**

5 **Q.** There was no obligation for the company to

6 in fact adopt those in this principle, was there?

7 **A. Not based strictly on this principle in**

8 **form. In substance I think it does.**

9 **Q.** Now, in your supplemental direct testimony

10 you withdraw or correct the reference to a

11 five-year average and you justify that change on

12 the basis of what you characterize as the

13 company's, quote, arbitrary accounting change to

14 surrogate numbers. Do you recall having testified

15 to that effect?

16 **A. Yes.**

17 **Q.** Is it not correct that the numbers that

18 the company proposed were the result of a North

19 Dakota-specific depreciation study that it

20 submitted in this proceeding?

21 **A. You know, I don't know if those net**

22 **salvage studies were North Dakota specific or**

23 **systemwide. They may have been. They did indeed**

24 **-- the company did indeed propose specific North**

25 **Dakota distribution depreciation rates.**

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1 MR. JOHNSON: That's all I have. Thank

2 you. Thank you, Your Honor.

3 JUDGE FETCH: All right. Thank you.

4 Ms. Jeffcoat-Sacco, do you have any

5 questions?

6 **EXAMINATION**

7 **BY MS. JEFFCOAT-SACCO:**

8 **Q.** I was wondering if you could just kind of

9 summarize how -- I got the impression from your

10 overview today, your summary today, that many, many

11 utilities are handling the issue as NSP, but I

12 wondered if you could give me a breakdown, you

13 know, of jurisdiction how are the other commissions

14 -- have the other utilities in other jurisdictions

15 allowed or not allowed?

16 **A. Delaware, not allowed. In D.C., not**

17 **allowed. In Maryland, not allowed. In Georgia, I**

18 **think not allowed. In New Jersey, not allowed. In**

19 **Pennsylvania, not allowed.**

20 **Q.** Do you have access to a list of all of

21 them? I mean just out of curiosity.

22 **A. I have access to the ones I'm aware of.**

23 MS. JEFFCOAT-SACCO: That's all I have.

24 Thank you.

25 JUDGE FETCH: Mr. Norrell, did you have

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1 questions?

2 MR. NORRELL: No.

3 JUDGE FETCH: All right. We'll go to the

4 Commission. Commissioner Fedorchak.

5 **EXAMINATION**

6 **BY COMMISSIONER FEDORCHAK:**

7 **Q.** Mr. Majoros, can you depreciate an asset

8 greater than its value?

9 **A.** You're not supposed to, but the way the

10 company proposes doing it, including future costs

11 in depreciation rates results, if you assume a

12 single asset, at the end of that asset's life

13 accumulated depreciation exceeds the plant value,

14 and that is one of the factors that the

15 professional accounting profession mentioned as

16 being problematic with this approach when it wrote

17 SFAS number 143, which defined asset retirement

18 obligations.

19 **Q.** So can you use a real simple example of a

20 real product that they might be depreciating, how

21 it works on their books. Like say a pole cost a

22 thousand dollars. Just walk through that and how

23 they are depreciating and resulting in this

24 inflated ratio that you're referring to.

25 **A.** Okay.

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1 **Q.** Sorry.

2 **A.** Oh, no, no, no.

3 **Q.** I'm not an accountant.

4 **A.** That's fine. I'm going to scribble all

5 over my example here. So a thousand-dollar pole,

6 that's the example, and we're going to put a

7 thousand-dollar pole in service today. Now, this

8 company's -- this is distribution. This company's

9 distribution additions are largely driven by

10 replacements; in other words, there's already an

11 old pole there that's rotten. Ms. Perkett talked

12 about that old pole the other day. So let's assume

13 the old pole was put in service 50 years ago and

14 cost \$100.

15 What happens is the company does an

16 estimate of what it costs to replace the old pole,

17 and that cost is a thousand dollars in your

18 example. So it puts the thousand dollars into

19 plant and then it allocates 10 percent, according

20 to Ms. Perkett, to cost of removal. So what's left

21 in plant now is \$900 and a negative accumulated

22 depreciation of \$100. That's the allocated cost of

23 removal.

24 The next thing the company does -- now,

25 let's say the pole has a 10-year life. In total

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1 **the company has to recover a thousand dollars, so**

2 **that would be a hundred dollars a year for the**

3 **total pole and replacement of the old one.**

4 **Q.** Where is the removal cost?

5 **A.** You look like I've lost you.

6 **Q.** No. I'm just wondering where the removal

7 cost is in.

8 **A.** It's in the thousand dollars.

9 **Q.** I thought that was the cost of the pole.

10 **A.** That is the cost of the pole. And that

11 cost, the way they do their budgeting, includes

12 removal of the old pole.

13 **Q.** So the pole maybe cost \$900 and they've

14 added a hundred dollars for the removal?

15 **A.** Right.

16 **Q.** Is that what they do?

17 **A.** I don't think they add a hundred dollars.

18 I think they say we're going to spend \$1,000 on a

19 new pole and that expenditure includes getting the

20 old pole out of there. It's \$1,000 for the total

21 pole job. That's the way this company does it.

22 That's the way all companies do it -- all

23 utilities.

24 **Q.** Okay.

25 **A.** So the cost of removal is a part of that

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1 1,000, and they should get \$100 a year for 10

2 years, which adds up to \$1,000. But, remember,

3 they allocated \$100 to cost of removal. The next

4 thing they do -- the next thing they do is relate

5 that negative \$100 to the original cost of the

6 original pole, which was \$100. So that ratio is a

7 negative 100 percent. That is a negative net

8 salvage ratio, which they apply on top of the

9 original cost of the pole -- this pole and wind up

10 recovering twice the amount of the \$1,000

11 expenditure because of the inflation manifested --

12 or which occurred between the placement of the

13 original pole and the current cost. That ratio is

14 what they call, or what everybody calls, nonlegal

15 ARO. The difference in money is nonlegal AROs,

16 they collect it, and then the professional

17 accounting community recognizes this problematic

18 problem and requires them to report it as an

19 obligation back to ratepayers if they don't incur,

20 you know, the additional thousand dollars. And

21 that's what is in the now 377 million regulatory

22 liability that this company recognizes in its GAAP

23 financial statements. But I might add, they do not

24 want it recognized for regulatory purposes. That

25 is a loaded term, "recognized," as the gentleman

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1 said.

2 Q. All right. That leads me then to my next
3 question, which is, are you suggesting that this is
4 just a matter of reporting this to us, or are you
5 suggesting that we not recognize these costs and
6 then they will need a smaller -- their revenue
7 requirement will go down?

8 A. Well, the actual cost of removal for this
9 pole when it is retired in 10 years, if they have
10 an obligation to do anything with it as a result of
11 environmental rules or something like that, the
12 present value of that cost is included in the legal
13 ARO, which they do record and they do report in
14 their Form 1. And I'm suggesting that at least on
15 a going-forward basis that that is what we use to
16 estimate future cost of removal. But I'm saying
17 I'm not proposing any huge reductions to
18 depreciation expense in this case. I'm asking for
19 transparency and accountability relating to what
20 they've already done, and then on a going-forward
21 basis, once they start reporting this, it should be
22 easier for staff and this Commission to look at
23 what is truly going on.

24 Earlier we talked about cash flow.

25 Q. Mm-hmm.

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1 A. It's a fair expenditure.

2 Q. It is. It allows staff to bring in --

3 A. It should be allowed.

4 Q. I think it is actually. But, anyway,
5 thank you for coming out here.

6 A. Thank you.

7 Q. And thank you all for your patience the
8 last couple days as we got through the company's
9 case. I don't have a lot of questions. I want to
10 start out with, you referred to Case No. PU-07-776.

11 A. Yes, sir.

12 Q. And, interesting enough, if you look at
13 page 3 of that, my name is at the bottom of the
14 order, so I remember --

15 A. Oh, you were here?

16 Q. I was here. That was my first rate case,
17 so I remember the depreciation discussion very
18 intently.

19 But to get to your point, on page -- let
20 me look through here -- of course, I had it before
21 we started talking. Okay. On page 7 it talks
22 about the North Dakota depreciation study and I
23 read through that and I see a lot of things that
24 could be interpreted a lot of different ways about
25 what the company should have done or what we said,

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1 A. This company's ratemaking return for 2012
2 as reported in its Form 1 was \$502 million. This
3 company's cash basis return as reported in its Form
4 1 for 2012 is \$715 million, and most of that
5 difference is driven by depreciation and deferred
6 taxes. Ratepayers pay those. Those are noncash
7 expenses included in their revenue requirement. So
8 I'm trying to get some transparency. My area of
9 specialization, my job in this case, is
10 depreciation. That's what I'm going for. I'm
11 trying to get it right.

12 COMMISSIONER FEDORCHAK: Thank you.
13 That's all my questions.

14 JUDGE FETCH: Thank you, Commissioner.
15 Chairman Kalk.

16 COMMISSIONER KALK: Thank you, Your Honor.
17 EXAMINATION

18 BY COMMISSIONER KALK:

19 Q. Thank you, Mike, for your testimony today.
20 Also thank you for being willing to come work with
21 our advocacy staff to help flesh out other
22 viewpoints on the issues. It's an interesting
23 scenario, the company files that rate case and then
24 they pay us money to hire you to testify against
25 them, but I like it.

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1 so I don't think there's much sense for me to get
2 into that now, but I will tell you that at our work
3 session I intend to go through and see what
4 happened based on this order from our -- my staff's
5 viewpoint and I think we'll flesh that out because
6 I think there's definitely two different sides to
7 what we think happened on that.

8 The question I would ask to you is that --
9 I've also been involved in at least two other rate
10 cases with this company. Why didn't it come up
11 beforehand if there was something that was not
12 implemented in that rate case?

13 A. I don't know. I mean, that was the last
14 rate case I was in, 776, so I don't know what
15 happened.

16 Q. Did that discussion come up at all in your
17 discussion with your group, if you will? I'm sure
18 that question -- I wouldn't think -- I think that
19 would be a reasonable question to come up in your
20 discussion with advocacy staff.

21 A. Yeah, I don't recall having that
22 discussion. Probably should have.

23 Q. Fair enough. All right. So I think the
24 only other point I had was, you made your point, I
25 think, and that's my goal, is to go through that

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1 with the work session. We'll see how that plays
 2 out.
 3 But you did make a reference that in 2002
 4 the SEC expressed their displeasure with this
 5 practice. Kind of a followup to Ms. Jeffcoat's
 6 question, I mean, are you alleging that the company
 7 is doing something illegal in their practices or
 8 just highly frowned upon?
 9 **A. Highly frowned upon by the public
 10 accounting community and the SEC.**
 11 **Q.** But there is no guidance from the SEC that
 12 says specifically you cannot do this?
 13 **A. Oh, yes. Yes, there is. Yes, there is.**
 14 **Q.** Okay. So where would that be?
 15 **A. I think the public accounting --**
 16 **Q.** But you just contradicted yourself. You
 17 just told me it was highly frowned upon, then you
 18 just said the SEC said you cannot do it. It's one
 19 or the other, I would think, unless it's gray
 20 interpretation area, which oftentimes we see from
 21 federal bodies to give states the ability to
 22 interpret it.
 23 **A. I'm not a lawyer, and I don't profess to
 24 be a lawyer, but I can say this, the SEC responded
 25 to the public utility industry back in the days**

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1 **when all of this was being debated that it
 2 believed, it was its position that this money was a
 3 regulatory liability, and that's documented.**
 4 **Q.** Okay.
 5 **A. Now, if the company did not report this as
 6 a regulatory liability, its auditors -- its
 7 external auditors would not be allowed -- would not
 8 be able to give it what's called a clean audit
 9 opinion. It would be a qualified audit opinion,
 10 and that is what would be reported to the SEC, and
 11 I don't know what would happen then.**
 12 COMMISSIONER KALK: Okay. All right.
 13 Thank you, sir.
 14 JUDGE FETCH: Chairman Kalk, I'm going
 15 to -- before we move on, I'm just going to note
 16 that this case that has been referred to,
 17 Commission Case No. PU-07-776, need not be
 18 introduced as evidence. The Commission can take
 19 official notice of its own decisions. All right.
 20 COMMISSIONER KALK: Thank you, Your Honor.
 21 JUDGE FETCH: That's a legal point. All
 22 right. Commissioner Christmann.
 23 **EXAMINATION**
 24 **BY COMMISSIONER CHRISTMANN:**
 25 **Q.** Good morning, Mr. Majoros. I'm not sure I

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1 fully understood the result of your conversation
 2 with Mr. Johnson. The SEC line on the last page
 3 that he had there and the \$300-and-some million at
 4 the top, did we discover that that does give the
 5 transparency that you were looking for, albeit not
 6 agreeing with the whole concept, but at least the
 7 transparency is there for us, or was that not what
 8 we found in that line of questioning?
 9 **A. Well, you don't set rates based on this
 10 report. You set rates based on the Form 1 and
 11 earnings reports to this Commission. This report,
 12 the 10-K, is not a price regulator's report. FERC
 13 Form 1 is, and that's where I recommend we have
 14 transparency, and then the earnings reports to this
 15 Commission.**
 16 **Q.** Okay. Thank you.
 17 **A. And also specific recognition of the
 18 regulatory liability just like the company requests
 19 when it asks for a regulatory asset.**
 20 **Q.** If the cost of removing an old pole is
 21 going to be figured into the cost of putting in the
 22 new pole, what happens -- let me try and paint a
 23 picture here. You have a line going from A to B
 24 and a different line going from A to C. Well,
 25 later on the line going -- I guess I'll change it.

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1 We don't even need the A to C one anymore.
 2 Disregard that. A to B this time is not going to
 3 be just replace, those poles are getting bad,
 4 there's a better way, they are going to get power
 5 from somewhere else over to B, so now a line is
 6 built over there, they get power from there.
 7 Where -- if they're not building this revenue into
 8 their system to dismantle and get rid of that line
 9 from A to B, where do they get it now when it's not
 10 just a simple pole-to-pole replacement?
 11 **A. Well, first of all, I'm not sure where
 12 else they're getting it. They might consider that
 13 to be a replacement for this. Nevertheless, I
 14 think you're talking about what we would call an
 15 abandonment, a final end-of-life retirement of the
 16 original pole without replacement.**
 17 **Q.** Right.
 18 **A. And at that point they would incur
 19 whatever removal costs they're required to incur
 20 and they would debit those costs to accumulated
 21 depreciation, which would either be flowed back to
 22 them over the life of the next asset, the remaining
 23 assets, or it could remain in rate base forever,
 24 the original, the cost of that replacement removal.**
 25 **Q.** Okay.

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1 **A. The company is always protected. The**
 2 **company doesn't lose money on this kind of**
 3 **transaction. It's always kept whole.**
 4 **Q. Lastly, I don't know if NSP has any**
 5 **facilities in this jurisdiction that are bonded as**
 6 **far as removal.**
 7 **A. Mm-hmm.**
 8 **Q. But who knows, they may in the future. So**
 9 **how does that play into this if there's a bonding**
 10 **requirement where a bond payment has to be made**
 11 **annually that provides removal money for when that**
 12 **time comes? Is that just a -- does that have**
 13 **nothing to do with this, that that cost of that**
 14 **bond is a year-to-year expense?**
 15 **A. That has a lot to do with this. That's a**
 16 **legal ARO. That is a legal ARO and that's what I'm**
 17 **recommending be used to calculate the cost of**
 18 **removal going forward.**
 19 **Q. Okay.**
 20 **A. That bonding requirement is a legal ARO.**
 21 **In fact, all the company has to do is -- and I'm**
 22 **not a lawyer, don't profess to be a lawyer, but the**
 23 **way I read SFAS 143, if a company -- top company**
 24 **official were to come up here and swear to you that**
 25 **they will remove all of their poles when they**

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1 **replace them, then that becomes a regulatory -- a**
 2 **legal ARO under the premise of promissory estoppel,**
 3 **and at that point you would use -- and they do have**
 4 **legal AROs associated with poles reported in the**
 5 **Form 1. They just don't want to use those numbers**
 6 **because they're too low. They would rather use**
 7 **higher numbers to build up their cash.**
 8 **Q. I thought I was done, but why are those**
 9 **other numbers so low?**
 10 **A. Because they're stated at their present**
 11 **value and they address only what the company is**
 12 **required to do legally -- or legally required to**
 13 **do.**
 14 **COMMISSIONER CHRISTMANN: I have no more**
 15 **questions. Thank you.**
 16 **JUDGE FETCH: Thank you, Commissioner. Do**
 17 **any of the Commissioners have further questions?**
 18 **COMMISSIONER FEDORCHAK: Just a couple.**
 19 **FURTHER EXAMINATION**
 20 **BY COMMISSIONER FEDORCHAK:**
 21 **Q. On this legal versus nonlegal ARO, I'm not**
 22 **wild about the idea of the company walking away**
 23 **from facilities that it isn't legally bound by some**
 24 **designation to remove. Is that what you're**
 25 **suggesting?**

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1 **A. I'm suggesting that if it is not legally**
 2 **bound to demolish a plant or dismantle a plant, I**
 3 **don't -- I know you're not -- you're not in favor**
 4 **of them walking away, but if they don't have any**
 5 **obligation to do it, they have an obligation to**
 6 **their shareholders to not do it because that would**
 7 **be an uneconomic decision. They would spend,**
 8 **according to their estimates, hundreds of millions**
 9 **of dollars to remove a plant that they didn't have**
 10 **to spend.**
 11 **Now, there is a legal obligation to**
 12 **decommission nuclear plants, and that is on their**
 13 **books and that liability is at its present value.**
 14 **If you are -- I think for your concern, you should**
 15 **discuss it with the Commissioners and staff and if**
 16 **this Commission were to direct the company that**
 17 **that's their obligation and you can perfect that**
 18 **into a legal obligation, then they have the legal**
 19 **obligation, but that does not exist right now.**
 20 **Q. Who determines what's legal? Who**
 21 **determines the list of what they legally have to**
 22 **remove?**
 23 **A. They have a list. It was provided in the**
 24 **response to 08 -- staff 08-68, and it was a**
 25 **confidential response, but there is a list where**

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1 **they went through every single asset category they**
 2 **have and determined what they were legally**
 3 **obligated to remove and what they were not. They**
 4 **evaluated assets and determined in some cases they**
 5 **weren't obligated to remove it so they weren't**
 6 **going to record a legal ARO for that, they were not**
 7 **going to accrue for that. What they're asking you**
 8 **to approve is the assumption that they're going to**
 9 **remove every damn -- every asset they have at an**
 10 **inflated price.**
 11 **Q. So they've got on their books things that**
 12 **they aren't going to remove, but yet they're asking**
 13 **us to include depreciation costs as if they are**
 14 **going to remove them?**
 15 **A. Yes, absolutely. That's what the entire**
 16 **regulatory liability relates to. That's why it**
 17 **exists, because they've collected \$377 million of**
 18 **that kind of money.**
 19 **COMMISSIONER FEDORCHAK: Okay. Thank you.**
 20 **JUDGE FETCH: Thank you. Other**
 21 **Commissioners? Any followup? Okay.**
 22 **EXAMINATION**
 23 **BY JUDGE FETCH:**
 24 **I just have a question for clarification.**
 25 **On your opening statement, the last paragraph on**

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1 the first page, you say that -- well, actually the
 2 first two lines, but, first of all, define what you
 3 mean by "normal companies."
 4 **A. Nonregulated is what I was talking about.**
 5 **Q.** Okay. Nonregulated companies.
 6 **A. Yes.**
 7 **Q.** Okay. And the first line then, in 2002,
 8 you say the professional accounting community and
 9 the SEC expressed displeasure with the practice
 10 then. This is almost 12 years later. Is that
 11 still the case or have things changed since then?
 12 **A. Things haven't changed.**
 13 **Q.** So your position is that's still the case?
 14 **A. Yes.**
 15 JUDGE FETCH: Thank you.
 16 All right. At this time we'll go back to
 17 Mr. Norrell if there is any redirect.
 18 MR. NORRELL: Thank you, Your Honor.
 19 There is.
 20 **REDIRECT EXAMINATION**
 21 **BY MR. NORRELL:**
 22 **Q.** Mr. Majoros, do companies necessarily take
 23 down assets that they don't use?
 24 **A. When you say a company, I assume you mean**
 25 **public utility.**

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1 **Q.** Yes. I apologize. Yes.
 2 **A. I don't know.**
 3 **Q.** Have you ever seen poles or transformers
 4 in front of abandoned homes or businesses?
 5 **A. Oh, yeah.**
 6 **Q.** Does the company, in this case NSPM, have
 7 a surplus in its accumulated depreciation accounts
 8 for production and transmission?
 9 **A. Yes.**
 10 **Q.** Did the Minnesota Commission in its recent
 11 deliberations tell the company that it needed to
 12 refund this amount -- this surplus amount to
 13 ratepayers?
 14 **A. I understand that it did.**
 15 **Q.** The company has stated numerous times, and
 16 you've sat through the testimony, and have you
 17 heard where it talks about abiding by past
 18 precedent and previous settlement decisions and the
 19 company's urging the Commission to look back at the
 20 past precedent and previous settlements? Have you
 21 heard those statements?
 22 **A. I think so, yes.**
 23 **Q.** Do you think then -- if a company agrees
 24 to report on a specific depreciation rate, do you
 25 think that that should be bound then to just the

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1 next case or to all subsequent cases?
 2 **A. Well, I don't know. I'm not a lawyer.**
 3 **But in this case Ms. Perkett says in her testimony**
 4 **-- her direct testimony that her depreciation**
 5 **proposals comply with the principles adopted in the**
 6 **settlement in Case No. PU-07-776. The company**
 7 **asserts that. So I don't know what happened in the**
 8 **last two cases. That's what she asserts here, and**
 9 **I disagree with her, they don't comply.**
 10 MR. NORRELL: Thank you. No further
 11 questions, Your Honor.
 12 JUDGE FETCH: Thank you, Mr. Norrell.
 13 I'll go to Ms. Jeffcoat-Sacco next.
 14 **FURTHER EXAMINATION**
 15 **BY MS. JEFFCOAT-SACCO:**
 16 **Q.** I just want to be clear. For security
 17 purpose, the disclosure that you're advocating here
 18 is required -- for regulatory purposes, the
 19 disclosure of the regulatory asset -- or liability
 20 is required, correct, because that's why it's on
 21 the 10-K?
 22 **A. Yes.**
 23 **Q.** For regulatory purposes, you're
 24 recommending that the Commission require at least
 25 the disclosure here, and are you also recommending

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1 an approval process? I guess that's a two-part
 2 question.
 3 **A. Well, I'm recommending how -- in the**
 4 **stipulation in 07-776 one of the principles was**
 5 **that future net salvage would be stated at its**
 6 **present value. The company didn't do that here.**
 7 **So I've said, okay, in the future let's use the**
 8 **legal AROs as a basis for that and get rid of all**
 9 **this controversy. But my primary thrust is getting**
 10 **transparency of that regulatory liability and any**
 11 **additions they're making to it and accruals, report**
 12 **it to this Commission, and I'm trying to get**
 13 **Commission recognition of that regulatory**
 14 **liability.**
 15 **Q.** And I just want to be sure I understand so
 16 I'm putting it in slightly different terms.
 17 **A. Okay.**
 18 **Q.** Your recommendation then is that the
 19 Commission require the transparency, require the
 20 telling us and require -- when you say
 21 "recognition," I'm trying to sort out if that's
 22 Commission approval or --
 23 **A. Well, requires -- the word "require" is**
 24 **correct, but I'm asking for recognition --**
 25 **Q.** I guess that's the words --

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1 **A. -- which means that this Commission**
 2 **recognizes that if this company does not spend the**
 3 **North Dakota piece of that 377 million on cost of**
 4 **removal, then what's left is owed back to**
 5 **ratepayers. That's what I'm -- that's the**
 6 **recognition I'm asking for.**
 7 **Q.** One second, please. If you know --
 8 assuming the Commission requires the company to
 9 report, and if you know, do you believe the company
 10 could report them by asset category?
 11 **A. Yes, I do.**
 12 **Q.** And then I had one more question just on
 13 the legal obligation of the legal ARO. It's my
 14 understanding that the legal obligation could come
 15 from a federal requirement, like a super fund
 16 cleanup or something, a state requirement to clean
 17 up or dismantle or decommission, a local ordinance
 18 of some sort, and perhaps even a contractual
 19 arrangement, I'm envisioning.
 20 **A. That's right.**
 21 **Q.** So the requirement could come from several
 22 different sources, all of which are lumped together
 23 in that category of legal ARO?
 24 **A. That's my understanding.**
 25 **Q.** Okay.

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1 **A. It could come from a promise by the**
 2 **company.**
 3 MS. JEFFCOAT-SACCO: Okay. And that's
 4 what I was saying, like a contractual agreement or
 5 it could come from a contractual agreement on a
 6 lease site or something.
 7 That's all I have. Thank you.
 8 JUDGE FETCH: Thank you. Mr. Johnson.
 9 MR. JOHNSON: A few questions, Your Honor.
 10 JUDGE FETCH: Please proceed.
 11 MR. JOHNSON: They'll move quickly.
 12 **RE-CROSS-EXAMINATION**
 13 **BY MR. JOHNSON:**
 14 **Q.** Mr. Majoros, you had some discussion about
 15 SEC requirements and SEC filings, and so forth.
 16 You were not inferring, were you, that the company
 17 was not abiding its SEC filing requirements?
 18 **A. No. I was confirming that you do.**
 19 **Q.** Okay. Thank you. You had some discussion
 20 about whether or not the company has made
 21 appropriate commitments to this Commission with
 22 respect to the use of removal costs that it has
 23 recovered. Do you recall that generally?
 24 **A. No.**
 25 **Q.** Okay. I thought you had some of that

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1 discussion with Commissioner Christmann and perhaps
 2 with Commissioner Fedorchak, but, in any event, do
 3 you agree with me that the 2007 settlement contains
 4 the provision that the company will -- and I'll
 5 read it to you, "Both parties agree that, unless
 6 directed otherwise by the Commission, rate recovery
 7 -- past, present, and future -- for the removal and
 8 retirement of company utility property will be used
 9 solely for the retirement of the company's utility
 10 property." Do you recall that being in the 2007
 11 settlement?
 12 **A. Yes.**
 13 **Q.** Now, you had some discussion with respect
 14 to installation costs and removal costs and I was
 15 left somewhat confused by that and I may get myself
 16 more confused but I'll try a question.
 17 Let's assume that we install a facility --
 18 a pole and line facility of some sort and the
 19 capital costs, that is to say, the equipment and
 20 the installation alone, is a thousand dollars. If
 21 there is an anticipated 10 percent removal
 22 adjustment factor applied to that, wouldn't the
 23 amount that was recorded initially be the thousand
 24 dollars of capital plus the hundred dollars for
 25 removal?

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1 **A. The capital expenditure decision, as you**
 2 **just described it, would be to spend \$1,100 on the**
 3 **new pole.**
 4 MR. JOHNSON: Thank you. That's all I
 5 have.
 6 JUDGE FETCH: Thank you. Commissioner
 7 Fedorchak, do you have any further --
 8 COMMISSIONER FEDORCHAK: I don't.
 9 JUDGE FETCH: Commissioner Kalk?
 10 COMMISSIONER KALK: No, Your Honor.
 11 JUDGE FETCH: Commissioner Christmann?
 12 COMMISSIONER CHRISTMANN: Yes, Your Honor,
 13 one.
 14 **FURTHER EXAMINATION**
 15 **BY COMMISSIONER CHRISTMANN:**
 16 **Q.** Are you aware of any jurisdictions that
 17 have either passed a law or issued an order that
 18 did require removal of all property and essentially
 19 made all the property of a utility a legal ARO?
 20 **A. Not all property. I'm aware of or I've**
 21 **heard of one. I can't confirm this. That I think**
 22 **it was in Kansas somebody applied to build a new**
 23 **combined cycle plant and they were granted their**
 24 **certificate of necessity and convenience contingent**
 25 **upon words in that grant that they remove that**

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1 **plant when it is retired from service. They were**
 2 **removed to, I think, greenfield status.**
 3 COMMISSIONER CHRISTMANN: Thank you.
 4 JUDGE FETCH: Mr. Norrell, anything
 5 further?
 6 MR. NORRELL: No, Your Honor. Thank you.
 7 JUDGE FETCH: Ms. Jeffcoat-Sacco?
 8 MS. JEFFCOAT-SACCO: Yes.
 9 **FURTHER EXAMINATION**
 10 **BY MS. JEFFCOAT SACCO:**
 11 **Q.** Our depreciation expert on the advisory
 12 staff would like to know how you interpret or
 13 understand the sentence from the settlement that
 14 was quoted to you by Mr. Johnson, the one about
 15 unless directed otherwise by the Commission, that
 16 it will be used solely for the retirement of the
 17 company's utility property and recognized as a
 18 regulatory liability. How do you -- what does that
 19 mean to you? Do you want to look at the language?
 20 **A. Yeah, let me see the language.**
 21 MS. JEFFCOAT-SACCO: May I?
 22 JUDGE FETCH: Where are you reading from?
 23 THE WITNESS: I'm reading from the
 24 settlement that's part of the order in 07-776.
 25 JUDGE FETCH: All right.

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1 MR. JOHNSON: In his testimony at page 10.
 2 MS. JEFFCOAT-SACCO: Oh. If it's in his
 3 testimony, then that's better than this.
 4 JUDGE FETCH: All right. Page 10 of
 5 direct testimony?
 6 MR. JOHNSON: Yes.
 7 JUDGE FETCH: All right. Thank you.
 8 **Q.** (MS. JEFFCOAT-SACCO CONTINUING) So can
 9 you tell us what that means to you, please?
 10 **A. Well, that means what it says. It says**
 11 **that past rate recovery for removal and retirement,**
 12 **present rate recovery for removal and retirement,**
 13 **and future rate recovery for removal and retirement**
 14 **will be solely used -- will be used solely for the**
 15 **retirement of the company's utility property and be**
 16 **recognized as a regulatory liability. And I**
 17 **believe that is what the company does. I think it**
 18 **probably -- well, I can't tell you where it**
 19 **spends -- how it spends its cash. As I said**
 20 **earlier, the cash comes in and floats around. I**
 21 **think that what they're doing -- well, that says**
 22 **what it says, and I think they're recognizing the**
 23 **regulatory liability in the Form 10-K.**
 24 MS. JEFFCOAT-SACCO: There has been
 25 another question, and I think I know your answer to

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1 it, it's going to be I'm not a lawyer so -- and I'm
 2 about to ask it, but I'm going to ask it for the
 3 two parties to address in their briefs, and that is
 4 whether that paragraph of that settlement
 5 constitutes a legal ARO. I am not asking you to
 6 make that legal interpretation.
 7 JUDGE FETCH: All right. So he's not a
 8 lawyer, you're not asking him to make a legal
 9 conclusion, but you would like the parties to
 10 address that in their briefs?
 11 MS. JEFFCOAT-SACCO: Yes, please.
 12 JUDGE FETCH: All right. You need not
 13 answer.
 14 Any other questions, Ms. Jeffcoat-Sacco?
 15 MS. JEFFCOAT-SACCO: No.
 16 JUDGE FETCH: Back to Mr. Johnson.
 17 MR. JOHNSON: No, Your Honor.
 18 JUDGE FETCH: Thank you. Back to the
 19 Commission. Any further questions?
 20 COMMISSIONER KALK: Just one on Illona's
 21 comment. That was, I think, the point of taking
 22 this to work session. I'll be looking forward to
 23 your opinion on if that's a legal ARO. Thank you,
 24 Your Honor.
 25 JUDGE FETCH: Any further questions for

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1 this witness from anyone?
 2 MR. NORRELL: No, Your Honor.
 3 JUDGE FETCH: We've been around a few
 4 times. All right. Thank you, Mr. Majoros. You're
 5 excused.
 6 THE WITNESS: Thank you, all.
 7 JUDGE FETCH: And at this time it's ten
 8 minutes to ten and we're going to take a ten-minute
 9 break.
 10 (Recess taken.)
 11 JUDGE FETCH: Okay. We are back on the
 12 record. It is 10:05 a.m., Central Time, and at
 13 this time we're going to proceed with the next
 14 witness. I believe that is Charles King, Mr.
 15 Norrell.
 16 MR. NORRELL: Yes, Your Honor, that is
 17 correct.
 18 JUDGE FETCH: All right. And do you have
 19 an opening statement for Mr. King?
 20 MR. NORRELL: Yes, Your Honor.
 21 THE WITNESS: Can I be sworn first?
 22 JUDGE FETCH: Do you want to pass that out
 23 at this time, please.
 24 MR. NORRELL: Yes.
 25 JUDGE FETCH: All right. Thank you. And

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1 you've been present when I've instructed as to
2 penalties for perjury?
3 THE WITNESS: Yes.
4 JUDGE FETCH: Okay. Please speak up nice
5 and loudly and maybe if you can move that
6 microphone a little closer to you. Thank you.
7 Please raise your right hand.
8 (Witness sworn.)
9 JUDGE FETCH: Thank you. All right. And
10 what you've passed out is an opening statement of
11 Charles King labeled PSC 17 and by stipulation this
12 is admitted into the record.
13 MR. NORRELL: Thank you, Your Honor.
14 JUDGE FETCH: Please proceed, Mr. Norrell.
15 **CHARLES W. KING,**
16 being first duly sworn, was examined and testified
17 as follows:
18 **DIRECT EXAMINATION**
19 **BY MR. NORRELL:**
20 **Q.** Mr. King, you'll be testifying to PSC
21 Exhibit 3; is that correct?
22 **A.** I assume so. I didn't know it had that
23 designation, but --
24 **Q.** That's marked as the direct testimony and
25 exhibits of Charles W. King. Do you have any

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1 corrections that you need to make on the record to
2 your testimony?
3 **A.** No, I do not.
4 MR. NORRELL: With that -- has the witness
5 been sworn?
6 JUDGE FETCH: Yes, he has.
7 MR. NORRELL: I apologize.
8 JUDGE FETCH: That's okay.
9 **Q.** (MR. NORRELL CONTINUING) Mr. King, you
10 may proceed with your opening statement.
11 **A.** Good morning. My name is Charles King.
12 I'm here representing the advocacy staff on the
13 subject of rate of return.
14 I recommend a return on equity of NSP --
15 for NSP's North Dakota rate base of 9 percent. The
16 basis of this recommendation is set forth in my
17 testimony and exhibits. The reasons why I arrive
18 at 9 percent while Ms. Bulkley arrives at 10.25
19 percent are listed in the last pages of my
20 testimony and I will not repeat them here.
21 The company's response to my
22 recommendation essentially boils down to two
23 points. First, that interest rates are increasing
24 and, second, that 9 percent is way below the return
25 awards being granted to other utilities.

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1 **Ms. Bulkley would have you believe that**
2 **interest rates are skyrocketing. That's something**
3 **of an exaggeration. Here are the numbers. In July**
4 **the average yield on a 30-year treasury bond was**
5 **3.61 percent, last week it was 3.87 percent, higher**
6 **but hardly skyrocketing. In July the Baa rated**
7 **corporate bonds were yielding 5.32 percent, last**
8 **week they were at 5.55 percent, again hardly a**
9 **skyrocketing increase. Ms. Bulkley admits that as**
10 **interest rates increase, the spread between bond**
11 **yields and stock returns narrows. If that's the**
12 **case, then the 20-point increase in interest rates**
13 **translates to a much smaller increase in ROE**
14 **requirements.**
15 **Ms. Bulkley also points to forecasts of**
16 **much higher interest rates with long-term**
17 **treasuries over 5 percent in a few years. The**
18 **problem here is that analysts have been forecasting**
19 **the interest rate increases for years and they have**
20 **yet to materialize. The Federal Reserve has made**
21 **clear that it will not allow interest rates to**
22 **increase significantly until the unemployment rate**
23 **falls below 6 percent. Sadly, we are still a long**
24 **way from that goal.**
25 **The company has placed its greatest**

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1 **emphasis on the second objection, the 9.0 percent**
2 **would be lower than all but one return awarded in**
3 **the last year and a half.**
4 **In my testimony I guard against relying on**
5 **other commissions' returns on the grounds it makes**
6 **regulation circular. Decisions based on other**
7 **decisions do not allow for objective evidence that**
8 **departs from the conventional wisdom of the**
9 **regulatory community.**
10 **My response to NSP's complaint is twofold.**
11 **First, objective evidence does indicate that the**
12 **appropriate return is well below the average of the**
13 **allowed returns during the past year. And, second,**
14 **objective evidence also suggests the average**
15 **awarded return is too high.**
16 **The objective evidence supporting a lower**
17 **return is in my testimony. I did not invent a**
18 **single number in that testimony and exhibit. Every**
19 **number came from outside objective sources that**
20 **have no interest in skewing the equity returns up**
21 **or down. Those numbers show quite clearly that a**
22 **return of approximately 9 percent is all that**
23 **investors require at this time.**
24 **The objective evidence that is current --**
25 **that currently allowed returns are unnecessarily**

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1 **high is found in my Exhibit CWK-2, Schedule 4, page**
 2 **2. And I would hope you could turn to that, if you**
 3 **could. I'm sorry to pull this on you. I have it**
 4 **here if you would like me to pass it to you.**
 5 COMMISSIONER KALK: I'm good.
 6 JUDGE FETCH: Is this your direct
 7 testimony?
 8 THE WITNESS: Well, I only have one
 9 testimony, so it's the direct testimony. It's the
 10 exhibit to it. There's two exhibits, CWK-2, CWK-1,
 11 and this is CWK-2.
 12 COMMISSIONER FEDORCHAK: Page 1?
 13 THE WITNESS: Yep. And I focus on column
 14 C, market-to-book ratio. That column shows the
 15 ratios of the market price of each -- oh, and it's
 16 page 2, not page 1 of Schedule 4.
 17 JUDGE FETCH: Okay. Now, which exhibit
 18 was it?
 19 THE WITNESS: CWK-2.
 20 JUDGE FETCH: Okay.
 21 THE WITNESS: Schedule 4, page 2.
 22 JUDGE FETCH: Schedule 4.
 23 COMMISSIONER KALK: So you can zoom on the
 24 iPad for the font, just so you know.
 25 JUDGE FETCH: The setting isn't set right

1 been granting is clearly excessive.
 2 Now, you've been told a 9 percent return
 3 award will result in North Dakota being downgraded
 4 as an investor unfriendly regulatory environment.
 5 Now, this challenge raises a question of your
 6 responsibility. Are you responsible to the
 7 investor community to provide an ROE award that
 8 pleases them or are you responsible to the citizens
 9 of North Dakota to ensure that they pay rates
 10 sufficient, but no more than sufficient, to allow
 11 the company to attract capital and maintain credit.
 12 If your responsibility is to the citizens of North
 13 Dakota, then you will award a 9 percent return
 14 regardless of what the investment community thinks
 15 of it.
 16 Thank you.
 17 MR. NORRELL: Thank you, Mr. King. The
 18 witness is available for cross-examination.
 19 JUDGE FETCH: Thank you. Mr. Johnson.
 20 MR. JOHNSON: Thank you, Your Honor.
 21 **CROSS-EXAMINATION**
 22 **BY MR. JOHNSON:**
 23 **Q.** Good morning, Mr. King.
 24 **A.** **Good morning.**
 25 **Q.** I'm going to direct your attention to a

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1 on this.
 2 COMMISSIONER CHRISTMANN: Okay. We're
 3 good.
 4 THE WITNESS: Are we good?
 5 COMMISSIONER CHRISTMANN: Yeah.
 6 THE WITNESS: Take a look at column C.
 7 This column shows the -- it's labeled
 8 market-to-book ratio and it shows a ratio of the
 9 current market price of each company's stock to the
 10 book value of each company's stock. And it's
 11 relevant because ROE awards are applied to the book
 12 value of plant. Now, if regulators are granting
 13 the exact return on book equity that investors
 14 require, then the amounts that they're willing --
 15 investors are willing to pay for the company's
 16 stock should be equal to book value, but it isn't.
 17 In every case the returns on book value are such
 18 that investors are bidding the market value of
 19 utility stocks well over their book value. In
 20 Xcel's case the market value is 153 percent of its
 21 book value, but they run as high as 225 percent.
 22 That persistent excess of market over book value
 23 indicates quite clearly that utility returns exceed
 24 considerably the minimum requirements of investors.
 25 A 10 percent -- the 10 percent that regulators have

1 few topics as we go along, and as I move from topic
 2 to topic, I'll try to make that apparent so that we
 3 keep talking about the same thing at the same time.
 4 And let's start with your opening
 5 statement here. At the base of the second page,
 6 you have a reference, and I guess also in your
 7 direct testimony, to your peer group stock prices.
 8 **A.** **Yes.**
 9 **Q.** As of what date was that?
 10 **A.** **Well, let's see. The market price was 60**
 11 **days previous to, and you'll find this at the**
 12 **footnote of Exhibit CWK-2, Schedule 2. It's**
 13 **average closing prices during the April -- period**
 14 **April 29 through June 25.**
 15 **Q.** Thank you. Would you agree with me that
 16 utility stock prices have slid recently?
 17 **A.** **I don't know whether they have or not.**
 18 **Q.** You have not checked that?
 19 **A.** **I'm sorry?**
 20 **Q.** You have not checked that?
 21 **A.** **No.**
 22 **Q.** In your opening statement you presented an
 23 argument talking about the relative book values of
 24 the peers and of Xcel Energy.
 25 **A.** **Yes.**

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1 **Q.** I don't recall you having discussed that
 2 in your direct testimony. Did I miss something?
 3 **A. No.**
 4 **Q.** Now, on page 8 of your direct testimony,
 5 lines 4 and 5, you talk about the implications of a
 6 prior analysis and I believe that analysis was
 7 largely concerning interest rates and their
 8 movement.
 9 **A. Yes.**
 10 **Q.** Am I correct?
 11 **A. Yes.**
 12 **Q.** And you state at page 8, lines 7 and 8,
 13 that the desirability of utility stocks to other
 14 forms of investment has increased with the decline
 15 of interest rates. The increase in desirability
 16 and consequent decrease in demand has driven up the
 17 prices of utility stocks.
 18 **A. That's right.**
 19 **Q.** So declining interest rates drive up
 20 utility stocks. Is it fair for me to conclude that
 21 rising interest rates have the opposite effect?
 22 **A. That's true. The estimate has been that**
 23 **for every one percentage point increase in the**
 24 **treasury bond rate -- 30-year treasury bond rate,**
 25 **that the cost of equity goes up about .3 percent.**

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1 **And I don't have that study with me and I'm not**
 2 **even sure I subscribe to it, but that's an**
 3 **indication of the trend.**
 4 **Q.** 30 basis points, .3 percent?
 5 **A. 30 basis points for a 100 basis point**
 6 **change in the treasury bond rate.**
 7 **Q.** Thank you. And thinking about how prices
 8 of utility stocks affect the cost of equity
 9 analysis, is it correct that an increase in prices
 10 decreases dividend yields holding all other factors
 11 equal?
 12 **A. Yes.**
 13 **Q.** And, accordingly, a reduction in the
 14 dividend yields would tend to reduce the calculated
 15 cost of equity under the DCF model?
 16 **A. That's correct.**
 17 **Q.** Now, you've indicated that -- your
 18 recognition that interest rates are increasing, but
 19 you have characterized two of those interest rate
 20 increases from July to current date, those being
 21 the 30-year treasuries and the Moody's Baa index.
 22 **A. Yes.**
 23 MR. JOHNSON: Your Honor, I would like to
 24 have an exhibit marked and then approach the
 25 witness.

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1 JUDGE FETCH: You may.
 2 MR. JOHNSON: Thank you.
 3 JUDGE FETCH: I will label this -- maybe I
 4 just have two copies. Is it two pages?
 5 MR. JOHNSON: It's two pages. I believe
 6 you do have two copies, Judge.
 7 JUDGE FETCH: Thank you. I will label
 8 this PSC Exhibit 35.
 9 COMMISSIONER FEDORCHAK: PSC or NSP?
 10 MR. JOHNSON: NSP.
 11 JUDGE FETCH: What did I say? Let's try
 12 NSP 35. Thank you.
 13 I'll let you identify -- have the witness
 14 identify it before we offer it.
 15 THE WITNESS: I have it.
 16 **Q.** (MR. JOHNSON CONTINUING) Can you identify
 17 that, Mr. King?
 18 **A. Well, I think it's a chart of yields on**
 19 **the 30-year treasury bond.**
 20 MR. JOHNSON: Your Honor, I would move
 21 admission of this document into evidence.
 22 JUDGE FETCH: Thank you. Any objection?
 23 MR. NORRELL: No.
 24 JUDGE FETCH: Thank you. NSP Exhibit 35
 25 is admitted. Continue, please.

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1 **Q.** (MR. JOHNSON CONTINUING) Mr. King, just
 2 so that people -- everyone understands what this
 3 is, it's my understanding that this is from Yahoo
 4 Finance and that it is a one-year look at 30-year
 5 treasury yields.
 6 **A. Yep.**
 7 **Q.** And you can tell it's the one-year look
 8 because the little square below the graph, the one
 9 that says 1Y is colored in?
 10 **A. Yes.**
 11 **Q.** And it's my understanding that this shows
 12 dividend yield changes in the 30-year treasury from
 13 approximately August of 2012 through August of
 14 2013?
 15 **A. That's correct.**
 16 **Q.** So by way of perspective, the July to
 17 August change that you were talking about is sort
 18 of in the 2 -- I don't know -- bars, columns,
 19 whatever you'd want to call them, on the right and
 20 the history from prior periods is to the left of
 21 that?
 22 **A. That is correct.**
 23 **Q.** Now, it would be my interpretation that
 24 over time, and based on our conversation, that as
 25 the interest yields have increased for the 30-year

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1 treasuries, the relative desirability of utility
 2 stocks as an investment would have decreased?
 3 **A. Well, of all stocks would have decreased**
 4 **somewhat.**
 5 **Q.** But we were talking about utilities
 6 earlier.
 7 **A. Yes. Yes. But it would apply to all**
 8 **stocks.**
 9 MR. JOHNSON: Your Honor, may I have a
 10 second exhibit marked?
 11 JUDGE FETCH: Yes, you may.
 12 MR. JOHNSON: Thank you. Your Honor, I do
 13 move admission of the -- did we do that? We did
 14 that.
 15 JUDGE FETCH: We did admit 35.
 16 MR. JOHNSON: I apologize, Your Honor.
 17 JUDGE FETCH: That's fine. This will be
 18 marked NSP Exhibit 36. All right. I believe we
 19 have those.
 20 MR. JOHNSON: Thank you, Your Honor.
 21 **Q.** (MR. JOHNSON CONTINUING) Mr. King, I
 22 would like to direct your attention to what's been
 23 marked as NSP 36. Can you identify that for me?
 24 **A. Well, let's see. It's from somebody**
 25 **called FRED, and it's a Moody's seasoned Baa**

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1 **corporate bond yield; Source, Governors -- Board of**
 2 **Governors of the Federal Reserve system. It**
 3 **appears to be -- I guess these are monthly data.**
 4 **It's a line that shows the monthly change in yields**
 5 **on Baa corporate bonds.**
 6 **Q.** And this is from the St. Louis Federal
 7 Reserve?
 8 **A. I guess that's what it is. I'm just**
 9 **reading the web page. Yes, I guess that's what**
 10 **that is, St. Louis Fed.**
 11 MR. JOHNSON: Your Honor, I would move
 12 receipt into evidence of this.
 13 JUDGE FETCH: Any objections, Mr. Norrell?
 14 MR. NORRELL: No, Your Honor.
 15 JUDGE FETCH: Thank you. NSP Exhibit 36
 16 is admitted.
 17 **Q.** (MR. JOHNSON CONTINUING) And this appears
 18 to show the change in the Moody's Baa corporates.
 19 I don't know that this is the utilities, but this
 20 is the corporates?
 21 **A. Yes, it's all corporate bonds.**
 22 **Q.** And this would show the changes in all
 23 corporate bonds from the beginning of 2012 through
 24 August of 2013?
 25 **A. I think it's July of 2013.**

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1 **Q.** You're right. I apologize. Through July
 2 of 2013.
 3 Now, you were -- in your direct testimony
 4 at page 9, you indicated a criticism, I believe --
 5 I'll characterize it as that -- regarding decisions
 6 by other state -- utility entities in 2012 and you
 7 characterized it as a persistent disbelief that
 8 interest rates could stay as low as they have for
 9 as long as they have.
 10 **A. That's right.**
 11 **Q.** It would appear that at this point,
 12 anyway, interest rates are in fact no longer
 13 holding at the low levels, they are increasing?
 14 **A. Not as low as they have been. They're**
 15 **still quite low. And I don't think they'll go a**
 16 **whole lot higher because the Fed has been very**
 17 **emphatic that they're not going to allow a**
 18 **significant increase in interest rates as long as**
 19 **unemployment is as low as it is now.**
 20 **Q.** Other analysts are in fact predicting
 21 fairly substantial increases in the treasuries, are
 22 they not?
 23 **A. They have been predicting substantial**
 24 **increases in treasuries and in interest rates in**
 25 **general for years, and month after month after**

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1 **month those forecasts have proved to be overstated,**
 2 **and I can demonstrate that if you would like.**
 3 **Q.** Mr. King, let's go back to NSP 36 for a
 4 moment.
 5 **A. Which one is that?**
 6 **Q.** That's the 30-year treasuries.
 7 **A. Okay.**
 8 **Q.** And you described your DCF analysis as
 9 using stock price data from the period of June 25,
 10 I believe, going back 60 days.
 11 **A. That's correct. That just happened to be**
 12 **when I did this analysis.**
 13 **Q.** I appreciate that. I believe you were
 14 using almost most current data available at that
 15 time, were you not?
 16 **A. Yes.**
 17 **Q.** However, looking at NSP 36, it would
 18 appear that by happenstance -- and I'll
 19 characterize it that way -- you caught a
 20 particularly low ebb in utility stock prices for
 21 your analysis?
 22 **A. Well, I don't know that. I got a**
 23 **particularly low ebb in treasury bond yields.**
 24 **Q.** Fair enough.
 25 **A. There's no indication -- unless you have**

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1 **an exhibit showing utility stock prices, I can't**
 2 **confirm that.**
 3 **Q.** Other than the character- -- other than
 4 the characteristics we talked about earlier, which
 5 is that low yields lead to high utility prices and
 6 vice versa?
 7 **A.** As a general proposition, but before I
 8 admit or even imply that utility stock prices have
 9 declined significantly, I'd like to see the
 10 evidence. You may be right, but I don't know that
 11 that's the case.
 12 **Q.** The principles we talked about would
 13 suggest that's the case, would they not?
 14 **A.** Yeah, but I don't want to -- I don't want
 15 to buy onto that suggestion unless it's
 16 demonstrated. Maybe you have a demonstration.
 17 **Q.** It was in your testimony.
 18 **A.** What was in my testimony?
 19 **Q.** The principles we were articulating a
 20 moment ago.
 21 **A.** Well, I don't know that it was in my --
 22 yeah -- yeah, it is true the principles are in my
 23 testimony. What is not true is that I agree that
 24 stock prices have declined significantly in
 25 response to these treasury bond yield increases

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1 **during the last few months.**
 2 MR. JOHNSON: I have no other questions.
 3 Thank you, Your Honor.
 4 JUDGE FETCH: All right. Thank you. I
 5 believe the order of testimony then now comes -- or
 6 questioning comes to Mr. Norrell. No. I'm sorry.
 7 We'll go to the Commission. Ms. Fedorchak.
 8 COMMISSIONER FEDORCHAK: To Illona.
 9 MS. JEFFCOAT-SACCO: I don't have any
 10 questions so it's okay.
 11 JUDGE FETCH: Okay. Sorry. Yesterday it
 12 was so clear.
 13 COMMISSIONER FEDORCHAK: Hard to get into
 14 a new routine.
 15 JUDGE FETCH: Yeah. A little spacial
 16 disorientation. All right. Commissioner
 17 Fedorchak.
 18 **EXAMINATION**
 19 **BY COMMISSIONER FEDORCHAK:**
 20 **Q.** I'll start with your opening statement,
 21 Mr. King. Just for some clarification, you say
 22 here that Ms. Bulkley admits that as interest rates
 23 increase, the spread between bond yields and stocks
 24 -- stock returns narrows and, if that's the case,
 25 then the 20-point increase in interest rates

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1 translates to a much smaller increase in ROE
 2 requirements. Can you explain what you mean by
 3 that? If you need to --
 4 **A.** Well, it's been demonstrated what's
 5 indicated. When I say demonstrated, it implies
 6 that we know absolutely what stock return
 7 requirements are, but it's been demonstrated at
 8 least the apparent return on stocks increases as
 9 interest rates increase, but not at the same rate.
 10 That if you have an increase in treasury bond rates
 11 like we see here --
 12 **Q.** Mm-hmm.
 13 **A.** -- the increase in required returns will
 14 not be as steep. It will be much lower. It will
 15 only be, according to the study I've seen, about 30
 16 percent of the increase in treasury bond. Now, if
 17 treasury bonds go up 20 points, that's 0.20
 18 percent, then that means that the interest -- the
 19 yield on utility stocks would go up only 0.06
 20 percent.
 21 **Q.** Okay. If you wouldn't mind, let's get
 22 into some examples. Use a real example, like, you
 23 know, a treasury bond and a utility stock.
 24 **A.** Well, we have between July and now --
 25 what, mid-July and now a 20-basis point increase in

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1 **treasury bond yields. That's in my statement. In**
 2 **that time the utility or overall stock return**
 3 **requirement will have increased, but not as much.**
 4 **It will have increased 0.6 percent or six basis**
 5 **points.**
 6 **Q.** And how does this tie to a smaller
 7 increase in ROE?
 8 **A.** Well, because the return to stock prices
 9 is ROE, is return on equity, equity being the
 10 stock.
 11 **Q.** Right. Do you think -- talk to me a
 12 little bit about your proposal at 9 percent and the
 13 company's proposal at 10.25 and changing --
 14 actually scratch that. Currently they get 10.4 and
 15 you're recommending 9 percent.
 16 **A.** Yes.
 17 **Q.** Talk to me about how you feel that jump
 18 will look to investors -- how does that large of a
 19 swing, or maybe you don't think it's a large swing,
 20 reflect on investors?
 21 **A.** Be sure investors will squeal. They will
 22 think it's terrible. But the issue I have is -- is
 23 your constituency investors. To hear Ms. Bulkley
 24 talk, your concern is making investors happy.
 25 Well, if you want to make investors happy, by all

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1 means stay at 10.4. But your responsibility is to
 2 the citizens of North Dakota and your job is to set
 3 this rate of return where it should be, that is,
 4 minimum required to recover -- to maintain credit
 5 and increase -- maintain credit and attract
 6 capital.

7 As a practical matter, it probably won't
 8 have much effect on Xcel because North Dakota is
 9 very small potatoes in the total scope of things.
 10 But we're not supposed to think that way. We're
 11 supposed to assume that we are setting a new rate
 12 of return for the entire company. And it is true
 13 that if you set the rate at 9 percent, you will get
 14 a lot of flak from the investor community and
 15 probably the company's stock hypothetically would
 16 go down, but that's as it should be because the
 17 company has been over-awarded, it has been given a
 18 rate of return too high. I don't want to criticize
 19 you all, but 10.4 is much too high, at least now.
 20 Maybe it was better when you awarded it. But you
 21 have to bite the bullet and set the rate at what
 22 the minimum investors require, because you'll hear
 23 howls from investors. What you won't hear howls
 24 from are those folks down in the trailer court who
 25 now have to pay 6 bucks a month more for their

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1 electricity and they can't afford it. I think
 2 those are the people that you have a responsibility
 3 to concern yourself with.

4 Q. Okay. Then what do you say to the
 5 company's assertion that the ratepayers are
 6 affected by increased borrowing costs?

7 A. First of all, I don't think the company's
 8 borrowing costs will be affected one bit.
 9 Borrowing costs are a function of a lot of ratios,
 10 a return on equity being only one of them. It has
 11 to do with the coverage of interest charges. It
 12 has to do with free cash flow, which would include
 13 depreciation and deferred taxes as well as return
 14 on equity. I would question whether there's going
 15 to be any significant change in the company's
 16 borrowing costs even if we hypothesize that the
 17 total return to Xcel would go down to 9 percent.

18 Q. I've been sort of intrigued by the
 19 difference between the allowed return and the
 20 actual return and wondering why there's so much
 21 emphasis on what we allow by the investment
 22 community versus them looking at what they actually
 23 are going to make by historical -- you know, the
 24 past couple years the company hasn't been meeting
 25 its allowable returns.

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1 A. Well, the concern is that what you allow
 2 is the starting point. In other words, you allowed
 3 10.4 and they only earned just under 9. The
 4 presumption is if you allow 9, they'll only earn
 5 under -- you know, about 7 and a half. The way I
 6 think you repair this is try and come up with a
 7 rate of return -- I mean, a decision that allows
 8 them to actually earn the 9 percent, and that will
 9 offset to some degree the perception that you're
 10 anti-investor.

11 If you can allow -- make sure this company
 12 is actually able to earn that 9 percent, investors
 13 will be a lot happier than if you give them 10 and
 14 a half -- well, 10.25 and then they don't have a
 15 chance of earning it. I think that's the kind of
 16 confidence that investors would much prefer than
 17 just the flat-out award.

18 Q. I am interested in that, so what do we do
 19 to get to that?

20 A. That's the other piece of this whole rate
 21 case that I'm not involved in. The revenue
 22 requirement guys are the ones to talk to about
 23 that.

24 Q. And then my last question to you is, were
 25 you here yesterday when Mr. Tyson testified?

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1 A. Yes.

2 Q. Give me your thoughts on his comments.

3 A. Well, Mr. Tyson is an employee of Xcel,
 4 and Xcel's interest is maximizing profit. He's
 5 going to give you the picture solely from the
 6 standpoint of investors in Xcel. And what he's
 7 going to try and tell you is that if the company
 8 makes a big return, it's going to be wonderful for
 9 ratepayers. Well, it's wonderful for ratepayers if
 10 the company makes a return sufficient to attract
 11 capital and maintain credit, which a 9 percent
 12 return will do.

13 It's even more wonderful for the company
 14 if they make way over that, and that is not good
 15 for ratepayers. Ratepayers need the minimum -- the
 16 minimum return necessary to maintain credit and
 17 attract capital, but they shouldn't pay a red cent
 18 more, and that's the nut I'm asking you to bite,
 19 namely, go down to what is the minimum even though
 20 it isn't the conventional wisdom of the regulatory
 21 community.

22 Q. What do you think of -- what would you
 23 think of a compromise that sets a higher return
 24 than what you're recommending but requires that if
 25 the company exceeds it, it shares in its excess

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1 earnings with the ratepayers?

2 **A. A lot of commissions have done that,**

3 **usually when they have multi-year awards. Georgia,**

4 **for example, only has one rate case every three**

5 **years and they do a projection of the next year's**

6 **revenue requirement, the year after and the year**

7 **after, and then there is a set rate of return and**

8 **there is a dead band around it usually of about**

9 **half a percentage point. Let's say they set 10**

10 **percent and if they get -- the company earns over**

11 **10 and a half, anything over that they have to**

12 **share with ratepayers. And, similarly, if they go**

13 **under that, then they get a bump in their rates.**

14 **That's a multi-year kind of thing.**

15 **Now, on a one-year go I don't think you**

16 **would -- that doesn't make as much sense. In Maine**

17 **it's even more exaggerated, they go out five years,**

18 **and have these kind of adjustments for dead band,**

19 **plus sharing above a dead band, a dead band plus.**

20 **It isn't an automatic rate increase. They have to**

21 **come back in for it, but they have the right to**

22 **jump ahead of the five-year schedule if they don't**

23 **make their -- if they go below the dead band. It's**

24 **a feature you could think about.**

25 **Q. Interesting. And just to kind of take the**

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1 extreme scenario, say we went with the 9 percent

2 and the company couldn't raise its equity -- raise

3 capital to --

4 **A. If there was a demonstration that the**

5 **company couldn't raise capital, then I think the 9**

6 **percent would be too low. But I would -- I**

7 **would -- I just don't think that's going to be the**

8 **case. I don't see how that could be the case.**

9 COMMISSIONER FEDORCHAK: That's all for me

10 for now.

11 JUDGE FETCH: Thank you, Commissioner

12 Fedorchak. Commissioner Kalk.

13 COMMISSIONER KALK: Thank you, Your Honor.

14 **EXAMINATION**

15 **BY COMMISSIONER KALK:**

16 **Q. Thank you, Mr. King, for your testimony.**

17 **And the same thing I told the previous witness,**

18 **thanks for coming out here and helping us out.**

19 **It's always good to get different perspectives.**

20 **Commissioner Fedorchak opened up some questions I**

21 **wanted to explore a little bit further.**

22 **The concept you were just talking about**

23 **about earning shares above a certain point, we've**

24 **used that in previous orders and I think that's a**

25 **good idea, but I never thought about the idea on**

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1 the other side, the undershares, if you will. Will

2 you walk me through that again? I know you talked

3 about it. Give me a little more detail how that

4 would flesh out.

5 **A. Well, the theory of it is that if you give**

6 **an award for a multi-year -- a multi-year award and**

7 **you set a rate of return and if the company**

8 **overearns that return, it shares with the**

9 **ratepayers. If it underearns that return, it has a**

10 **constitutional -- and I'm not a lawyer, but it's my**

11 **understanding it has a constitutional right to get**

12 **more money; in other words, it becomes a taking by**

13 **the Commission where the company is forced to hold**

14 **its prices down to a point where it can't cover its**

15 **costs.**

16 **Q. So how would that practice -- we've seen**

17 **cases where companies have overearned and at the**

18 **end of the year they submit us paperwork that says**

19 **we overearned by this amount and we've already got**

20 **an agreement in place and, let's say, half of it**

21 **goes back to the customers, it's pretty easy to**

22 **figure that out.**

23 **A. Yes.**

24 **Q. So if we set it for the underearned, would**

25 **it be the same thing, the company would file their**

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1 underearnings?

2 **A. No, no. You can't do that. It tends not**

3 **to work symmetrically, I'm afraid. If you**

4 **underearn, then they have to demonstrate that**

5 **they -- how much more money they have to have come.**

6 **It's a matter of probably law that you can't**

7 **increase rates without some demonstration.**

8 **Q. Sure. We can explore this more in a work**

9 **session, I guess. But it's not certainly going**

10 **through another rate case like this. It could be a**

11 **procedure, you think, that would be more of a**

12 **45-day window where the company would file --**

13 **A. It could be something shorter than that.**

14 **Q. Because the -- not to give out all my**

15 **cards here too early, but I would certainly like to**

16 **get to a point with all of our investor-owned**

17 **utilities where we're not having rate cases every**

18 **year. I would like to get to at least a three-year**

19 **period, maybe even longer.**

20 **A. Yeah.**

21 **Q. But the challenge is figuring out an ROE**

22 **that you could predict for that period of time.**

23 **How would you -- how would you envision something**

24 **like that where if my goal was to have a rate case**

25 **no less than every -- or no more than every three**

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1 years, how would you structure an ROE given the
2 variability that can take place in that three-year
3 period?

4 **A. Well, what I would do is tie the ROE to**
5 **the treasury bond rate, and this is being**
6 **recommended in Maine where they have a five-year**
7 **window. There the proposal, and it hasn't been**
8 **adopted yet, is that for -- there's a dead band of**
9 **treasury bond changes of a hundred basis points.**
10 **In other words, from the get-go as long as the**
11 **treasury bond yield does not change more than a**
12 **hundred basis points -- and right now it is what,**
13 **3.8. As long as it doesn't exceed 4.8, there's no**
14 **change in the allowed return.**

15 **If it exceeds 4.8, then the allowed return**
16 **on equity to the company increases by approximately**
17 **30 basis points, and that's that one -- that one to**
18 **-- one to .3 relationship I was talking about where**
19 **the return on equity doesn't increase at the rate**
20 **that the treasury bond yield increases. And from**
21 **then on every change -- annual change in the**
22 **treasury bond yield gets a .3 percent change up or**
23 **down in the allowed return for that year.**

24 **Q. So the ROE that you're recommending today**
25 **is 9.0.**

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1 **A. Yeah.**

2 **Q. How long do you feel comfortable that**
3 **that's the right amount?**

4 **A. Well, companies telegraph pretty**
5 **clearly --**

6 **Q. No, no. What do you think?**

7 **A. What do I think?**

8 **Q. What do you think?**

9 **A. I just can't say. If there is a dramatic**
10 **increase in interest rates, obviously an ROE of 9**
11 **percent is not appropriate, but it's got to be a**
12 **fairly hefty increase in interest rates.**

13 **Q. So one year? Do you think one year is**
14 **fair?**

15 **A. Oh, I would say certainly for one year.**

16 **Q. Okay.**

17 **A. But the company has telegraphed to you**
18 **that they're going to be in here next year and**
19 **you'll be looking at this whole thing all over**
20 **again, unfortunately.**

21 **Q. Were you here when I talked yesterday with**
22 **Ms. Ann Bulkley?**

23 **A. Yes.**

24 **Q. Are you familiar with what advance**
25 **determination of prudence is?**

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1 **A. Yes.**

2 **Q. What would your thoughts be on if levying**
3 **a company an advance determination of prudence**
4 **should affect the ROE?**

5 **A. Well, the fact that you issue these**
6 **reduces the risk of new investment and, therefore,**
7 **lowers the demand for RO- -- I mean, the required**
8 **ROE.**

9 **Q. Did you determine -- did you include the**
10 **fact that this Commission has been very favorable**
11 **to ADPs in your calculation of return on equity?**

12 **A. No, I did not. Not explicitly.**

13 **Q. So if you would view the Commission more**
14 **favorably for ROE versus one not favorably, how**
15 **much do you think that could sway your ROE**
16 **calculation?**

17 **A. Well, Ms. Bulkley was right, that it's a**
18 **matter of comparison. I used 16 companies and I'd**
19 **have to look at all those 16 companies to see**
20 **whether they also issue ADPs.**

21 **Q. Okay.**

22 **A. And if they do, then the fact that you**
23 **issue ADPs won't have much effect. On the other**
24 **hand, if 15 of them don't and you do, then it's a**
25 **significant reduction in risk that's discrete only**

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1 **to NSP and should be recognized in the return on**
2 **equity.**

3 **Q. Okay. Thank you. Then the last question**
4 **-- the company now is asking for a rate increase of**
5 **roughly 9.25 percent and they're given interim**
6 **rates right now. How do you see the relationship**
7 **between the actual rate increase they get to the**
8 **return on equity? How do you see that**
9 **relationship?**

10 **A. Oh. Well, the lower the return on equity,**
11 **the lower will be the rate increase.**

12 **Q. So I couldn't separate and give them a**
13 **rate increase of 11 percent but a return on equity**
14 **of 9 percent?**

15 **A. You would have to offset it with something**
16 **else. You'd have to do some disallowing. You're**
17 **talking about disallowing all those renewable**
18 **energy projects, well, have a go at that. That**
19 **would be an offset. But all things being equal,**
20 **you can't give them a high return and a lower rate**
21 **increase.**

22 **Q. Unless we make something else along the**
23 **way.**

24 **A. Yeah.**

25 **COMMISSIONER KALK: Maybe that will**

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1 happen. You never know. Thank you, sir.
 2 THE WITNESS: Thank you.
 3 JUDGE FETCH: Thank you, Commissioner.
 4 Commissioner Christmann.
 5 **EXAMINATION**
 6 **BY COMMISSIONER CHRISTMANN:**
 7 **Q.** Mr. King, in our discussion yesterday with
 8 Ms. Bulkley about the downgrading of South Dakota
 9 and Minnesota --
 10 **A. Yes.**
 11 **Q.** -- we talked about whether that was -- or
 12 I asked the question whether it was purely because
 13 of the ROEs. Are you familiar with that --
 14 **A. Yes.**
 15 **Q.** -- those decisions? And was that a -- you
 16 know, the only factor or a major factor or just one
 17 of many factors in those downgrades, in your
 18 opinion?
 19 **A. Certainly it won't be the only factor. It**
 20 **is a major factor, but it is not the only factor.**
 21 **I mentioned to Commissioner --**
 22 COMMISSIONER FEDORCHAK: Fedorchak.
 23 THE WITNESS: -- Fedorchak or Fedorchak --
 24 COMMISSIONER FEDORCHAK: There you go.
 25 Absolutely.

1 **your constituents.**
 2 **Q.** And I appreciated that clarity at the end
 3 of your statement today, but I do want to ask one
 4 more question on that from the perspective of the
 5 investors. Am I understanding you right that if
 6 everything else is done well, a 9 percent ROE would
 7 not necessarily cause a downgrade, if the rest --
 8 **A. I can't promise you that, but certainly it**
 9 **would reduce the likelihood.**
 10 **Q.** When we talk about this, we talk about
 11 kind of an us-versus-them relationship between the
 12 investors and the ratepayers. Is there some rule
 13 of thumb or does this have to do with the 1 percent
 14 to .3 percent correlation you were talking about,
 15 the difference between what a ratepayer would
 16 expect they're going to have to pay at 10 and a
 17 quarter percent versus 9 percent? How do I
 18 translate that difference to a ratepayer that
 19 approaches me on the street?
 20 **A. Well, the ratepayer that approaches you on**
 21 **the street neither knows nor cares what the rate of**
 22 **return is. What he's worried about is the electric**
 23 **bill, and if the electric bill goes up 9 percent,**
 24 **which, incidentally, is multiples of the rate of**
 25 **inflation, and it comes on top of other rate**

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1 THE WITNESS: Now I've lost my train of
 2 thought working on your name. Get me back on
 3 track, please.
 4 **Q.** (COMMISSIONER CHRISTMANN CONTINUING) The
 5 correlation between the lower ROEs and the
 6 downgrading of other jurisdictions.
 7 **A. Oh, that's right. If you -- even with a**
 8 **low rate of return, if the probability of earning**
 9 **that return is significantly greater in North**
 10 **Dakota than elsewhere, then I think that's an**
 11 **offsetting consideration that might improve their**
 12 **view of North Dakota's regulation. It's not just**
 13 **the absolute level of rate of return, but what they**
 14 **call a quality of regulation, where the regulation**
 15 **tends to have, inconsistent from case to case,**
 16 **disallowances or treatments of various costs that**
 17 **can't be forecast or anticipated by the investment**
 18 **community, that makes for a very unstable and**
 19 **unreliable form of regulation. There is some point**
 20 **to consistency, but it is true, though, that the**
 21 **allowed return is a major factor in setting these**
 22 **regulatory environments.**
 23 **Now, again, remember that the regulatory**
 24 **environment is purely from the investor standpoint,**
 25 **and I submit that the investors are not necessarily**

1 **increases, both past and future that apparently are**
 2 **multiples of the rate of inflation, that's what he**
 3 **cares about, and the difference between the 10.25**
 4 **and 9 is reflected in that rate increase. If you**
 5 **go 9 percent instead of 10.25, you have a much**
 6 **smaller rate increase and that's the thing that the**
 7 **ratepayer cares about.**
 8 **Q.** But is there a number that one could put
 9 to just that part of the discussion? All the
 10 things we're going to end up dealing with in this
 11 whole rate case when it gets down to the difference
 12 between 10 and a quarter or 9 percent, what is the
 13 impact of that part of the puzzle to a ratepayer?
 14 **A. You know, I have that in my data request**
 15 **here. I asked them what a 1 percent difference in**
 16 **return on equity equals, and I have to look it up.**
 17 **If I could find it quickly, I will try and do that.**
 18 **Oh, here it is. I'll find it for you.**
 19 **Here's the question I asked, "Please**
 20 **provide a quantification of the net change in**
 21 **NSPM's revenue requirement that results from a 1**
 22 **percent, a hundred-basis point change, in the**
 23 **allowed cost of equity." And it says, "The result**
 24 **in a theoretical 1 percent change in the cost of**
 25 **equity is a reduction of the revenue requirement**

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1 request in this proceeding of approximately 3.2
2 million." Now, we're at 1.25 difference, so think
3 maybe what, 3.5, 3.6 million out of the -- how much
4 are they asking for -- 14 million. So that's the
5 impact.

6 COMMISSIONER CHRISTMANN: Thank you. I
7 have no further questions.

8 JUDGE FETCH: All right. Thank you. Ms.
9 Jeffcoat-Sacco, any questions? And then we'll come
10 back to Mr. Norrell and make the rounds.

11 MS. JEFFCOAT-SACCO: I do but I thought
12 I'd wait till my turn came up.

13 EXAMINATION

14 BY MS. JEFFCOAT-SACCO:

15 Q. You've said several times that the
16 Commission's job is to find that number that is the
17 minimum required, and I always thought the
18 objective was a reasonable number as opposed to a
19 minimum number.

20 A. Well, that's the reasonable number. The
21 reasonable number, in my opinion, and maybe others
22 have different views, is the number that allows the
23 utility to raise capital and maintain credit, but
24 it should be no higher than that number, because
25 that's the number that best balances the interest

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1 of ratepayers and the interest of the company.

2 Q. Do you have the docket number in Maine
3 that you're referring to where apparently they're
4 looking at the sharing mechanisms?

5 A. I can get it for you. It's underway.
6 What happened is the company filed a rate
7 application, they were looking for a capital budget
8 rider or tracker and the Commission rejected that
9 out of hand and so the company has to refile and so
10 the whole case has been put back, but part of the
11 case is this proposal for a tracker for the 30-year
12 treasury. I haven't talked to -- I represent the
13 consumer advocate there and I haven't talked to
14 them, but my personal preference is to favor it
15 because I think it reduces the risk of -- well, it
16 reduces the company's risk and, therefore, reduces
17 the required rate of return.

18 Q. So it is for one company, though? It's
19 not like a generic --

20 A. It's Central Maine Power.

21 Q. And if you could get the docket number
22 during one of the breaks or something, that would
23 be helpful.

24 A. I'll look. I can get it right off my
25 computer.

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1 Q. Okay. And then we did have one further
2 question. Perhaps you should take a minute to
3 explain the difference between your recommended
4 capital structure -- in a summary fashion, your
5 recommended capital structure and the company's and
6 what sort of impact that has, if it's large or
7 small, to this question.

8 A. Well, I know what I used, and I can't
9 right off remember what the company used, but what
10 I used was the latest actual capital structure.
11 There is a propensity of utilities to forecast
12 capital structures, and I don't really know how
13 they do that. They forecast capital structures and
14 they forecast the cost of those capital structures,
15 particularly the cost of debt.

16 Now, we've been talking about the
17 uncertainty of future interest rate changes and I
18 have pointed out that there's been a propensity to
19 overstate future interest rates. That adds a new
20 area of uncertainty into the whole finding of rate
21 of return, so my preference, and the thing I urge
22 on all commissions that I testify before, is to use
23 the latest actual capital structure. I believe I
24 used the capital structure as of --

25 COMMISSIONER FEDORCHAK: I think what you

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1 used -- I wrote it in -- March 2013.

2 Q. (MS. JEFFCOAT-SACCO CONTINUING) Do you
3 want to identify that piece of paper?

4 A. I don't see the capital structure on here.

5 COMMISSIONER FEDORCHAK: Isn't it that?
6 THE WITNESS: Oh, up here. Okay. I've
7 got that. What it doesn't tell me is when this --
8 oh, this is 2011 actual.

9 COMMISSIONER FEDORCHAK: This was yours.

10 THE WITNESS: Oh, March 13, 2003.

11 COMMISSIONER FEDORCHAK: 2013.

12 THE WITNESS: 2013. I'm sorry.

13 JUDGE FETCH: Do you want to identify that
14 piece of paper?

15 THE WITNESS: This is Exhibit AEH-1,
16 Schedule 3, page 5 of 6 that I'm looking at.

17 JUDGE FETCH: And Commissioner Fedorchak
18 just handed that to you?

19 THE WITNESS: Yeah, she wrote in the March
20 2013 capital structure, and the capital structure
21 that I used is in Exhibit CWK-1 and it's March 31.

22 COMMISSIONER FEDORCHAK: Same one?

23 THE WITNESS: Yeah, this is the capital
24 structure I used. Now, I don't know what the
25 company used right off the top of my head.

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1 **Q.** (MS. JEFFCOAT-SACCO CONTINUING) The one
 2 you used is company actual March 31 or your
 3 recommended?
 4 **A. No, it's company actual March 31. I got**
 5 **it out of the form 10-Q that the company files with**
 6 **the SEC.**
 7 MS. JEFFCOAT-SACCO: Thanks. That's all.
 8 JUDGE FETCH: Thank you. Mr. Norrell.
 9 MR. NORRELL: Thank you, Your Honor.

REDIRECT EXAMINATION

10 **BY MR. NORRELL:**
 11 **Q.** Mr. King, you mentioned yesterday you were
 12 here when Mr. Tyson testified via telephone.
 13 **A. Yes.**
 14 **Q.** And do you recall he stated approximately
 15 two-thirds of the investors in the company are
 16 institutional investors and only one-third are
 17 individual investors?
 18 **A. Yes.**
 19 **Q.** In your opinion, do individual investors
 20 actually look at things like rate of return when
 21 they're investing in a company such as this, or is
 22 it more likely they would buy utility stocks
 23 because they have historically been thought of as a
 24 secure investment?
 25

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1 **A. Well, probably individual customers buy**
 2 **them because they're secure and they tend to have**
 3 **highish dividend yields. The institutional**
 4 **investors are probably more analytical in their**
 5 **purchases and do go into the issues of return on**
 6 **equity allowances, and so on.**
 7 **Q.** You've mentioned numerous times that
 8 there's a tendency to overstate future interest
 9 rates. Can you give us an example of that?
 10 **A. Well, I've got a chart here which you can**
 11 **hand out -- I did have a chart -- which shows --**
 12 **have you got that chart?**
 13 **Q.** I think I do.
 14 **A. Here it is.**
 15 MR. NORRELL: May I hand this chart out?
 16 It's marked as Exhibit CWK, but I don't believe
 17 it's been prefiled. No, it has not.
 18 JUDGE FETCH: And it's not in the
 19 testimony?
 20 MR. NORRELL: It is not.
 21 THE WITNESS: This was an exhibit --
 22 JUDGE FETCH: Go forward with that,
 23 please, Mr. Norrell.
 24 MR. NORRELL: I'll seek to admit it as a
 25 hearing exhibit.

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1 JUDGE FETCH: Yes, this would be labeled
 2 PSC Exhibit 18. And have the witness identify this
 3 and then I'll see if there's any objections.
 4 THE WITNESS: This is a chart which shows
 5 the forecasts 18 months prior to the actual by the,
 6 what's called, Blue Chip Financial Forecasts. Blue
 7 Chip is an organization that --
 8 JUDGE FETCH: Don't testify. Just
 9 identify it.
 10 THE WITNESS: I'm trying to identify what
 11 Blue Chip is.
 12 JUDGE FETCH: The document says Blue Chip
 13 Financial Forecasts for 30-Year Treasury Bonds.
 14 THE WITNESS: Oh, all right.
 15 JUDGE FETCH: All right. At this time,
 16 Mr. Johnson, any objections?
 17 MR. JOHNSON: No, Your Honor, but I will
 18 be very interested to find out what this is as Mr.
 19 King is going forward with it.
 20 JUDGE FETCH: Okay. And at the very
 21 least, Mr. Norrell, have the witness identify who
 22 prepared this or where this came from.
 23 MR. NORRELL: Yes.
 24 JUDGE FETCH: All right. Exhibit PSC 18
 25 is admitted.

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1 **Q.** (MR. NORRELL CONTINUING) Mr. King, could
 2 you please identify who prepared this and where the
 3 information came from?
 4 **A. Well, I prepared it. We subscribe to a**
 5 **service called Blue Chip Financial Forecasts. It's**
 6 **a monthly publication of the consensus of a whole**
 7 **raft of different analysts. It's not just**
 8 **securities analysts. They go to universities, they**
 9 **go to -- they have 30 or 40 people that they ask**
 10 **questions about what they expect, and these --**
 11 **among the questions they ask, and there's a bunch**
 12 **of others, is what is the forecast that you have**
 13 **for 30-year treasury bonds in the next quarter, the**
 14 **next quarter and the next quarter and the next**
 15 **quarter, out six quarters, which is 18 months.**
 16 **So what I did was, I went through my old**
 17 **copies of these reports and I identified when the**
 18 **forecast was made and for what quarter, and you**
 19 **will see the forecast made in January 2008 was for**
 20 **the second quarter of 2009 and the forecast was 4.9**
 21 **percent. That's the top line. And then I went and**
 22 **looked up in the Federal Reserve historical record**
 23 **what the actual treasury bond yield was, and in the**
 24 **case of that month the actual was 4.17, and I did**
 25 **that for each of the monthly forecasts from January**

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1 of 2008 through December of 2011, which got me to
2 the forecast through the first quarter of 2013.
3 And what it shows is that except for a
4 period of about three quarters -- three months,
5 rather, forecasts, Blue Chip has consistently
6 forecast interest rates significantly higher than
7 ones that actually developed 18 months later, and
8 that's the basis of my statement that the forecasts
9 had been consistently overstated relative to the
10 actuals.

11 MR. NORRELL: Thank you, Your Honor. I
12 have no further questions.

13 JUDGE FETCH: Thank you, Mr. Norrell. Mr.
14 Johnson, recross?

15 MR. JOHNSON: Yes. Thank you, Your Honor.

16 **RECROSS-EXAMINATION**

17 **BY MR. JOHNSON:**

18 **Q.** Mr. King, let's stay on this topic here
19 for a moment because I'm not sure I yet understand.

20 So the data ranges at the base of the page
21 pertain to the actual treasury yields or is that
22 the forecast? It appears to be the actuals.

23 **A.** Well, take a look at the top. You see
24 "for quarter," it says -- the top line says 2009,
25 4.9.

1 investors, if you will, look at both actual data
2 and forecast data?

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

4 **Q.** So even though the forecasters are
5 consistently wrong per your chart here, investors
6 would be looking at that and giving it whatever
7 weight they thought it deserved?

8 **A.** Yeah. But in this case I'm concerned
9 about basing a rate of return finding on forecasts
10 that have consistently proven exaggerated. Ms.
11 Bulkley goes out to, I don't know, 2016, 2018,
12 something like that, in a couple of her models,
13 coming up with the treasury bond yield that she's
14 going to use as her risk-free rate in both the
15 interest rate risk premium methodology and in the
16 capital asset pricing study. She uses these
17 far-out forecasts, which I -- first of all, I don't
18 think you can forecast interest rates that far out
19 with any reliability regardless of what the trends
20 are, and, second, the pattern has been for over-
21 forecast.

22 **Q.** However, I believe a moment ago we did
23 agree that investors, whether they're wise or not
24 wise, do look at that data.

25 **A.** Yeah, they do, but I'm concerned this

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1 **Q.** I see that.

2 **A.** And that's the forecast. And then the
3 next column is the actual for that quarter.

4 **Q.** Okay. So that helps. So what you did was
5 you cut off your data, and I don't mean that in any
6 editorial sense, but your data ends for the actual
7 treasury bond yields in the first quarter of 2013,
8 if I understand?

9 **A.** Yes. And that's because, I have to
10 confess, our subscription ran out and I didn't
11 renew it.

12 **Q.** Fair enough. So if we were to extend this
13 through the recent rise in treasury yields, we may
14 get the same or a different result?

15 **A.** Well, in preparing this case, I
16 resubscribed, but I haven't yet gotten the reports.
17 Among the things I've got to do when I get to my
18 office is phone them up and say where are my
19 reports.

20 **Q.** And I appreciate that. I was trying to
21 figure out the implications of this. The recent
22 rise in treasury yields is not reflected in this
23 data as compared to what the forecasts were?

24 **A.** No.

25 **Q.** And is it correct that analysts or

1 **Commission not.**

2 **Q.** And isn't it correct that the goal here is
3 to determine what investors require? Hasn't this
4 Commission said that in so many words?

5 **A.** Well, in forecasting the growth rates
6 that's what we do look at. In using the capital
7 asset pricing model and in using the interest rate
8 risk premium, we're not -- that's not based on
9 investor forecasts or investor expectations.
10 That's based on the actual risk-free rate.

11 **Q.** And, Mr. King, I was not referring to a
12 particular model. Isn't it correct that this
13 Commission has said the ultimate test for the ROE
14 is what investors require?

15 **A.** It's what investors require, but you've
16 got to realize that Ms. Bulkley's 10.25 percent
17 return estimate is based on -- to some measure on
18 these very exaggerated future treasury bond yields.

19 **Q.** Which investors rely on to some degree?

20 **A.** Oh, no, no, no, no.

21 **Q.** But a moment ago we agreed on that.

22 **A.** No. What I said is that the two cases in
23 which she uses these forecasts have nothing to do
24 with investor expectations. They are estimates of
25 the added cost of stocks over risk-free rate, and

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1 she set the risk-free rate at an unreasonably high
 2 level, which the risk-free rate is what it is, it
 3 isn't what investors expect it to be.
 4 Q. So those comments you've just made are now
 5 addressed to the CAPM model and the risk premium
 6 model?
 7 A. Exactly.
 8 Q. Thank you. Earlier on you had some
 9 discussion and you articulated your view on what
 10 the appropriate ROE was which you characterized as
 11 the minimum needed to raise capital and maintain
 12 financial integrity.
 13 A. That's correct.
 14 Q. And I believe you characterized that as
 15 not following the conventional wisdom of the
 16 regulatory community.
 17 A. Not necessarily following, yes.
 18 Q. If I'm an investor and I have two
 19 investments of comparable risk, one in an
 20 environment -- or excuse me -- a jurisdiction that
 21 has a more -- a higher view of the appropriate ROE
 22 than North Dakota, assuming it were to follow your
 23 recommendation, what incentive would I have to
 24 invest in North Dakota when I could get a higher
 25 authorized ROE elsewhere?

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1 A. Well, an investor looking at a series of
 2 utilities can't buy the book value. He can buy
 3 only the market value, which is significantly less
 4 than the return on book value. When you give an
 5 excessive rate of return on book value, the effect
 6 of that is to bid up the market price, and the
 7 market price is what the investor has to pay, and
 8 it is significantly lower than the book return if
 9 the market-to-book ratio is well over one. So the
 10 investor doesn't look at the return on book value,
 11 he looks at the return on market value, which
 12 arguably is equal for all utilities of comparable
 13 risk. The difference is that the utility that gets
 14 the high rate of return has a very high stock
 15 price. The utility that gets the lower rate of
 16 return has a lower stock price. But from the
 17 investor's viewpoint, the return is the same.
 18 Q. So you're suggesting that an investor will
 19 get the same return with a 9 percent ROE as with a
 20 10.25?
 21 A. If the stock price of the company with the
 22 10.25 is proportionately higher than that
 23 differential, the answer is the same return.
 24 Q. That would be the market-to-book
 25 discussion we had earlier?

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1 A. Exactly.
 2 Q. Let's just clear up one point here. You
 3 had some discussion about the effect of a 1 percent
 4 change in the ROE and you quoted a response
 5 provided by the company that would be about \$3.2
 6 million.
 7 A. Yes, for a 1 percent.
 8 Q. Right. And if we were to take that 3.2
 9 number and multiply it by 1.25, I believe that
 10 would reflect the additional 25 basis point swing,
 11 would it not?
 12 A. That's right.
 13 Q. My calculation leads to a \$4.0 million
 14 impact rather than the 3.5 you sort of estimated?
 15 A. I was just winging it. I was trying not
 16 to overstate it.
 17 Q. Right.
 18 A. But if that's what the calculation is,
 19 it's 4 million bucks.
 20 MR. JOHNSON: Thank you. That's all I
 21 have, Your Honor.
 22 JUDGE FETCH: Thank you, Mr. Johnson. At
 23 this time we'll go to the Commission. Commissioner
 24 Fedorchak.
 25

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1 **FURTHER EXAMINATION**
 2 **BY COMMISSIONER FEDORCHAK:**
 3 Q. Yeah. Ms. Jeffcoat-Sacco was talking
 4 about the company's capital structure and we didn't
 5 actually get to the part where you were going to
 6 talk about the differences, so I found the
 7 official, not my scribbled-in references to both
 8 the company's and yours, and if you could speak
 9 to -- they aren't significant differences, but they
 10 are different and I would like to know what the
 11 impact of that is. So the company's is on page 41
 12 of Ms. Bulkley's testimony in a chart and then
 13 yours is on Exhibit --
 14 A. Mrs. Bulkley's initial testimony or
 15 rebuttal?
 16 Q. Rebuttal.
 17 A. Rebuttal. Okay.
 18 Q. Yeah, rebuttal testimony. And I have
 19 that.
 20 A. Oh, dear. I have implied growth rates on
 21 utility sector. Maybe I'm in the wrong place. Are
 22 you sure it isn't the initial? Let me see.
 23 Q. Oh, yes, it is the initial. Did it
 24 change, though?
 25 A. Yeah, I've got it here.

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1 Q. Okay.

2 A. Here's the trouble. I don't really know

3 what the basis of Ms. Bulkley's capital structure

4 is.

5 Q. I'm mostly interested in your explanation

6 of what the difference is in how these are

7 structured, and they're fairly small, what you're

8 proposing and what they are, what the effect is and

9 should we be concerned about it.

10 A. Well, obviously Ms. Bulkley's capital

11 structure is different from mine because mine is as

12 of a date later than Ms. Bulkley's initial

13 testimony. So right off the bat that would explain

14 some of the difference.

15 Q. What's the effect, though?

16 A. Whether she used a historical capital

17 structure or forecast one, I just don't know. I

18 can't tell from this.

19 Q. So you can't speak to what the effects

20 those differences have?

21 A. The effect of the difference, that I can

22 speak to. One minute. She has an equity

23 percentage -- well, the biggest difference is she

24 has an equity percentage of 44.96 percent, I have

25 one of 45.24, and the effect of that -- that was

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1 debt -- I'm sorry -- not equity. The effect of

2 having a little more debt is to lower the composite

3 rate of return. She has a common equity proportion

4 of 52.56 percent, I have a common equity proportion

5 of 53.42 percent. And the fact that I have a

6 slightly higher equity proportion means that my

7 cost of capital composite, cost of capital would be

8 slightly higher had I used her ratio. I have less

9 short-term debt, which has the effect of increasing

10 my composite rate of return. I think the overall

11 difference, to sum it up, is that using my capital

12 structure probably increases by a couple basis

13 points the overall rate of return.

14 Q. Okay. Thank you.

15 A. And I could work through it and give you a

16 precise number, if you'd like.

17 Q. Sure, that would be helpful.

18 THE WITNESS: Let me do that over the

19 break.

20 COMMISSIONER FEDORCHAK: Okay. Thank you.

21 That's all my questions. Thanks.

22 JUDGE FETCH: Thank you, Commissioner.

23 Commissioner Kalk?

24 COMMISSIONER KALK: No, ma'am.

25 JUDGE FETCH: Commissioner Christmann?

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1 COMMISSIONER CHRISTMANN: I have no

2 further questions, either.

3 JUDGE FETCH: All right. Thank you,

4 Commissioner.

5 Ms. Jeffcoat-Sacco, any further questions?

6 **FURTHER EXAMINATION**

7 **BY MS. JEFFCOAT-SACCO:**

8 Q. Just one based on that because I thought I

9 understood. You are not recommending revisions to

10 the capital structure? As part of your

11 recommendation, you're not recommending they have

12 too much equity or too much debt or anything like

13 that? You were just using different numbers based

14 on a different date?

15 A. That's the only effective difference.

16 MS. JEFFCOAT-SACCO: Okay. That's all I

17 wanted to clear up. That's all.

18 JUDGE FETCH: All right. Thank you. And,

19 Mr. Norrell, any further questions?

20 MR. NORRELL: No, Your Honor. Thank you.

21 JUDGE FETCH: Thank you. Mr. Johnson, any

22 further questions?

23 MR. JOHNSON: No, Your Honor.

24 JUDGE FETCH: Commissioners? Any further

25 questions from any of the Commissioners?

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1 All right. Hearing none, you're excused.

2 THE WITNESS: Thank you.

3 JUDGE FETCH: All right. Are we ready to

4 proceed to the next witness or does the Commission

5 want a five-minute break?

6 All right. We'll take five minutes.

7 (Recess taken.)

8 JUDGE FETCH: Okay. We are back on the

9 record and it is 11:30 a.m., Central Time. We are

10 planning to break at noon, between noon and one for

11 lunch, but we will begin with this next witness and

12 see how far we get. Mr. Norrell, please identify

13 your witness.

14 MR. NORRELL: Thank you very much, Judge.

15 The next witness would be Dr. Karl Pavlovic. He is

16 testifying to PSC Exhibits 4 and 5. I will note

17 that this is out of order from the proposed witness

18 list. Should I restate that?

19 JUDGE FETCH: That's fine.

20 MR. NORRELL: The exhibits will be kept

21 the same, but the witness -- the order of witnesses

22 is a little different due to logistics this morning

23 for the witnesses.

24 JUDGE FETCH: Okay. Then to back up, is

25 he testifying to Exhibits 4 and 5 or 5 and 6?

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1 MR. NORRELL: 5 and 6.
 2 JUDGE FETCH: Thank you.
 3 MR. NORRELL: I'm sorry if I wasn't clear
 4 on that.
 5 JUDGE FETCH: All right. Thank you. All
 6 right. Do you have a witness opening statement
 7 that you're going to present?
 8 MR. NORRELL: I do. I would ask Mr.
 9 Pavlovic if he has any corrections to add to
 10 Exhibits 5 and 6.
 11 DR. PAVLOVIC: Yes. Excuse me. I have
 12 some typographical corrections.
 13 JUDGE FETCH: Let's place you under oath
 14 first.
 15 DR. PAVLOVIC: That would be good.
 16 JUDGE FETCH: All right. And please
 17 pronounce your last name for the record.
 18 DR. PAVLOVIC: Pavlovic.
 19 JUDGE FETCH: Pavlovic. All right.
 20 Please raise your right hand. I know you've been
 21 here and heard me instruct as to penalties for
 22 perjury.
 23 **KARL PAVLOVIC,**
 24 being first duly sworn, was examined and testified
 25 as follows:

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1 JUDGE FETCH: Thank you. All right. I
 2 believe Mr. Norrell asked you if you had
 3 corrections to Exhibits PSC 5 and 6. And can you
 4 give us those now, please.
 5 THE WITNESS: Yes. This is to Exhibit 5,
 6 my direct testimony, and while I'm not dyslexic, I
 7 in my testimony managed only once to get the
 8 acronym correctly for the transmission cost
 9 recovery. That was its first incident. So I would
 10 like to tell you those corrections. All these
 11 corrections are replacing TRC with TCR.
 12 The first of them is on page 5 at line 12.
 13 The second is at page 6 on line 13. The third and
 14 fourth are on page 19 at lines 13 and 16; on page
 15 21 at line 13; on page 22, lines 17, 27, and 28;
 16 and on page 23, lines 4, 5, and 10.
 17 I also have two typographical corrections
 18 to Exhibit 5 on page 19, and the first one is at
 19 line 3 and I would like to insert between the words
 20 "charges" and "purpose" "for the." And on line 9
 21 I'd like to strike the only occurrence of the word
 22 "of" and replace it with the word "or."
 23 JUDGE FETCH: Okay. Thank you. Mr.
 24 Norrell.
 25 MR. NORRELL: Do you have any other

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1 corrections, Mr. Pavlovic?
 2 THE WITNESS: No, I do not.
 3 MR. NORRELL: With that, then, I would
 4 like to hand out Mr. Pavlovic's opening statement
 5 and seek admission of this as PSC No. 19.
 6 JUDGE FETCH: All right. And by
 7 stipulation the opening -- witness opening
 8 statement is admitted into the record as PSC
 9 Exhibit 19. Thank you. Mr. Norrell.
 10 MR. NORRELL: Thank you, Your Honor.
 11 **DIRECT EXAMINATION**
 12 **BY MR. NORRELL:**
 13 **Q.** Mr. Pavlovic, would you care to read what
 14 you have in front of you for the record?
 15 **A. Yes, I will.**
 16 **My name is Karl Richard Pavlovic. My**
 17 **testimony addresses, on behalf of the Commission's**
 18 **advocacy staff, the assertions and proposals in**
 19 **this proceeding by Northern States Power regarding**
 20 **its North Dakota jurisdictional and class costs of**
 21 **service, rate design, and proposed transmission**
 22 **cost recovery tracker.**
 23 **In my testimony I conclude that NSP's**
 24 **jurisdictional cost assignment methods and**
 25 **procedures are, with the exception of the use of a**

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1 **12 coincident peak demand allocator, appropriate**
 2 **and in accordance with the principles enunciated in**
 3 **the NARUC Cost Allocation Manual. The 12**
 4 **coincident peak demand overallocates system costs**
 5 **to the North Dakota jurisdiction.**
 6 **I also conclude that NSP's class cost**
 7 **assignment methods and procedures are appropriate**
 8 **and consistent with the NARUC cost allocation**
 9 **principles and that NSP's proposed customer class**
 10 **revenue distribution is cost based and reasonable.**
 11 **While the class cost study does not directly**
 12 **support the current rate structure, NSP's proposed**
 13 **modifications to the rate components, moving**
 14 **customer and demand charges towards full cost**
 15 **recovery, are appropriate and reasonable. NSP's**
 16 **rate structure, however, is overly complex and the**
 17 **tariff is virtually incomprehensible.**
 18 **Finally, I conclude that NSP's application**
 19 **for a transmission cost recovery rider does not**
 20 **comport with the statutory requirements for**
 21 **Commission consideration and lacks a demonstration**
 22 **that the costs proposed for the tracker meet the**
 23 **criteria for inclusion in a tracker.**
 24 **There are 13 generally accepted methods**
 25 **for the allocation of electric production costs and**

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1 six generally accepted methods for the allocation
 2 of electric transmission costs. The primary factor
 3 considered in selection of an allocation method is
 4 cost causation as reflected in the planning and
 5 operation of an electric utility's production and
 6 transmission facilities. The primary drivers/
 7 metrics of cost causation on electric production
 8 and transmission facilities are demand and energy.
 9 Selection of an allocation method consists of
 10 determining which method best reflects the
 11 utility's actual system planning and operation. My
 12 testimony provides explanations and illustrations
 13 of each of these points drawn from the NARUC
 14 Manual.

15 In my testimony I assessed the 12
 16 coincident peak demand allocator that Northern
 17 States Power uses to effect its jurisdictional
 18 allocation of production and transmission costs and
 19 recommended that NSP use a single coincident peak
 20 demand allocator. My assessment is based on my
 21 review of cost allocation and system planning
 22 documents and other information provided by NSP in
 23 testimony and discovery.

24 The 12 CP method is considered appropriate
 25 where system monthly demand does not vary

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1 significantly or where the utility plans and
 2 operates its facilities so as to maintain equal
 3 reserve margins, LOLPs or other reliability index
 4 values in all months. As regards variation in
 5 monthly peak demand, NSP is a strongly summer
 6 peaking system and there is considerable variation
 7 in its monthly peak demand. As regards equal
 8 monthly reliability indexes, there is in the
 9 documents and information that I reviewed no
 10 indication or explanation that NSP plans and
 11 operates its system to maintain equal monthly
 12 reliability indexes.

13 In fact, other than statements that NSP
 14 uses this 12 CP method to allocate production and
 15 transmission, there is in the documents and
 16 information that I reviewed no indication or
 17 explanation that NSP plans and operates its
 18 production and transmission facilities to anything
 19 other than its annual system peak demand.

20 In addition, there are allocation methods
 21 explained in the NARUC Manual that are designed to
 22 account for timing and cost differences among
 23 baseload, intermediate, and peaking production
 24 facilities. NSP does not use any of these other
 25 allocation methods. For these reasons, I conclude

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1 that 1 CP is the appropriate method for allocation
 2 of NSP's production and transmission costs to the
 3 North Dakota jurisdiction.

4 Q. Thank you, Mr. Pavlovic. You've been in
 5 the room for the testimony over the past few days,
 6 have you not?

7 A. Yes, I have.

8 Q. And you've indicated on the record in
 9 testimony there have been some issues that have
 10 arisen that you would like to address and I have
 11 informed the other parties of this. Could you
 12 please briefly address those in the sake of moving
 13 this along expeditiously towards cross-examination?

14 A. Yes, I can, and I will. I have four, it's
 15 a mixture of responses and agreements with previous
 16 -- previous testimony.

17 The first of these is that advocacy staff
 18 supports NSP's proposal to move the PPA issues to a
 19 separate proceeding on the fuel charge.

20 Second, I agree with Ms. Heuer that my
 21 proposed allocation adjustment should be applied to
 22 the test year adjustments as well.

23 Third, I recommend that the tariff
 24 revisions and alignment of the class cost study
 25 would be most efficiently undertaken in a

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1 collaborative process.

2 And, fourth, if the broad outlines of
 3 NSP's system planning and operations presented in
 4 Ms. McCarten's, Mr. Brockett's, and Mr. Wishart's
 5 testimony the last two days are correct, I can say
 6 that it is likely that neither the 12 CP nor the
 7 1 CP allocation method is the most appropriate
 8 method to use -- to use to determine NSP's North
 9 Dakota jurisdictional cost. Rather, one of the
 10 energy weighting or time differentiating methods
 11 should be adapted to NSP's actual system planning
 12 and operations.

13 I would like to amend my recommendation
 14 regarding the allocation method to be used in this
 15 proceeding. I recommend that the Commission adopt
 16 the 1 CP method for the purposes of this proceeding
 17 and direct NSP to develop and use in its next rate
 18 case a demonstrably accurate allocation of NSP's
 19 production and transmission cost to its North
 20 Dakota jurisdiction.

21 MR. NORRELL: Thank you. The witness is
 22 available for cross.

23 JUDGE FETCH: All right. Thank you. At
 24 this time, Mr. Johnson, you may cross-examine.

25 MR. JOHNSON: Thank you, Your Honor.

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1 **CROSS-EXAMINATION**2 **BY MR. JOHNSON:**3 **Q.** Bear with me just a moment, please.4 **A. Certainly.**

5 **Q.** Dr. Pavlovic, I'm going to have just a
6 very few questions for you, and the first few
7 questions pertain to the NARUC Manual which you
8 have included as an exhibit, and, fortunately, it
9 appears our versions tie out by way of page
10 reference.

11 I'd like to direct your attention first to
12 page 22, at the base of the page, and I would ask
13 that you read into the record simply for
14 convenience the first two sentences of that last
15 paragraph, starting with "This manual only." Do
16 you see that?

17 **A. Yes, I do see it. This manual -- excuse**
18 **me. This is at page 22 of the 1992 NARUC Cost**
19 **Allocation Manual. "This manual only discusses the**
20 **major costing methodologies. It recognizes that no**
21 **single costing methodology will be superior to any**
22 **other and the choice of methodology will depend on**
23 **the unique circumstances of each utility."**

24 **Q.** And I would like to then direct your
25 attention to page 39 of the manual.

1 **cost allocation."**

2 **Q.** Now, Dr. Pavlovic, when you put your
3 testimony together, were you aware of the prior
4 North Dakota Commission cases that discussed the CP
5 allocators?

6 **A. No, I was not.**

7 **Q.** Would you agree with me that for at least
8 the last 20 years, the Commission has consistently
9 applied some version of the 12 CP to NSP's cost
10 allocation?

11 **A. It's my understanding that that is what**
12 **happened.**

13 **Q.** Would you agree with me that the
14 Commission has also expressly rejected the use of
15 the 1 CP for NSP?

16 **A. It's my understanding that that is --**
17 **under the circumstance in which that determination**
18 **was made, that is what happened.**

19 MR. JOHNSON: Your Honor, I do have a
20 portion of an order that I would like to have again
21 read into the record for convenience purposes. I'm
22 not sure whether our protocol is to now mark
23 Commission orders or whether I can simply provide
24 one to the witness.

25 JUDGE FETCH: You can simply provide one

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1 **A. I'm there.**

2 **Q.** And this will take me a moment to find the
3 reference point for you. It's in the middle of the
4 first paragraph, in the line that starts with the
5 words "maximum peak approach," and if you could
6 read the next sentence into the record again simply
7 for convenience. It's the one that begins "Over
8 time."

9 **A. Yes, I'm examining the content. "Over**
10 **time it became apparent to some that hours other**
11 **than the peak hour were critical from the system**
12 **planner's perspective and utilities moved towards**
13 **multiple peak allocation methods."**

14 **Q.** And then at the base of the page, if you
15 could read that last paragraph.

16 **A. "If the utility bases its generation**
17 **expansion planning on reliability criteria such as**
18 **loss of load probability or expected unserved**
19 **energy that has significant values in a number of**
20 **hours, then the classes demands in hours other than**
21 **the single peak hour may also provide an**
22 **appropriate basis for allocating demand-related**
23 **production costs. Use of the multiple hour methods**
24 **also greatly reduces the possibility of atypical**
25 **conditions influencing the load data used in the**

1 to the witness, cite what's relevant and the
2 Commission can take official notice of its own
3 order.

4 MR. JOHNSON: Thank you. Somewhere here I
5 have copies for the parties too for convenience.
6 If you'll bear with me just a second, I'll find
7 them.

8 JUDGE FETCH: Thank you.

9 MR. JOHNSON: Here they are. My apologies
10 for the delay.

11 JUDGE FETCH: That's fine. All right. I
12 believe everyone has a copy. Please proceed.

13 MR. JOHNSON: Thank you, Your Honor.

14 **Q.** (MR. JOHNSON CONTINUING) Dr. Pavlovic,
15 I've handed to you a copy of findings of fact,
16 conclusions of law and order in Case No.
17 PU-400-91-112, and that pertains to a Northern
18 States Power Company electric rates proceeding. Do
19 you see that?

20 **A. Yes, I do.**

21 **Q.** I would ask you to turn to page 8 of that
22 document and paragraph 6 and I would ask you to
23 read that into the record, please.

24 **A. "The 1 CP method focuses on the size of**
25 **the single largest annual system peak. The**

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1 **Commission previously found that this method**
 2 **ignores the demand cost that off peak customers**
 3 **impose on the system. We continue to believe that**
 4 **1 CP is inappropriate."**

5 **Q.** Now, in the context of the Commission
 6 having expressly found that the 1 CP is
 7 inappropriate and having applied a variant of the
 8 12 CP for 20 years, wouldn't it be more sensible
 9 for this Commission to apply the 12 CP now even if
 10 it concludes that some other system should be used
 11 perhaps in the future?

12 **A. Well, it would certainly be consistent**
 13 **with precedent if they were to do that. On the**
 14 **other hand, of all the various factors that the**
 15 **Commission should take into consideration in**
 16 **selecting, adopting a cost allocation method, the**
 17 **primary one should be cost causation and the**
 18 **current circumstances under which NSP operates.**

19 MR. JOHNSON: Thank you, Dr. Pavlovic.
 20 Your Honor, I have no other questions.

21 JUDGE FETCH: Thank you, Mr. Johnson. Ms.
 22 Jeffcoat-Sacco.

23 EXAMINATION

24 **BY MS. JEFFCOAT-SACCO:**

25 **Q.** Well, I had a slight variation of that

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1 not? Might it have that consequence also to switch
 2 now even if you're recognizing that there's not a
 3 basis to switch in the methodology? Might be a
 4 basis in the motivation, not in the methodology.
 5 So would not -- the revenue requirement component
 6 then would be skewed, which would contribute to the
 7 company not being able to earn whatever its allowed
 8 return was?

9 **A. The revenue -- the revenue requirement**
 10 **that the Commission sets, my understanding under**
 11 **traditional -- the traditional regulatory model, is**
 12 **intended to provide the company with an incentive**
 13 **in order to operate its system in such a way that**
 14 **it can recover its costs. It's entirely possible**
 15 **that switching to the 1 CP might underestimate the**
 16 **revenue requirement for NSP for its North Dakota**
 17 **jurisdiction. It's also entirely possible that the**
 18 **12 CP method is overestimating the revenue**
 19 **requirement.**

20 MS. JEFFCOAT-SACCO: That's all I have.
 21 Thank you.

22 JUDGE FETCH: Thank you. Let's see if we
 23 can try to complete this witness before we break
 24 for lunch. Commissioner Fedorchak.

25

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1 same question. In your opening statement you did
 2 say that based on what you heard in testimony, that
 3 you would say now that neither the 12 CP nor the 1
 4 CP is the correct one, and that's why you would
 5 recommend that the Commission order the company to
 6 develop an appropriate one for North Dakota. Did I
 7 hear that in that summary?

8 **A. Yes.**

9 **Q.** Yes. So I was going to ask, based on the
 10 fact that you're kind of concluding 1 CP is not
 11 necessarily the right answer either, why change
 12 while the company is directed -- if the company
 13 should be directed to develop one, why change to
 14 the 1 CP from what has been happening for the last
 15 many years while a new one is being developed and
 16 reviewed?

17 **A. The short answer is that I believe**
 18 **requiring the 1 CP method in this application will**
 19 **provide the company with the proper incentive to**
 20 **develop a more appropriate allocation method.**

21 **Q.** And might it have some of those offsetting
 22 consequences of like not setting your rates
 23 correctly, your whole revenue requirement
 24 correctly, that we were just talking about with Dr.
 25 King and whether the ROE is the correct number or

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1 EXAMINATION

2 **BY COMMISSIONER FEDORCHAK:**

3 **Q.** Mr. Pavlovic, could you take a minute and
 4 explain some of the -- some of the simple features
 5 about a few of these methods, say the 1 CP, the 12
 6 CP, and you mentioned a couple other in your
 7 testimony, you know, the time -- some of the other
 8 methods that account for different system design.
 9 Talk about just a few of them that -- both the 1
 10 CP, the 12 CP and one that might be a future
 11 consideration and what system features each of them
 12 are intended to be used to support. Do you know
 13 what I'm saying?

14 **A. Yes, I do.**

15 **Q.** Because I went to rate school, believe it
 16 or not, and people talked about this in a way that
 17 you could really understand it, and I haven't heard
 18 that in the last two days on this particular issue.
 19 Like what 1 CP is used for this, 12 CP is used for
 20 systems like this, and there's these other methods,
 21 all of them are designed to account for certain
 22 things. I think that would be helpful to get our
 23 brains around a little bit some of the features of
 24 how North Dakota is, what kind of a system we have
 25 and how this cost allocation method would be used

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1 to effectively relate to that.

2 **A. All of the 13 methods are more or less**

3 **precise ways of recognizing that a customer or a**

4 **group of customers or a jurisdiction may have a**

5 **differential impact on different parts of the**

6 **company. We're talking production -- production**

7 **capacity. Because in the end it's the demand that**

8 **customers make for the capacity that drives the**

9 **decisions. That is what the company is trying to**

10 **do with all of its operation system and planning.**

11 **The peak methods -- all of the peak**

12 **methods, which is one of the three categories, they**

13 **basically assume that there really isn't much**

14 **difference in the demand of different -- of**

15 **individual customers, of individual aggregations of**

16 **customers or of a jurisdiction like North Dakota.**

17 **The single peak assumes that there really**

18 **is no differentiation in terms of the time on the**

19 **system that various customers' demand is**

20 **impacted -- is impacting the capacity. The**

21 **multiple peak methods make various assumptions**

22 **about basically the time, about the demand the**

23 **customers make, when they make this demand for**

24 **capacity and try to differentiate that.**

25 **As a general rule, customer demand can be**

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1 differentiated depending upon the season, and

2 that's the whole point of the multiple peak, is to

3 try to capture that in some way. That's basically

4 what the single peak and the multiple peak methods

5 are trying to get, is trying to make assumptions

6 about the way the system is operated and the way --

7 well, assumptions about customers' demand, the time

8 when it occurs and the company's response to that

9 demand.

10 There's a second class of methods that are

11 called the energy weighted method that basically

12 assume that these differences in the timing of the

13 demand the customers make can be measured and

14 estimated by looking not only at the capacity

15 demand that the customers make, but their total

16 consumption of energy on the system, and that's why

17 they're called energy weighting methodologies.

18 The third class -- and so the question --

19 well, let me continue.

20 The third class of methods really in a

21 much more precise fashion attempt to do what the

22 second class of methods do, which is to identify by

23 customer when the demand occurs and what portion of

24 the production fleet that demand is drawing on, the

25 baseload production facilities, intermediate or

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1 **cycling facilities or peaking facilities, and**

2 **that's why they're called time differentiated.**

3 **They're the most precise, I would say, in terms of**

4 **-- these methods are distinguished by their**

5 **precision. They still have to be adapted to the**

6 **particulars of any individual utility.**

7 **Q. Thank you. So the order that we just all**

8 **looked at was from 1991. The system that was being**

9 **operated in 1991 was far different from the system**

10 **today; is that correct?**

11 **A. NSP's -- we have to be clear that what**

12 **we're talking about is the operation of NSP's**

13 **system as a whole.**

14 **Q. Correct.**

15 **A. And, yes, it's very much different.**

16 **Q. So does it stand to reason that we should**

17 **be looking at taking a fresh look at the current**

18 **factors at play with MISO and wind and all the new**

19 **components that are being incorporated into the**

20 **system and how we are assigning those costs to**

21 **North Dakota customers?**

22 **A. Absolutely. That's my recommendation.**

23 **The biggest change -- Commissioner Kalk, you've**

24 **several times mentioned that times change and**

25 **circumstances change. The most significant change**

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1 in NSP from a cost causation perspective is its

2 entering into MISO.

3 As Mr. Wishart was explaining, NSP doesn't

4 actually make the decisions about when its

5 production is dispatched. All -- not all. I had a

6 side conversation with him and certain of the

7 production facilities, the nuclear facilities and I

8 think he was saying most of the baseload

9 facilities, are what are called self-scheduled and

10 that's where NSP decides they're just going to run

11 them, period, it doesn't matter what's happening in

12 the market, and then they dispatch the rest of

13 their facilities through MISO, but those facilities

14 are being dispatched not in response to just the

15 demand of NSP's customers, but the customers of all

16 of the participants in MISO.

17 **Q. So we heard a lot from the company that it**

18 **would be very troublesome for them to have us**

19 **change our allocation method when their other**

20 **states are using this allocation method. So when**

21 **could we ever do this then in that scenario where,**

22 **you know, we're kind of -- sort of bound by what**

23 **other states are doing because it puts the company**

24 **in a box?**

25 **A. Let me give you a real world example to**

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1 think about. Pepco Holdings, Incorporated, PHI, is
 2 structurally very similar to Xcel, has a number of
 3 operating subsidiaries, Potomac Electric Power
 4 Company, Atlantic City Electric, and Delmarva in
 5 Delaware. Pepco spans the District of Columbia and
 6 Maryland jurisdictions. Delmarva spans the
 7 Delaware and Maryland jurisdictions. So they --
 8 these are two subsidiaries -- two operating
 9 subsidiaries, you could compare them to
 10 NSP-Minnesota, NSP-Wisconsin. I don't know whether
 11 they are multi-jurisdictional.

12 In any event, for decades Pepco has
 13 operated under one cost methodology, a
 14 noncoincident peak average in excess and in
 15 Maryland under a 4 CP methodology. It happens that
 16 you have two different cost allocation
 17 methodologies. And in addition, I can't remember
 18 whether it was you, Commissioner Fedorchak, but
 19 someone asked, well, what's the effect of this. It
 20 can be that only 98 percent of the company's
 21 production assets and then as things are allocated
 22 get assigned to either jurisdiction. In fact, the
 23 practical consequence on Pepco in the District of
 24 Columbia and in Maryland has been that Pepco
 25 essentially assigns somewhat over a hundred percent

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1 of its revenue requirement, as it were, to the two
 2 jurisdictions. As Mr. Brockett said, you don't
 3 know which way it's going to go.

4 Q. But it's never going to be a hundred
 5 percent, it's always going to be less or more?

6 A. That would really depend on the
 7 interaction between the two methodologies utilized.

8 COMMISSIONER FEDORCHAK: I think that
 9 concludes my questions.

10 JUDGE FETCH: All right. Thank you.
 11 Commissioner Kalk.

12 COMMISSIONER KALK: Thank you, Your Honor.

EXAMINATION

BY COMMISSIONER KALK:

15 Q. Thank you for your testimony. Just one
 16 question for you.

17 It appears you don't like the transmission
 18 cost rider. Can you kind of give me just in a
 19 nutshell -- I don't need all the -- I read all the
 20 other stuff -- just in a nutshell what is the
 21 biggest thing you don't like about the transmission
 22 cost rider?

23 A. The biggest thing I don't like about the
 24 transmission cost rider is that I don't know
 25 everything about it. All I know is conceptually

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1 how it would be constructed because -- and what the
 2 rate design basically would be is the surcharge.

3 Q. Okay. And you referred to in your
 4 testimony that the company might be doing something
 5 later. So if you had more information about what
 6 they propose it to look like, that might clarify
 7 your decision, you may support it if they had the
 8 answers?

9 A. I might well support it if -- I mean, I'm
 10 not opposed to trackers --

11 Q. Okay.

12 A. -- on principle. I don't think there's
 13 any regulatory principle on which one should be
 14 opposed to trackers, but they have to be
 15 implemented very carefully because there's a great
 16 danger particularly with investment riders of over
 17 -- of the company overrecovering on its assets.

18 COMMISSIONER KALK: Okay. All right.
 19 Thank you.

20 JUDGE FETCH: Thank you. Commissioner
 21 Christmann.

EXAMINATION

BY COMMISSIONER CHRISTMANN:

24 Q. Mr. Pavlovic, from what you know of the
 25 three jurisdictions in NSP-Minnesota, would you

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1 expect that either of the other two jurisdictions
 2 might also benefit their ratepayers with a 1 CP as
 3 opposed to a 12 CP method?

4 A. You mean were NSP having to go to a 1 CP
 5 method?

6 Q. Right. Would that -- apparently North
 7 Dakota ratepayers would benefit from it.

8 A. Well, they would benefit from it in the
 9 sense that I believe it is a more accurate estimate
 10 of, in fact, what's North Dakota's cost
 11 responsibility.

12 Q. Would that likely be the case with South
 13 Dakota or Minnesota? I'm trying to gather whether
 14 one or the other might follow North Dakota's lead
 15 if North Dakota switched.

16 A. As I said earlier in my testimony, based
 17 on what I now know about the way NSPM operates, I
 18 think all the jurisdictions would benefit by going
 19 to a more precise allocation methodology.

20 North Dakota is distinguished from the two
 21 other jurisdictions by the fact that it is winter
 22 peaking as opposed to the other. In recent time
 23 it's been what you might call weekly winter
 24 peaking, but in fact NSP's forecast for the test
 25 year was that North Dakota would once again be

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1 winter peaking in 2013, and that could -- that
 2 difference may be being -- I think it's likely that
 3 that difference is actually being captured in the 1
 4 CP, although very grossly. I'm not sure -- in the
 5 sense of imposing it on the entire system, there's
 6 no question that North Dakota would benefit, as it
 7 were, to the expense of South Dakota and Minnesota.
 8 I mean, that's just the nature of the calculation.

9 Q. How much would North Dakota -- an
 10 individual North Dakota ratepayer benefit? I mean,
 11 is this a lot of discussion over something that
 12 would be a couple pennies on a monthly bill or -- I
 13 have no -- I haven't found any correlation between
 14 this change -- or what this change would do to a
 15 ratepayer.

16 A. I haven't calculated the impact of this
 17 change on the application. Mr. Murgace has in
 18 fact, I believe, and he estimated that it would be
 19 approximately -- that the change was approximately
 20 3.2 million, but I'm not certain about that.

21 Q. Okay.

22 A. But it's a significant amount of money to
 23 the revenue requirement and it would be a
 24 significant amount of money in terms of rates.

25 Q. Okay. Then, lastly, I want to rephrase

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1 something so I'm sure if I understood you right.
 2 Yesterday in our discussion of having one
 3 jurisdiction calculated under a different method
 4 than the other -- others in this case, I clearly
 5 see NSP's point about how it's going to leave some
 6 dollars out there that aren't recovered, they're
 7 not going to come out to an exact total. When you
 8 talked about Pepco before, if -- the variation
 9 between jurisdictions with using different methods,
 10 if that's leaving the company 2 percent short, are
 11 they just figuring they need 102 percent and then
 12 using the methods in the various jurisdictions
 13 calculating it out and thus it leaves them almost
 14 right on a hundred percent, or did I misunderstand
 15 that?

16 A. It is in fact a little more complicated
 17 than that. What is actually being allocated are --
 18 well, in this case, NSP properly directly assigns
 19 all the distribution investment, all the
 20 distribution expenses that occur in North Dakota to
 21 North Dakota. That does not get allocated. So
 22 we're just talking about transmission and
 23 production.

24 What actually gets allocated is production
 25 plant, that is, the plant investment, the plant in

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1 service. I think it's proper to say that what in
 2 the end -- although it's not direct, what gets
 3 allocated to rate base and then what gets
 4 allocated. So the production rate base and the
 5 transmission rate base get allocated to the two or
 6 the three jurisdictions. Then based on that
 7 allocation -- and when they're operating on the
 8 jurisdictional level, using in fact the same
 9 allocator, NSP allocates production expenses and
 10 transmission expenses on the same base. The
 11 revenue requirement is in fact built on adjustments
 12 to rate base and allowance, disallowance,
 13 adjustment to expenses.

14 So to talk strictly speaking -- and that's
 15 why I was careful to say what got -- in the case of
 16 Pepco gets overallocated ends up with -- it ends up
 17 with Maryland calculating its revenue requirement
 18 for the Maryland Commission on the basis of 55
 19 percent of the assets and the expenses and Pepco in
 20 D.C. building its revenue requirement on a 46, 47
 21 percent allocation of the rate base and the
 22 expenses, which adds to 102 percent. That's where
 23 the shortfall or the overage is occurring on the
 24 basis of the revenue requirements base calculation
 25 of rate base and expenses. The revenue requirement

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1 is then built up by adjusting those numbers in each
 2 jurisdiction.

3 You'd actually have to do a detailed
 4 analysis of NSP's revenue requirement approved in
 5 Minnesota and revenue requirement approved in North
 6 Dakota, South Dakota to determine whether the
 7 company is in terms of actual revenue requirement
 8 costs overrecovering or underrecovering.

9 COMMISSIONER CHRISTMANN: Thank you. I
 10 have no other questions.

11 JUDGE FETCH: Thank you. All right. Mr.
 12 Norrell.

13 MR. NORRELL: No, Your Honor, not at this
 14 time.

15 JUDGE FETCH: This may be your last
 16 chance.

17 MR. NORRELL: Fully understood.

18 JUDGE FETCH: Thank you. Mr. Johnson.

19 MR. JOHNSON: Thank you, Your Honor. I do
 20 have a few areas, but I think they'll go pretty
 21 quick.

22 JUDGE FETCH: Thank you.

23 **RE-CROSS-EXAMINATION**

24 **BY MR. JOHNSON:**

25 Q. Dr. Pavlovic, were you here yesterday when

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1 Mr. Brockett testified that the change from a 12 CP
2 to a 1 CP would cost the company \$20 million?
3 **A. Yes, I heard him testify.**
4 **Q.** Do you have any basis of personal
5 knowledge to dispute his estimate of the cost?
6 **A. No, because I don't know what the basis of**
7 **his cost was.**
8 **Q.** Thank you.
9 **A. Mr. Mugrace might well calculate a**
10 **different impact.**
11 **Q.** Now, you talked about, you had dialogue
12 with respect to potential benefits from other
13 states moving to a 1 CP. And let's assume for
14 purposes of discussion that Mr. Brockett was
15 correct and we're talking about a \$20 million
16 change here. If all of the other states adopt
17 1 CP, it's my understanding that subject to timing
18 differences, the company's cost recovery will be
19 100 percent.
20 **A. As I was just explaining to Commissioner**
21 **Christmann, the cost recovery on base rate base and**
22 **expenses would be a hundred percent. That doesn't**
23 **speak to whatever adjustments are made in the two**
24 **jurisdictions.**
25 **Q.** I appreciate that distinction. Let's

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1 assume that the adjustments are constant so we have
2 this \$20 million number that's in play if Mr.
3 Brockett is correct. So it would then stand to
4 reason that if North Dakota's revenue requirement
5 went down by \$20 million, that \$20 million would be
6 shifted to either or both of South Dakota and
7 Minnesota?
8 **A. If I assume equal revenue requirements in**
9 **all three jurisdictions, then that's exactly right.**
10 **Q.** Equal adjustments, I believe; correct?
11 **A. Yeah, if you assume that you have exactly**
12 **the same revenue requirements being calculated in**
13 **both jurisdictions.**
14 **Q.** Now, you talked about Pepco living in an
15 environment where it uses different cost allocators
16 in its different jurisdictions, and I believe you
17 characterized that as something that has been going
18 on, I believe it was, for decades.
19 **A. Yeah, I'm pretty sure it's gone on for**
20 **decades.**
21 **Q.** That would suggest that there has been a
22 period of stability of some duration for those
23 Pepco-operating companies?
24 **A. Well, in each jurisdiction they've in fact**
25 **enjoyed exactly the same stability that NSP says**

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1 **the 12 CP has given them in this jurisdiction.**
2 **Q.** That is to say, each jurisdiction has
3 consistently applied its cost allocator and the
4 Pepco operating companies have not had to adjust to
5 changes in the allocator?
6 **A. That's correct.**
7 **Q.** Now, you had some discussion about the use
8 of the 12 CP in the context of 1991 as relates to
9 2013, thinking in the context of system changes,
10 operational changes, what have you. Do you recall
11 that?
12 **A. Yes.**
13 **Q.** And you mentioned among the factors that
14 have changed is the emergence of MISO as an entity
15 in the upper midwest region.
16 **A. Yes.**
17 **Q.** MISO has been in place for quite a while,
18 has it not? Ten years or so?
19 **A. Quite possible ten years.**
20 **Q.** And NSP has had three North Dakota rate
21 cases, has it not, since 2007 plus this one?
22 **A. That's my understanding.**
23 **Q.** And is it your understanding that in those
24 prior three cases, the Commission did in fact use
25 the method proposed by the company in this case?

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1 **A. I believe the company used this method in**
2 **its proposals in those cases. I believe those**
3 **cases were settled.**
4 **Q.** Do you know of any adjustments to the
5 company's proposals that arose in those cases?
6 **A. No, I don't.**
7 MR. JOHNSON: I don't have any other
8 questions, Your Honor. Thank you.
9 JUDGE FETCH: Thank you, Mr. Johnson. Ms.
10 Jeffcoat-Sacco.
11 **FURTHER EXAMINATION**
12 **BY MS. JEFFCOAT-SACCO:**
13 **Q.** I have two. They'll be quick. One
14 follows up on this MISO discussion in changes in
15 the system.
16 As I was listening to your discussion with
17 Commissioner Fedorchak on that, I was thinking,
18 well, that's a good point, but I was also thinking,
19 doesn't that make the 1 CP even less appropriate,
20 the whole concept of MISO doing the dispatching and
21 all of that, and moving those decisions away from
22 the demands of just the NSP customers, I kind of
23 thought the 1 CP seemed to be contrary to the
24 objective of that.
25 **A. It would be remarkable if the 1 CP turned**

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1 out to be what we call a good estimator of a much
 2 more complicated situation.
 3 Q. Okay.
 4 A. It's also entirely possible that this
 5 could be done much more accurately and the results
 6 would be close to the 1 CP.
 7 Q. Okay. You might get there a different
 8 route, the results might be close. And I would
 9 like you to very summarily, please, because I know
 10 time is of the essence here, but staff was
 11 wondering what it was you heard that caused you to
 12 change your recommendation. What can you point to
 13 in a very summary fashion from the testimony?
 14 A. Very summary. There in the -- I was
 15 provided in discovery and also there's a discussion
 16 of the cost -- there's a lengthy discussion of
 17 jurisdictional cost allocation in Schedule 12 of
 18 Ms. Heuer's testimony. There is no indication in
 19 any of that document that NSP does its system
 20 planning taking into account the fact that it's
 21 operating in MISO and it's dispatching. There's
 22 just no indication whatsoever.
 23 Now, all of that documentation just gives
 24 the impression that, in NSP's estimation, the 12 CP
 25 is a better -- is a better indication than the 1 CP

1 REDIRECT EXAMINATION
 2 BY MR. NORRELL:
 3 Q. I just have one. There was some concern
 4 expressed on the record about the accuracy with
 5 predicting the system peak using the 1 CP method.
 6 Can that concern be addressed by -- or smoothed by
 7 looking at other years to help determine that?
 8 A. Oh, the variability?
 9 Q. Yes.
 10 A. Yes, it can. In addition, the variability
 11 of the actual -- no. Well, the most appropriate
 12 way to address that problem is to average in the
 13 adjustments that I recommended here. That's
 14 exactly what I did, I took the three-year average.
 15 MR. NORRELL: No further questions.
 16 JUDGE FETCH: Thank you. Mr. Johnson?
 17 MR. JOHNSON: Nothing further, Your Honor.
 18 JUDGE FETCH: Thank you. Ms.
 19 Jeffcoat-Sacco?
 20 MS. JEFFCOAT-SACCO: Nothing. Thanks.
 21 JUDGE FETCH: From the Commission. I
 22 believe Commissioner Christmann has a question.
 23 COMMISSIONER CHRISTMANN: Thank you, Your
 24 Honor. I did think of one more.
 25

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1 or any of these other things. If it comes to the
 2 question of selecting between the 1 CP and the peak
 3 methods, the only criteria that are indicated is
 4 making the 12 CP appropriate. There's no mention
 5 of any of that in any of the documentation that
 6 they plan to a particular reliability index and
 7 there isn't significant variation in the monthly
 8 peaks.
 9 I mean, the fact that -- I mean, I know
 10 that NSP operates in MISO, but I don't know how
 11 they operate and I don't know that they -- and I
 12 did not know that they did their planning, you
 13 know, taking all of these things into account.
 14 MS. JEFFCOAT-SACCO: Thank you. That's
 15 all I have.
 16 JUDGE FETCH: Thank you. Commissioner
 17 Fedorchak, any followup?
 18 COMMISSIONER FEDORCHAK: No.
 19 JUDGE FETCH: Commissioner Kalk?
 20 COMMISSIONER KALK: No, ma'am.
 21 JUDGE FETCH: Commissioner -- is everyone
 22 just hungry? Mr. Norrell, anything further?
 23 COMMISSIONER CHRISTMANN: No.
 24
 25

1 FURTHER EXAMINATION
 2 BY COMMISSIONER CHRISTMANN:
 3 Q. Sir, would there be logic -- rather than
 4 adopting a 1 CP method and using it and urging NSP
 5 then to come up with a more accurate method, would
 6 there be logic in continuing with the 12 CP method
 7 but setting some date certain in the future, a year
 8 or two down the road, at which we transition into a
 9 1 CP method unless they have brought forward what
 10 we deem to be a more accurate method and that
 11 that's been approved by us?
 12 A. Well, the truth be told, you're asking me
 13 a question outside my expertise. I'm not a
 14 commissioner. I'm not a rate regulator. But, yes,
 15 there would be merit in such an approach.
 16 COMMISSIONER CHRISTMANN: Thank you.
 17 JUDGE FETCH: Any further questions from
 18 Mr. Norrell or --
 19 MR. NORRELL: No, Your Honor.
 20 JUDGE FETCH: Mr. Johnson?
 21 MR. JOHNSON: No, Your Honor.
 22 JUDGE FETCH: Ms. Jeffcoat-Sacco?
 23 MS. JEFFCOAT-SACCO: No.
 24 JUDGE FETCH: Any further questions from
 25 any of the Commissioners?

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1 COMMISSIONER FEDORCHAK: No.
 2 JUDGE FETCH: All right. Thank you. At
 3 this time you are excused.
 4 THE WITNESS: Thank you.
 5 JUDGE FETCH: And it is 12:30 and we will
 6 take an hour for lunch, so be back here at 1:30.
 7 Thank you.
 8 (Recess taken at 12:30 p.m. to 1:34 p.m.)
 9 JUDGE FETCH: We'll come back to order.
 10 The time is about 1:34 p.m., Central Time, and at
 11 this time we're going to proceed with the staff
 12 advocacy case and, Mr. Norrell, please identify
 13 your witness.
 14 MR. NORRELL: Thank you, Your Honor.
 15 Staff at this point is going to call Mr.
 16 Dante Mugrace to the stand to testify to PSC
 17 Exhibit No. 4.
 18 JUDGE FETCH: All right. And do you have
 19 a witness opening statement?
 20 MR. NORRELL: We do, but can we swear the
 21 witness in and then we've got some corrections to
 22 that exhibit.
 23 JUDGE FETCH: All right. And, Mr.
 24 Mugrace, you've been present and heard me instruct
 25 as to penalties for perjury, have you not?

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1 THE WITNESS: Yes.
 2 JUDGE FETCH: Please raise your right
 3 hand.
 4 (Witness sworn.)
 5 JUDGE FETCH: Thank you. All right. Mr.
 6 Norrell.
 7 MR. NORRELL: Thank you.
 8 **DANTE MUGRACE,**
 9 being first duly sworn, was examined and testified
 10 as follows:
 11 **DIRECT EXAMINATION**
 12 **BY MR. NORRELL:**
 13 **Q.** Dante, just for the record, could you --
 14 how do you prefer your last name be pronounced?
 15 **A. Mugrace.**
 16 **Q.** Mugrace. Okay. Thank you. And you had
 17 indicated -- or are there any corrections to PSC
 18 Exhibit 4, which is your testimony and exhibits?
 19 **A. Yes, there are.**
 20 **Q.** And what would those be?
 21 **A. On page 31 of my testimony, line 13,**
 22 **regarding the recommendations of the company's**
 23 **proposed SO2 allowance credit of \$87,000, I**
 24 **incorrectly amortized it over a three-year period,**
 25 **and I should not have, so I'm agreeing with the**

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1 **company the beginning balance of the CO2 -- SO2**
 2 **allowance of \$87,000 was appropriate.**
 3 MR. NORRELL: And then I would also like
 4 the record to reflect that late Friday evening we
 5 noticed there were some trade secret materials
 6 provided in the filed Exhibit 4 -- the prefilled
 7 Exhibit 4. We have removed those from the
 8 Commissioners' packets that they've got in front of
 9 them, and we do have corrections here that we will
 10 submit with the original. We are taking out the
 11 trade secret information and putting the public
 12 information in instead.
 13 JUDGE FETCH: All right. Thank you. And
 14 this witness opening statement, have you labeled
 15 that PSC Exhibit 20?
 16 MR. NORRELL: I have 19, but I could be --
 17 JUDGE FETCH: 19 was Mr. Pavlovic's
 18 opening statement.
 19 MR. NORRELL: Okay. I apologize. And
 20 this will need to be 20 and I will need to mark
 21 these correctly.
 22 JUDGE FETCH: All right. And by
 23 stipulation, prior agreement, the opening statement
 24 is admitted into the record as Exhibit 20.
 25 MR. NORRELL: Just a minute, please, Your

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1 Honor. Your Honor, I'd like to pass this out as
 2 PSC Exhibit 20.
 3 JUDGE FETCH: Yes, please.
 4 **Q.** (MR. NORRELL CONTINUING) Mr. Mugrace, if
 5 you would please read your opening statement for
 6 the record.
 7 **A. Sure. My name is Dante Mugrace. I am a**
 8 **senior consultant with the economic and management**
 9 **consulting firm of Snavelly-King Majoros and**
 10 **Associates, Inc. Our office is located in**
 11 **Landover, Maryland. I am appearing on behalf of**
 12 **the advocacy staff of the North Dakota Public**
 13 **Service Commission. I have provided testimony with**
 14 **respect to the company, Northern States Power**
 15 **Company's, revenue requirement for its electric**
 16 **service operations in North Dakota.**
 17 **My approach in calculating the recommended**
 18 **revenue requirement is based upon the use of a**
 19 **three-year historical average (2010, 2011, and**
 20 **2012) for the company's other operating revenues**
 21 **and its operating expenses.**
 22 **The use of a three-year average provides**
 23 **for:**
 24 **A normalized level of its other operating**
 25 **revenues which takes into consideration the**

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1 variations and fluctuations occurring year to year,
 2 and the operating cycle to operating cycle, and
 3 providing for a smoothening of other operating
 4 revenues going forward.

5 A normalized level of operating expenses
 6 which takes into consideration the variations and
 7 fluctuations occurring year to year and operating
 8 cycle to operating cycle and provides for a
 9 smoothening of expenses going forward.

10 The results of a three-year historical
 11 average approach provides the basis to set a
 12 foundational level related to the company's other
 13 operating revenues and operating expenses instead
 14 of the company's 2013 fully forecasted test year
 15 approach for its financial data. The main factor
 16 for the use of a three-year historical average is
 17 that the company does not produce interim or
 18 semiannual financial statements. It is therefore
 19 difficult to test whether the company's projections
 20 are comparable and reliable with known actual
 21 results. I have also taken into consideration and
 22 made recommendations regarding the company's
 23 forecasted and individual 2013 adjustments to its
 24 other operating revenues and its operating
 25 expenses.

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1 For the setting of the company's retail
 2 operating revenues I've relied on the company's
 3 public notice, Schedule 2, which the company has
 4 projected total megawatt sales of 2.27 million
 5 megawatt sales. Based upon the company's data
 6 requests in 5-025, which shows five months of usage
 7 as of May 2013 and annualized it shows 2.4 million
 8 megawatts, so it's clear the megawatt sales have
 9 increased since the company filed its rate
 10 proceeding in December 2012. I have used a
 11 percentage factor and applied 2,270,000, which was
 12 in the notice, and factored in a 1.54 percent
 13 increase as described in my testimony to set
 14 projected megawatt sales in 2013 along with an
 15 historical average of three years of kilowatt costs
 16 and about 7.68 cents to compute my recommended
 17 sales revenue of \$177 million.

18 My approach to the company's proposed rate
 19 base is the use of the company as-filed 2011
 20 earnings report for the North Dakota jurisdiction
 21 which shows the plant in service average balance.
 22 I have taken into account the company's various
 23 proposed and forecasted adjustments expected to
 24 occur in 2013 as shown in my Exhibit -- as shown in
 25 company Exhibit AEH-1, Schedule 5.

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1 I have also taken into account and have
 2 accepted the company's various data responses with
 3 regard to its North Dakota jurisdictional capital
 4 additions for 2013 and applied the company's
 5 allocation factor applicable to the North Dakota
 6 operations to compute a projected capital plant
 7 addition balance that is expected to be placed in
 8 service in 2013.

9 Based upon this approach, my
 10 recommendation is a rate base balance of
 11 \$326,528,000 and a rate of return, as recommended
 12 by witness Charles King, of 7.138 percent, which
 13 calculates to a utility operating income of
 14 \$23,307,000. The recommended ratemaking components
 15 calculates to an overall revenue requirement
 16 decrease of approximately \$10 million as opposed to
 17 the company's revenue requirement increase of
 18 \$14.884 million as calculated by company witness
 19 Ms. Heuer in her rebuttal testimony.

20 I've relied on the testimony of Michael
 21 Majoros regarding the recommended depreciation
 22 expense to include in my revenue requirement
 23 calculation and on testimony of Dr. Karl Pavlovic
 24 regarding the various jurisdictional allocators to
 25 the company's rate base components and certain of

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1 the company's operating expenses.

2 MR. NORRELL: Thank you, Mr. Mugrace.
 3 This witness is available for cross-examination.

4 JUDGE FETCH: All right. Thank you, Mr.
 5 Norrell. Mr. -- I believe Ms. Valley is going to
 6 cross-examine.

7 MS. VALLEY: Yes. Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 **BY MS. VALLEY:**

10 **Q.** Mr. Mugrace, I would like to begin with a
 11 discussion of the test year in this case.

12 **A.** Sure.

13 **Q.** Do you agree that the company has a right
 14 to select a projected test year?

15 **A.** Yes.

16 **JUDGE FETCH:** Ms. Valley, could you speak
 17 up just slightly or get the microphone a little
 18 closer.

19 MS. VALLEY: Sure.

20 JUDGE FETCH: Thank you.

21 **Q.** (MS. VALLEY CONTINUING) And is the
 22 company's right to select a projected test year
 23 provided by statute?

24 **A.** Yes.

25 **Q.** And did the company in fact select a

791

1 projected 2013 test year?

2 **A. Yes, a forecasted projected test year,**

3 **correct.**

4 **Q.** And did you say that that was reasonable

5 to do so?

6 **A. That was reasonable to do so.**

7 **Q.** Do you agree that a test year is intended

8 to match 12 consecutive months of revenue with the

9 same 12 consecutive months of expense?

10 **A. Yes.**

11 MS. VALLEY: Now, I do have an exhibit

12 here. It's already entered into the record. I

13 would like to direct the parties -- or the

14 Commissioners and staff and everyone here to

15 Exhibit AEH-1, Schedule 11 in Anne Heuer's

16 testimony. I do have copies that I could just hand

17 out. It doesn't need to be admitted as a separate

18 exhibit, if that would be easier.

19 JUDGE FETCH: You said it's already been

20 admitted?

21 MS. VALLEY: It is in the record.

22 JUDGE FETCH: But for ease of reference,

23 maybe if you want to do that, that's fine.

24 All right. I believe everyone has it.

25 Thank you.

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1 **Q.** (MS. VALLEY CONTINUING) Mr. Mugrace, what

2 you have in front of you is Anne Heuer's direct

3 Schedule 11, which is a statement of operating

4 revenues and expenses. And am I correct that you

5 have replaced all of the test year operating

6 expenses found on lines 7 through 14 of that

7 schedule with a three-year average expense for the

8 2010, 2011, and 2012?

9 **A. I did.**

10 **Q.** And did you include 2013 test year

11 expenses in your cost averaging approach?

12 **A. No.**

13 **Q.** Now, moving up that table, did you replace

14 operating revenues found on lines 1 through 5 of

15 that schedule with a three-year average of

16 operating revenues from 2010, 2011, and 2012?

17 **A. I replaced the other operating revenue**

18 **with a three-year average. I used the retail based**

19 **on the company's most recent kilowatt-hour sales to**

20 **calculate a retail revenue -- retail revenues. I**

21 **didn't use a three-year average for the retail**

22 **revenues.**

23 **Q.** You used your forecasted sales for the

24 2013?

25 **A. And based on my historic three-year**

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1 **average of the kilowatt percent.**

2 **Q.** You used the kilowatt-hours --

3 **A. Kilowatt-hours.**

4 **Q.** -- based at a three-year average of the

5 kilowatt-hour rate on forecasted 2013 sales?

6 **A. Yes.**

7 **Q.** And looking again at Ms. Heuer's Schedule

8 11, line 17, did you replace 2013 amortizations

9 with a three-year average?

10 **A. For the amortizations I made adjustments**

11 **to the amortizations. I started with the 373, but**

12 **I made adjustments going forward with amortizations**

13 **that were going to occur in 2013.**

14 **Q.** And with respect to taxes on lines 18 to

15 22, did you replace taxes with a three-year

16 historical average.

17 **A. No. I accepted the company's property**

18 **taxes, which is higher than the \$7 million that**

19 **they have here. I think they used an \$8.1 million**

20 **property tax. I accepted that. The rest of them**

21 **are just based -- they're just components of the**

22 **revenue requirement. You have to get an operating**

23 **income to calculate the taxes, the federal and**

24 **state income taxes and payroll. It's another**

25 **process you have to calculate the bottom-line**

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1 **operating income -- the net operating income before**

2 **you calculate these taxes. They're not three-year**

3 **averages.**

4 **Q.** So they're calculated using a different

5 method than you did for calculating expenses?

6 **A. Yes.**

7 **Q.** Now, the table -- so it doesn't include

8 the three-year average adjustment that you made for

9 fuel and purchased power. And if I could point you

10 to page 33 of your direct testimony, if you look at

11 line 15, you state that the company recovers any

12 changes in the fuel and purchased energy costs

13 through the fuel cost rider; is that correct?

14 **A. Yes.**

15 **Q.** And were you aware that because fuel and

16 purchased power costs flow through the fuel clause,

17 that a matching amount of revenues is included in

18 the test year to avoid recognizing those costs in

19 base rates?

20 **A. Say that again, please.**

21 **Q.** Were you aware that because fuel and

22 purchased power costs flow through the fuel clause,

23 that a matching amount of revenues is included in

24 the test year to avoid recognizing those costs in

25 base rates?

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1 **A. Yes.**
 2 **Q.** And when you made your adjustment to fuel
 3 and purchased power in your Schedule DM-14, did you
 4 make an equal and offsetting reduction to revenues?

5 **A. No, I did not.**

6 MS. VALLEY: I would like to refer now to
 7 the testimony of NSP witness Mr. Stephen Foss, and
 8 I believe everybody has a copy of that, but for
 9 purposes of Mr. Mugrace, who likely does not have a
 10 copy of Mr. Foss's testimony, I did bring the
 11 exhibit out for him, if it's okay to provide that
 12 to Mr. Mugrace.

13 JUDGE FETCH: That's fine. Thank you.

14 **Q.** (MS. VALLEY CONTINUING) Mr. Mugrace, did
 15 you review the direct testimony of Mr. Stephen Foss
 16 on the 2013 level of costs for power production,
 17 transmission, and distribution?

18 **A. I don't think I did.**

19 **Q.** Now, you have a copy of Mr. Foss's
 20 testimony in front of you for your convenience.
 21 What I would like you to go to is on page 15, Table
 22 4 of Mr. Foss's testimony. And you'll see there
 23 that table discusses which expenses have increased
 24 and by how much and compares those costs to actual
 25 costs in 2011. Do you see that, Mr. Mugrace?

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1 **A. Yes.**

2 **Q.** And am I correct that your testimony does
 3 not discuss those costs and the reasons for those
 4 cost increases in 2013 as compared to 2011 actuals?

5 **A. I did not compare the costs in 2013**
 6 **because they were budgeted, they weren't actual**
 7 **costs that I could get my hands around.**

8 **Q.** And when you look at table 14 -- Table 4
 9 on page 15, does that table indicate that
 10 vegetation management has increased by \$1 million?

11 **A. It says that, but what has actually**
 12 **happened -- and is that on companywide basis or is**
 13 **it specific to North Dakota? I'm not sure by**
 14 **reading this table whether it's an actual amount or**
 15 **whether it's specific to companywide or it's**
 16 **allocated to the North Dakota jurisdictional**
 17 **operations.**

18 **Q.** Certainly, Mr. Mugrace, this is for North
 19 Dakota.

20 **A. I see that it's a \$1 million, but that's a**
 21 **budgeted amount. I haven't seen anything that has**
 22 **been actual of the 2013 test year.**

23 **Q.** So you did not look at the company's
 24 anticipated expenses and the reasons for those
 25 expenses in 2013?

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1 **A. I looked at them, but I couldn't accept**
 2 **them because I don't have any reliability on what**
 3 **has actually happened in 2013. Since the company**
 4 **doesn't provide any interim or updated financial**
 5 **statements, it's hard to test what the company has**
 6 **budgeted versus what the company has realized.**
 7 **It's been nine -- almost nine months into the test**
 8 **year and it's taxing to me just to find out how to**
 9 **match the budget which the company has proposed to**
 10 **its actual.**

11 **Q.** And, Mr. Mugrace, could you point to me
 12 where in your testimony you challenge the company's
 13 budgeting process?

14 **A. I think on page 34 but the recommended --**
 15 **the setting -- I recommended a three-year average**
 16 **for setting the fuel and purchased energy costs**
 17 **because the costs are evident and historic in**
 18 **nature and are documented. And as stated in the**
 19 **Cost Assignment and Allocation Manual, these**
 20 **allocations are jurisdictional, these**
 21 **jurisdictional costs are an annual process, they**
 22 **change from year to year, so the rate base, related**
 23 **costs, rate base investments, they change as well.**
 24 **So I didn't challenge the manual, but I would like**
 25 **to know what the actual costs are. I see the**

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1 **allocations, and I accept some of the allocations,**
 2 **but it's tough and it's difficult for me to see**
 3 **what has been projected as to what has actually**
 4 **happened.**

5 **Q.** But you -- Mr. Mugrace, my question was
 6 where in your testimony you challenge the company's
 7 budgeting process for calculating these.

8 **A. I didn't challenge the budget -- I didn't**
 9 **challenge the process. I just challenged they**
 10 **change from year to year.**

11 **Q.** Thank you, Mr. Mugrace. And going back to
 12 Mr. Foss's testimony, just as looking at the
 13 overall proposal, on line -- on page 14, line 16,
 14 he discusses the \$650,000 increase for distribution
 15 O&M, and did you challenge that level of increase
 16 in your testimony?

17 **A. Again, I didn't challenge it, but I would**
 18 **like to know what the actual costs are in 2013**
 19 **compared to what has been budgeted at the amount of**
 20 **\$650,000.**

21 **Q.** And do you agree that the Table 4 on page
 22 15 identifies capital support, vegetation
 23 management, damage prevention materials, and a
 24 reduction for other expenses?

25 **A. I see those numbers, yes.**

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1 **Q.** Thank you, Mr. Mugrace. And if I could
2 point you then to page 23, line 3 of Mr. Foss's
3 testimony, Mr. Foss explains that the increase in
4 transmission O&M for 2013 over 2011 actuals is 4.8
5 million, and did you increase the 2013 budget for
6 transmission expenses in your analysis?

7 **A.** 4.8 or 41.8?

8 **Q.** It's 4.8. I apologize if I misspoke.

9 **A.** I see 41.8. On Table 5, page --

10 **Q.** I'm sorry. No. 23, line 3.

11 **A.** Oh, page 23, line 3.

12 **Q.** Yes.

13 **A.** Okay. I see that, but, like I said, if
14 the company can provide me actual data, then I can
15 test whether the \$4.8 million that has been
16 budgeted over the 2011 actual expenses, then I can
17 compare what the company has budgeted to what has
18 been actually expended.

19 **Q.** And did you state that as a reason in your
20 testimony for not addressing these?

21 **A.** No, I didn't.

22 **Q.** Thank you, Mr. Mugrace. Now, Mr. Mugrace,
23 you had mentioned one-time amortizations in your
24 opening statement, and does the company propose to
25 amortize one-time expenses over three years?

1 **recover, so I would like to know if they're still**
2 **recovering those costs now and, if they are, then**
3 **they are amortizing those costs in 2013 so the new**
4 **rates or the new change in amortization would be**
5 **2014, not 2013.**

6 **Q.** Mr. Mugrace, do you understand that the
7 company currently has interim rates in effect?

8 **A.** Yes, they did.

9 **Q.** And do you agree that if final rates set
10 in this proceeding are less than interim rates,
11 that they will be set on the final revenue
12 requirement and to the extent that final rates are
13 less than interim rates, refunds will go -- be paid
14 to ratepayers?

15 **A.** Yes.

16 **Q.** And do you agree that if a one-third cost
17 is not included in final rates, that those costs
18 will be then included in that refund obligation to
19 ratepayers?

20 **A.** I don't think that's the -- I don't think
21 that's the answer. I don't think that's the
22 reason, because like the prior rate case expenses,
23 the company has already set in place by the
24 Commission a level of amortization they're allowed
25 to recover in rates, so barring any rate increase,

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1 **A.** Yes.

2 **Q.** And do you accept using a three-year
3 amortization?

4 **A.** Yes, I do.

5 **Q.** And did the company take the test year
6 expense and divide it by three?

7 **A.** Yes.

8 **Q.** And is the --

9 **A.** The outstanding balance and divided it by
10 three.

11 **Q.** Yes. Thank you for that clarification.
12 Is the company's assumption that it would receive
13 one-third of the cost in year one through interim
14 rates and the second third of the cost in the first
15 year final rates are in effect?

16 **A.** No, I don't see it like that.

17 **Q.** Mr. Mugrace, if the company is proposing
18 to amortize the costs over three years, would you
19 agree that one-third of the cost would be recovered
20 in each of those three years?

21 **A.** It depends on -- it depends on the
22 amortization, because some of these amortizations
23 have already been approved by the Commission to
24 recover those costs in rates, so they have a set
25 annual cost that they're already allowed to

1 the company can still recover those costs under its
2 old rate structure. I'm just extending it
3 because -- I'm adding an extra year of amortization
4 because the company is already recovering those
5 costs from the last rate structure -- the last rate
6 order. So those costs should be reduced by a third
7 and then that balance should be out by three years.

8 **Q.** And, Mr. Mugrace, it's my understanding
9 you haven't disagreed with the amount of the --

10 **A.** No, I do not disagree with the amount.

11 **Q.** -- to be amortized?

12 **A.** I accept the amount. That's the balance
13 of the amount.

14 **Q.** But do you agree if you disallow those
15 costs -- that one-third of the cost in the first
16 year rates are in effect, you would reduce that
17 recovery by a third?

18 **A.** No, I disagree with that.

19 **Q.** Mr. Mugrace, did the company calculate its
20 2013 test year plant in service by averaging the
21 2012 end-of-year balance with the 2013 end-of-year
22 balance?

23 **A.** They started with a 2011 average balance
24 and then they gave us the 2012 annual reports, then
25 they use a 2013 forecasted average balance.

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1 **Q.** Would you agree that the purpose of

2 averaging the beginning and ending plant in service

3 balance is to provide an average 2013 rate base?

4 **A. I agree with that.**

5 **Q.** Now, did you calculate the 2013 test year

6 plant in service by taking the plant in service as

7 reported in the 2012 earnings report and add the

8 2013 plant additions?

9 **A. I took the 2012 average balance in the**

10 **earnings report and I applied the company's**

11 **proposed capital additions with the company's 5.11**

12 **to 1 allocation factor applicable to North Dakota**

13 **to get a total gross capital additions expected to**

14 **be placed in service in 2013.**

15 **Q.** Now, do you agree if your starting place

16 is the reported plant in service in the 2012

17 earnings report, that that's the average rate base

18 for 2012 and not the end-of-year 2012 rate base?

19 **A. In the earnings report from -- the**

20 **earnings report provided by the Public Service**

21 **Commission, it says average rate base plant in**

22 **service \$780 million -- \$780,660,000. That's what**

23 **was my starting point and that's the average.**

24 **Q.** That is the average?

25 **A. That is the average.**

804

1 **Q.** So you agree it's not the end-of-year 2012

2 rate base?

3 **A. I don't see an end-of-year balance here,**

4 **so I didn't use that.**

5 **Q.** So if your starting place is the average

6 2012 plant in service, do you agree that your

7 proposal has the effect of removing 50 percent of

8 the plant additions made in 2012 from plant in

9 service?

10 **A. I don't see the information in front of me**

11 **to make a determination on that. I used what the**

12 **company used, average balance. In this earnings**

13 **report I don't see an end-of-year balance; I see an**

14 **average balance.**

15 **Q.** Do you know what the revenue requirement

16 effect of your plant in service recommendation is?

17 **A. Actually I've accepted almost all of the**

18 **company's utility plant in service barring \$10**

19 **million of it. In my spreadsheets I think I have**

20 **\$859 million of plant in service and the company is**

21 **proposing 869, so I have a \$10 million difference.**

22 **Q.** In the plant in service, but that's not

23 the revenue requirement?

24 **A. Just the plant in service, correct.**

25 **Q.** Thank you. And I just have one additional

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1 question here. If I could point you to page 25 of

2 your revised testimony, and you state on lines 10

3 through 18 that you used the increase in sales in

4 the first quarter 2013 over the first quarter 2012

5 to support an increase in the company's sales

6 figures of 1.54 percent.

7 **A. Correct.**

8 **Q.** Did you apply this increase to the

9 company's 2013 forecast?

10 **A. No, I did not.**

11 **Q.** And what number did you apply that to?

12 **A. I applied this number by the company's**

13 **public notice, which shows 2,270,721 megawatt**

14 **sales. That's what they publicly noticed that's**

15 **going to be in effect or expected in 2013. So I**

16 **used the 2013 number. But I looked at some of the**

17 **data requests and it seems like some of the**

18 **megawatts are increasing more than what the company**

19 **had proposed it to increase. But I used the 1.5**

20 **because I used the -- like you said, the first**

21 **quarter 2012 over the first quarter of 2013, that**

22 **1.54 percent, I used that as an increase over the**

23 **company's increase over the 2013 projected sales.**

24 **Q.** So you applied a 1.54 percent increase to

25 the company's sales forecast for 2013?

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1 **A. Yes.**

2 **Q.** And did the company update its forecast in

3 July 2013 to represent a 2 percent over 2012 actual

4 sales?

5 **A. If you can show me where that is, I'd be**

6 **happy to look at it.**

7 **Q.** It is in Anne Heuer's rebuttal on page 24.

8 I don't -- I'm not sure -- we could pull that for

9 you.

10 **A. I'm sorry. I don't have Ms. Heuer's**

11 **rebuttal. Sorry.**

12 **Q.** Well, in terms of how you presented the

13 sales forecast, is it correct then to say that you

14 did not back out the company's projected increase

15 in sales over 2012 from your projected increase in

16 sales for 2012?

17 **A. I did not back that out.**

18 MS. VALLEY: Thank you, Mr. Murgace. No

19 further questions at this time.

20 JUDGE FETCH: Thank you, Ms. Valley. Ms.

21 Jeffcoat-Sacco.

22 **EXAMINATION**

23 **BY MS. JEFFCOAT-SACCO:**

24 **Q.** I'm just going to say right upfront that

25 I'm probably not going to get these correct. We

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1 would like, though, some additional information on
 2 your basis for using the three-year average, and in
 3 doing that, I am trying to sort out if every --
 4 okay. You're not applying the three-year average
 5 to every line item; correct? I mean, some you're
 6 saying don't deserve a three-year average?
 7 **A. I'm not applying to any of the rate base**
 8 **components and I'm not applying to the retail**
 9 **revenue, but from basically the operating expenses**
 10 **and the other operating revenues because they**
 11 **fluctuate from year to year.**
 12 **Q.** Okay. So basically if we wanted to
 13 oversimplify perhaps or simplify, we would say it's
 14 those operating line items that you apply the
 15 three-year average to. Okay. Can you tell us then
 16 a little bit more about your reasoning for doing
 17 that?
 18 **A. Sure. Usually when a company projects**
 19 **forecasted data 2013, they usually supplement that**
 20 **with up-to-date information, so every quarter,**
 21 **every month, every six months they provide actual**
 22 **data and they supplement or replace the actual --**
 23 **the forecasted data to actual data so you can test**
 24 **whether the actual data is in line with what has**
 25 **been projected. In this case one of my data**

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1 requests says please provide updated reports on a
 2 monthly basis so we can test and track that data.
 3 The company, unfortunately, doesn't do it on the
 4 jurisdictional basis, they do it on a companywide
 5 basis, so it's difficult to me that the reliability
 6 is not there. If the company can produce actual
 7 data especially during a rate case proceeding, it
 8 would make my life a lot easier.
 9 **Q.** And we saw that in one of the exhibits
 10 yesterday, correct, that the answer was it's overly
 11 burdensome to produce that?
 12 **A. I have to start someplace. I can't start**
 13 **with projections because I don't know what the end**
 14 **result is going to be. I've got to start with**
 15 **something that's concrete and historic in nature.**
 16 **And people may think that it's a mismatch of test**
 17 **year components, but it's basically not. You have**
 18 **to start someplace and where do you start? The**
 19 **annual reports.**
 20 **Q.** Okay. Well, I don't want to pin you down
 21 here if you don't -- if you don't have an opinion
 22 or an answer for this, I understand, but if you had
 23 that actual data up to this point -- as you said,
 24 we're almost at nine months -- and let's assume
 25 that it convinced you that the forecast was

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1 accurate, as accurate as you would want, as you
 2 would feel comfortable with, would you abandon the
 3 three-year average recommendation because of nine
 4 months of proving it correct?
 5 **A. It would give me a different approach -- a**
 6 **different approach to the test year and I would**
 7 **accept the company's projections because I see from**
 8 **convincing, reliable data that their projections**
 9 **are accurate.**
 10 **Q.** Okay. Then I have one further question on
 11 that. If you recall from yesterday, there was a
 12 bit of discussion -- I think it was yesterday -- a
 13 bit of discussion about the statute that allows
 14 them to file a projected test year and the fact
 15 that it's supposed to be accompanied with the
 16 budgeted versus actual for some number of years
 17 before that -- not one but something more than one.
 18 If -- let's say that this case had come in with
 19 budgeted and actual North Dakota data for 2012,
 20 2010, and 2011, but no updates for 2013, that stays
 21 as it is because they don't do it or something,
 22 would those -- and let's say those comparisons
 23 showed fairly good accuracy in the budgeting, how
 24 would that affect your analysis?
 25 **A. It would give me more of a comfort level**

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1 to accept their projections because I could see
 2 that three years they've been on target, but I
 3 would like to see the actuals also because things
 4 change during the years. I mean, sometimes you
 5 have a good set of revenues going up but then they
 6 drop. I mean, it's always good to have actual --
 7 as most recent data as appropriate.
 8 MS. JEFFCOAT-SACCO: I think that's all at
 9 this time, anyway. Thank you.
 10 JUDGE FETCH: All right. Thank you. At
 11 this time we'll go to the Commission for
 12 questioning. Commissioner Fedorchak.
 13 **EXAMINATION**
 14 **BY COMMISSIONER FEDORCHAK:**
 15 **Q.** Yes. Mr. Mugrace, I see by your resume
 16 that you have worked on a commission, the New
 17 Jersey Board of Public Utilities.
 18 **A. Yes.**
 19 **Q.** When you were working on that commission
 20 and doing rate cases, what was your experience in
 21 terms of the use of test years and how companies
 22 tested their assumptions?
 23 **A. There's a two-pronged approach. The**
 24 **company can use a fully historical test year, so**
 25 **let's say in this case they come in in November**

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1 2012, they can use a 2012 test year, which will be
 2 fully historical two months after the fact, or a
 3 post-test year adjusted, which means they can go
 4 out six months beyond the historical test year.
 5 But in order to get those plant in service balances
 6 and all the other ratemaking components in service,
 7 they have to provide monthly updates to track what
 8 they're projecting as to what's actually happening,
 9 balance sheet and income statements. And before
 10 the commission makes the determination on rates,
 11 the post-test year plant -- the post-test year
 12 period must be fully historical. That's how New
 13 Jersey does it. But they have to constantly update
 14 their projections, usually it's on a month-to-month
 15 basis. We do accept quarterly basis too for
 16 smaller companies.

17 Q. Do you feel that they're -- that it's
 18 feasible with how this company operates to
 19 incorporate some of those methods into testing
 20 their test year assumption?

21 A. I think if the company could at least
 22 during rate case proceedings provide some type of
 23 update to track the projections, balance sheet or
 24 income statements, even if it's quarterly, at least
 25 we know, we have a comfort level to show what the

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1 company has projected to what the company has
 2 actually incurred. I'm all for a future
 3 forecast -- a full year forecast, but it's got to
 4 be backed up by data -- convincing and reliable
 5 data.

6 Q. If I'm following correctly the discussion
 7 here, yesterday it sort of sounded like the company
 8 was suggesting that you were using the three-year
 9 average when it was convenient and not when it
 10 wasn't convenient, but what you said today made
 11 me -- seemed like you had a more systematic way of
 12 applying the three-year average.

13 A. I used the three-year average when I
 14 didn't have any data that I could actually test, so
 15 I had to use something, but I used the company's
 16 rate base. I gave them all the rate base
 17 components. I adjusted revenues. I believe
 18 revenues are going up, but the cost per kilowatt is
 19 going down. Other operating revenues, they
 20 fluctuate from year to year, and the main focus of
 21 the three-year average is the expenses. How do you
 22 track something that's projected? You have to show
 23 something that's in line with what they're
 24 projecting.

25 Q. Okay. Does the company in their

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1 calculations -- in your understanding of their
 2 calculations, do they take into account increased
 3 sales in 2013?

4 A. I think they do. I think in Anne Heuer's
 5 testimony they used a kilowatt-hour that's less
 6 than 2.27 million. They used something less than
 7 that and they applied a 2 percent factor in their
 8 2013. So I think in their public notice it's 2.27
 9 million kilowatts that they used in 2013 projected.

10 Q. And is that --

11 A. That's under \$82,724,000 retail revenue
 12 increase -- retail revenue level.

13 Q. And how does that track to what you're
 14 seeing as happening in reality?

15 A. If you go -- it's data request 5-025,
 16 which gives you annualized five months of usage --
 17 of actual data. For the first five months I see
 18 1,015,000 kilowatts and the revenues of 79,366,000
 19 for five months. And I know that includes the
 20 interim rate increase in there too. If you
 21 annualize that out, they come up with 192 million
 22 dollars 878 in total revenues, but you've got to
 23 back out the interim rate that they've recovered or
 24 they've been allowed to recover from February 16th
 25 to the end of the test year, which is about \$12.8

814

1 million. So that gives me an interim annual -- an
 2 interim -- or not interim -- an annual level of
 3 revenues of about \$180 million if you project it
 4 out. They're forecasting 182,724,000, which is
 5 close, and I recommended 177, so it's close also.

6 Q. Okay. So they aren't real off on their
 7 estimate?

8 A. They're not real off, but if we had this
 9 kind of data for the expenses and the plant in
 10 service, we can track it evenly across everything.

11 Q. Yep. Okay. Does the company -- how do
 12 they test their projections?

13 A. They just have this budget forecast, it's
 14 companywide, and then you have your allocations and
 15 then you allocate the rate base revenues and O&M
 16 expenses across their band of jurisdictional
 17 operations. Minnesota, I think, is 87 percent,
 18 North Dakota is 6 percent, and I think South Dakota
 19 is 6-point-something percent, and it adds up to 100
 20 percent. That's how they allocate. And I'm okay
 21 with their allocations, how they process it, but my
 22 concern and my hookup is I need actual data just to
 23 make sure it's convincing and reliable to me.

24 Q. Your methodology in your estimation would
 25 be more precise -- or you're looking for something

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1 that's more precise?

2 **A. I've done the best I can with what I have**

3 **in front of me, but, like I said, the expenses are**

4 **taxing because expenses change from year to year**

5 **and it would be nice to see what their January**

6 **forecast is, their January budget is, February**

7 **forecast, February budget. It would be nice to**

8 **track that. You can look at the variances. If**

9 **they're small, you can project out for the whole**

10 **year.**

11 **Q. Okay. And by your calculations, the**

12 **company has too much revenue. Am I concluding --**

13 **A. Based on what I have for five months, it**

14 **looks like the company is accumulating more revenue**

15 **than they projected, but, like I said, it's only**

16 **been five months. I haven't seen any other**

17 **updates, like a six-month or almost a nine-month.**

18 **That could change too.**

19 **Q. Okay. But you have a -- your calculations**

20 **in the whole matter come out with a nearly \$10**

21 **million revenue excess; right?**

22 **A. That 192 includes the interim increase.**

23 **You have to back that out. So it's like about**

24 **\$12.8 million you've got to back out, so the actual**

25 **on an annual basis is about \$180 million, which is**

1 Bemidji CapX lines costs?

2 **A. I've accepted all the company's**

3 **adjustments to their 2013 test year.**

4 **Q. Was there anything that -- granted, you**

5 **accepted them in the end. Was there anything that**

6 **you had to go back and double-check at,**

7 **particularly the Brookings line that --**

8 **A. The Brookings I know is not going to be in**

9 **service until 2015, but I've accepted that those**

10 **costs are going to be incurred in 2013 because**

11 **there's some interconnection between one terminal**

12 **and the other. So I've accepted that because it is**

13 **a critical piece in the whole puzzle.**

14 **Q. All right. Great. Then to go a different**

15 **way back to your prepared testimony, there's some**

16 **discussion you have about advertising expenses.**

17 **You're recommending to not include the -- I think**

18 **it's \$191,000.**

19 **A. Where's -- can you tell me --**

20 **Q. Let's see if I can find it again. It's**

21 **about page 60. You talk about advertising -- page**

22 **58, the company --**

23 **A. Advertising.**

24 **Q. The company has proposed a decrease of**

25 **191,000. I just wanted to hear some more of your**

816

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1 **pretty close to 182. It's pretty close.**

2 **Q. Let me just direct you to page 5 of your**

3 **testimony -- your direct testimony.**

4 **A. Yes.**

5 **Q. In point number 6, the recommended**

6 **ratemaking components as indicated above calculates**

7 **to an overall revenue requirement decrease --**

8 **A. Yes.**

9 **Q. -- of \$9.9 million. So they basically**

10 **would need to be refunding; correct?**

11 **A. Based on my numbers, correct.**

12 **COMMISSIONER FEDORCHAK: Based on your**

13 **numbers. Okay. Thank you.**

14 **JUDGE FETCH: Thank you, Commissioner.**

15 **Commissioner Kalk.**

16 **COMMISSIONER KALK: Thank you, Your Honor.**

17 **EXAMINATION**

18 **BY COMMISSIONER KALK:**

19 **Q. Thank you, Dante, for your testimony. So**

20 **did you work for Commissioners Butler and Jeanne**

21 **Fox out there?**

22 **A. Yes, for many, many, many years.**

23 **Q. You know Fred never said New Jersey. He**

24 **always said Jersey, just for the record.**

25 **So you agree with the Brookings and the**

1 thoughts about their advertising expenses.

2 **A. It's a decrease in advertising expense, so**

3 **I'm accepting their decreasing the advertising**

4 **expense. I think this is companywide and the**

5 **allocated piece of that to North Dakota, \$48,000 of**

6 **that relates to customer programs and the other 143**

7 **is brand imaging, so they reduced all that out.**

8 **Q. And you, of course, agree with that?**

9 **A. Yeah, because brand imaging and**

10 **sponsorship does not provide any kind of service to**

11 **customers. It actually promotes the company for**

12 **its corporate image. But they took that out and I**

13 **accept that.**

14 **Q. Okay. Then the chamber dues going on down**

15 **the road, you don't think that they should be**

16 **paying chamber dues?**

17 **A. Chamber of commerce dues, it all depends.**

18 **I think they're lobbying in nature and, again, it**

19 **doesn't provide any benefit to the customer. It**

20 **provides a benefit to the corporation.**

21 **Q. Okay. Charitable donations, specifics on**

22 **page 61, you laid out several different groups that**

23 **receive donations and you don't think that's**

24 **necessarily appropriate either?**

25 **A. I don't think charitable donations should**

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1 be included at all for ratemaking purposes. It
 2 does nothing to the customer. If we took
 3 charitable donations out, the company would still
 4 be receiving safe and reliable service. It is just
 5 something that the company likes to do to promote
 6 their corporate image and their social
 7 responsibility, but social responsibility is not
 8 their regulatory compact. Safe, adequate, and
 9 reliable service is their regulatory compact.
 10 Q. And that was \$157,000?
 11 A. That was half of it. They removed half of
 12 it, but they wanted to recover the other half.
 13 Q. Okay. And a couple more down this line of
 14 discussion. Aircraft expenses, you don't think
 15 that their -- you think it's okay, but you would
 16 recommend a cap of 104,000, I think it was?
 17 A. It looks like their aircraft or the
 18 aviation usage is cheaper than the commercial
 19 flights, and they're only using one plane rather
 20 than two planes, so they're cutting it in half.
 21 But I would like to track it and just in case that
 22 those commercial flights are cheaper than the
 23 aviation, maybe down the road there should be some
 24 adjustments to that.
 25 Q. Okay.

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1 A. But it's less than what -- I agree it's
 2 less than what the commercial airlines are offering
 3 as far as flight.
 4 Q. And then the last one, incentive comp,
 5 which we've talked quite a bit about so I don't
 6 want to open up that whole discussion again, but
 7 the -- I did think it was unique this morning, we
 8 talked about the rate case in 2007 and that's when
 9 this Commission, which that was my first rate case,
 10 went from 25 to 15, and so this is kind of trying
 11 to bring it back up the other way. You basically
 12 say no need for incentive comp at all?
 13 A. If the company wants to provide incentive
 14 comp to its customers, they could do it on the
 15 shareholder side. The ratepayers should not be
 16 allowed to recover those costs in rates. They have
 17 an obligation to provide safe, adequate, and proper
 18 service. To provide even more of an incentive to
 19 provide service, the shareholders can pay for it.
 20 COMMISSIONER KALK: Fair enough. All
 21 right. Thank you very much.
 22 JUDGE FETCH: Thank you, Commissioner.
 23 Commissioner Christmann.
 24
 25

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EXAMINATION

1
 2 **BY COMMISSIONER CHRISTMANN:**
 3 Q. How common or uncommon is it for
 4 regulatory bodies to allow either economic
 5 development or charitable donations to be built
 6 into their costs?
 7 A. I know in New Jersey that we don't allow
 8 it at all since 1999.
 9 Q. Either one?
 10 A. Either one. I think it went to the
 11 Supreme Court and the ratepayer advocate in that
 12 state won it. I don't know -- I think in New York
 13 there are some levels of charitable contributions
 14 and donations and economics embedded into the
 15 costs, but that's how New York does its regulatory
 16 ratemaking. I know in New Jersey we don't allow it
 17 at all. It depends on the commission and it varies
 18 from commission to commission.
 19 COMMISSIONER CHRISTMANN: I have no other
 20 questions. Thank you.
 21 JUDGE FETCH: All right. Thank you. Mr.
 22 Norrell, back to you.
 23 MR. NORRELL: Thank you, Your Honor. I do
 24 have a point of clarification. I'm not sure -- I
 25 can't ask Mr. Murgace to testify to Mr. Foss's

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1 testimony, but I do have a question for NSP and I
 2 don't know how to put this forward, but just the
 3 testimony that was put forth by Mr. Foss relates to
 4 the NSPM expenses and I'm wondering if that -- to
 5 me that would seem to indicate systemwide. I'm
 6 wondering if we could get some clarification from
 7 NSP on that.
 8 MS. VALLEY: Thank you. Certainly
 9 distribution is jurisdictional specific. The
 10 transmission expense, I will ask Ms. Heuer. One
 11 moment. And the transmission was provided as a
 12 companywide figure.
 13 MR. NORRELL: Okay. Thank you.
 14 **REDIRECT EXAMINATION**
 15 **BY MR. NORRELL:**
 16 Q. Mr. Murgace, I was just wondering, when
 17 did the company provide you with the 2012 data?
 18 What did you look at for that? When did you
 19 receive it?
 20 A. I think it was received in their updates
 21 in May or June. It was probably in their -- it
 22 wasn't a data request to provide the annual reports
 23 for 2012 and their adjustments from their projected
 24 test year. There was some adjustments to Sherco,
 25 avi- -- not aviation -- Sherco, incentive

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1 **compensation, Black Dog removal, Monticello uprate,**
 2 **they took pieces of that out. They readjusted**
 3 **their depreciation schedules or their studies.**
 4 **They took certain pieces out. I think there were**
 5 **like six of them.**
 6 **Q.** That was an earnings report, you said?
 7 **A.** **It was just off of their proposed revenue**
 8 **requirement increase. It wasn't really a balance**
 9 **sheet or income statement. It was a summary of**
 10 **their updates to their forecasted data.**
 11 **Q.** Did the company furnish the end-of-year
 12 2012 plant in service balance prior to its rebuttal
 13 testimony?
 14 **A.** **I did not see that in any of my**
 15 **documentation. All I see was average plant in**
 16 **service.**
 17 MR. NORRELL: Thank you. No further
 18 questions.
 19 JUDGE FETCH: Thank you, Mr. Norrell. Ms.
 20 Valley.
 21 MS. VALLEY: Thank you.
 22 **RECROSS-EXAMINATION**
 23 **BY MS. VALLEY:**
 24 **Q.** Just a few more questions, Mr. Mugrace.
 25 Did you review Ms. Heuer's direct and rebuttal

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1 testimony?
 2 **A.** **Yes, I did.**
 3 **Q.** And did you review Tables 1 and 2 on pages
 4 11 and 12 of her direct testimony, which shows
 5 actual versus budget O&M expenses for years 2007
 6 through 2011?
 7 **A.** **I'm sure I did, but if you could refresh**
 8 **my memory or provide me something, I would be happy**
 9 **to look at it.**
 10 MS. VALLEY: Your Honor, I could show Mr.
 11 Mugrace my copies here, if that would help him.
 12 JUDGE FETCH: Yes, that would be fine.
 13 COMMISSIONER FEDORCHAK: What pages are
 14 those?
 15 MS. JEFFCOAT-SACCO: Could you identify
 16 the page numbers again, please?
 17 MS. VALLEY: Pages 11 and 12.
 18 MS. JEFFCOAT-SACCO: Of which testimony?
 19 MS. VALLEY: Of the direct.
 20 COMMISSIONER FEDORCHAK: Heuer?
 21 MS. JEFFCOAT-SACCO: Thank you.
 22 **Q.** (MS. VALLEY CONTINUING) So, Mr. Mugrace,
 23 do you agree that the company provided historical
 24 data of actual versus budget?
 25 **A.** **Yes, they did on a companywide basis, yes.**

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1 **Q.** Thank you.
 2 **A.** **From 2007 to 2011.**
 3 MS. VALLEY: Thank you, Your Honor. No
 4 further questions.
 5 JUDGE FETCH: All right. Thank you. Ms.
 6 Jeffcoat-Sacco?
 7 MS. JEFFCOAT-SACCO: We have no questions.
 8 JUDGE FETCH: I'll go back then to the
 9 Commissioners for any followup. Commissioner
 10 Fedorchak?
 11 COMMISSIONER FEDORCHAK: One second,
 12 please. No, I do not have any more questions.
 13 JUDGE FETCH: Thank you. Commissioner
 14 Kalk?
 15 COMMISSIONER KALK: No, Your Honor.
 16 JUDGE FETCH: Thank you. Commissioner
 17 Christmann.
 18 COMMISSIONER CHRISTMANN: No questions.
 19 JUDGE FETCH: All right. Mr. Norrell, do
 20 you have any further questions?
 21 MR. NORRELL: No. Thank you, Your Honor.
 22 JUDGE FETCH: I think we've made it around
 23 the room then. That will comprise your testimony
 24 and thank you, Mr. Mugrace.
 25 And I believe, Mr. Norrell, you have one

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1 final witness.
 2 MR. NORRELL: That is correct, Your Honor.
 3 Would the Court -- could we entertain just a
 4 five-minute break to get everything sorted?
 5 JUDGE FETCH: Yes. We'll take ten
 6 minutes.
 7 (Recess taken.)
 8 JUDGE FETCH: Okay. We'll come back to
 9 order. We're back on the record and the time is
 10 about 2:40 p.m., Central Time.
 11 And before we move to the next witness,
 12 counsel approached me and there is a matter of an
 13 agreement to admit an exhibit. And, Ms. Valley,
 14 would you identify that exhibit, please?
 15 MS. VALLEY: Thank you, Your Honor. This
 16 is a response to an information request that
 17 includes the jurisdictional cost of service. It's
 18 NDPSC-1-04, the IR. And what it includes is the
 19 cost of service study that has the beginning,
 20 ending and average plant balances for 2012 that was
 21 provided in this case, and it is marked as NSP 37
 22 and it's a supplement to an initial request that
 23 was provided.
 24 JUDGE FETCH: Okay. And by stipulation
 25 then NSP Exhibit 37 is admitted. All right. Thank

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1 you. And you don't need to recall a witness to
 2 have any testimony about that, Ms. Valley?
 3 MS. VALLEY: I'm sorry, Your Honor. I
 4 missed your question.
 5 JUDGE FETCH: You don't need to recall any
 6 witness for any testimony about this exhibit?
 7 MS. VALLEY: No, Your Honor. The parties
 8 agree to its admission.
 9 JUDGE FETCH: Thank you. All right. Then
 10 if we're ready to proceed to the advocacy staff
 11 witness Sara Cardwell. I'll turn it over to you,
 12 Mr. Norrell.
 13 MR. NORRELL: Thank you, Your Honor. I
 14 move that the witness be placed under oath and then
 15 we can do some introductory matters.
 16 JUDGE FETCH: Opening statement. All
 17 right. Ms. Cardwell, you've been present and heard
 18 me instruct as to penalties for perjury. Please
 19 raise your right hand.
 20 (Witness sworn.)
 21 JUDGE FETCH: Thank you. And maybe just
 22 move that mike a little closer to you, if you can.
 23 Thank you.
 24 All right. Mr. Norrell. And you've
 25 passed out the opening statement, which you've

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1 labeled PSC 21?
 2 MR. NORRELL: That is correct, Your Honor.
 3 JUDGE FETCH: All right. And by agreement
 4 or stipulation, this is entered into the record as
 5 PSC Exhibit 21. Okay. Please proceed.
 6 MR. NORRELL: Thank you, Your Honor. Ms.
 7 Cardwell will be testifying to PSC Exhibit 7.
 8 **SARA CARDWELL,**
 9 being first duly sworn, was examined and testified
 10 as follows:
 11 **DIRECT EXAMINATION**
 12 **BY MR. NORRELL:**
 13 **Q.** And, Ms. Cardwell, do you have any
 14 corrections that you'd like to make or anything for
 15 Exhibit 7?
 16 **A. No.**
 17 **Q.** Thank you. You may proceed with your
 18 statement.
 19 **A. I am a public utility analyst with the**
 20 **North Dakota Public Service Commission and am**
 21 **appearing on behalf of advocacy staff. The purpose**
 22 **of my testimony is to express concerns on the part**
 23 **of the advocacy staff as to NSP's spending that has**
 24 **caused the company to ask for an increase from**
 25 **customers for a 2008, 2011, 2012, and now a 2013**

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1 **test period.**
 2 **In the company's rebuttal, Vice President**
 3 **McCarten states that the company is considering the**
 4 **ratepayer and points to their offer to spread the**
 5 **2008 market losses in their pension plan over**
 6 **multiple years. Yet this is a small component of**
 7 **the rate case and we don't know how postponing this**
 8 **small amount may affect a future increase. She**
 9 **also points to two projects, the Black Dog**
 10 **repowering and the Prairie Island uprate, that the**
 11 **company canceled as cost reduction programs.**
 12 **However, the primary reason that the company**
 13 **canceled these projects was because the load growth**
 14 **that necessitated them did not materialize.**
 15 **And when questioned by Commissioner**
 16 **Fedorchak, Ms. McCarten indicated that the company**
 17 **will have at least two more years of significant**
 18 **spending as they complete their nuclear projects**
 19 **and the CapX2020 projects. In summary, the company**
 20 **has not alleviated our concerns regarding cost**
 21 **control.**
 22 MR. NORRELL: Thank you, Ms. Cardwell.
 23 This witness is available for cross-examination.
 24 JUDGE FETCH: Thank you, Mr. Norrell. Ms.
 25 Valley.

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1 MS. VALLEY: Thank you, Your Honor.
 2 **CROSS-EXAMINATION**
 3 **BY MS. VALLEY:**
 4 **Q.** Good afternoon, Ms. Cardwell. Starting on
 5 page 3, line 14 of your testimony, you question
 6 whether some of the acquisitions that the company
 7 is making are wise at this time. Do you agree that
 8 the wind resources you identify are not part of
 9 this docket and that the prudence of those
 10 investments for North Dakota customers will be
 11 addressed in a separate ADP proceeding?
 12 **A. I agree with that. However, the**
 13 **Commission should be made aware of other spending**
 14 **that the company is planning going forward.**
 15 **Q.** And thank you, Ms. Cardwell. Do you agree
 16 that those ADP applications have been filed in
 17 advance of the in-service dates of those projects?
 18 **A. Yes, they have.**
 19 **Q.** On page 4, line 21, you indicate that
 20 ratepayers have saved \$1.3 million from not paying
 21 for Prairie Rose costs during 2013. How do you
 22 calculate that savings?
 23 **A. I calculate that savings by looking at the**
 24 **monthly fuel cost rider adjustment filings that the**
 25 **company makes.**

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1 **Q.** And do you agree that the actual
 2 adjustment in the fuel cost reflects an average
 3 cost of energy from North Dakota -- for North
 4 Dakota customers who are not actually backing out
 5 all of the Prairie Wind costs related to those --
 6 all of the costs related to those kilowatt-hours?
 7 **A.** I believe that Mr. Wishart in his
 8 testimony said the savings to customers as the
 9 company calculates them are closer to \$300,000, but
 10 I don't have any calculations to back that up other
 11 than the system average cost that is being used for
 12 the purposes of the fuel cost rider at this current
 13 time.
 14 **Q.** Now, you had also questioned the company's
 15 proposal to site a gas plant in Hankinson and
 16 whether it's needed. Are the costs of those plants
 17 in this proceeding?
 18 **A.** No, they are not. Again, my purpose is to
 19 ensure that the Commissioners and the rest of the
 20 Commission has adequate knowledge of what the
 21 company's plans are going forward.
 22 **Q.** And do you agree that the company filed an
 23 ADP for those plants?
 24 **A.** Yes, the company did.
 25 **Q.** In a rate case does the Commission review

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1 costs and expenses in a test year and evaluate
 2 whether those are appropriate for recovery in a
 3 rate case?
 4 **A.** Yes, the Commission does, but as
 5 Commissioner Fedorchak mentioned earlier, and she
 6 asked the company's witness, Vice President
 7 McCarten, about what do you tell customers, and
 8 Vice President McCarten said, yeah, there are more
 9 expenditures coming down the trail. So, again, the
 10 purpose of my testimony was to ensure that the
 11 Commission has full knowledge that the company is
 12 still continuing to spend tremendous amounts of
 13 money in the next couple of years as a minimum.
 14 **Q.** Now, do you agree that the company has an
 15 obligation to provide electric service in its
 16 service territory?
 17 **A.** Yes, the company has an obligation to
 18 provide service and, in fact, we pointed out in
 19 some of our information that we provided that there
 20 are concerns that at least advocacy staff has in
 21 terms of the reliability of the service that the
 22 company is currently providing to customers in
 23 North Dakota.
 24 **Q.** And do you agree that the company has made
 25 significant investments in its distribution network

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1 in compliance with the Commission's order in the
 2 last case and that that has demonstrated
 3 significant improvement to its reliability?
 4 **A.** I don't have knowledge of the significance
 5 of this.
 6 **Q.** Do you agree that the company has an
 7 obligation to serve -- has also an obligation to
 8 invest -- or make the system investments necessary
 9 to ensure that it meets its obligation?
 10 **A.** Yes, but I also know that there is an
 11 excess in -- of over and above reserve margins in
 12 the MISO region right now.
 13 MS. VALLEY: Thank you, Ms. Cardwell. I
 14 don't have any further questions at this time.
 15 JUDGE FETCH: Thank you. Ms.
 16 Jeffcoat-Sacco.
 17 **EXAMINATION**
 18 **BY MS. JEFFCOAT-SACCO:**
 19 **Q.** The last statement that you just made
 20 about the excess in reserve margins, can you expand
 21 on that a little bit? You know that how and its
 22 relationship to your testimony?
 23 **A.** Oh. Well, I believe that what the company
 24 attorney was referring to is that the company's
 25 perspective is that these investments that they're

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1 going to be making that are part of these ADPs
 2 coming up are needed to provide reliable services
 3 to their customers, and I was merely pointing out
 4 that MISO's reserve margins are currently showing
 5 excess capacity, and I guess I'd have to pull those
 6 documents up from the MISO website.
 7 **Q.** So you're implying that use the excess
 8 capacity in MISO, purchase the power rather than
 9 investing to produce it or investing in purchasing
 10 it from a specific contract? Is that what you're
 11 saying, go to the market?
 12 **A.** No. We will address the ADPs within those
 13 particular proceedings. I was just -- it was just
 14 merely a comment that there are excess reserves in
 15 the MISO market currently, so I don't think that
 16 currently reliability from a production perspective
 17 is a problem for customers.
 18 MS. JEFFCOAT-SACCO: Okay. I understand.
 19 That's all I have. Thank you.
 20 JUDGE FETCH: Thank you, Ms.
 21 Jeffcoat-Sacco. We'll go to the Commission at this
 22 time. Commissioner Fedorchak.
 23 COMMISSIONER FEDORCHAK: Thank you, Judge.
 24
 25

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1 **EXAMINATION**

2 **BY COMMISSIONER FEDORCHAK:**

3 **Q.** Ms. Cardwell, can you tell me a little bit

4 about -- in your testimony you talked about needing

5 to reassess the need for the Minnesota competitive

6 resource docket. What is that and how does it

7 relate to this case?

8 **A.** Well, in Minnesota they have a competitive

9 resource process docket open right now, and the

10 three units that they applied for an ADP for are

11 within that docket, and so there are two processes

12 going on currently, our ADP as well as the

13 Minnesota process. But between the fact that they

14 have filed for this 600 megawatts of additional

15 simple cycle CTs as well as 750 megawatts of wind,

16 even within the State of Minnesota there are

17 parties questioning whether all this is necessary

18 at this time.

19 **Q.** But we don't have any role to play in that

20 docket in terms of telling them that they shouldn't

21 be doing it? Are you suggesting that we do that

22 or --

23 **A.** No. We are monitoring that docket and we

24 have filed as intervenors, but we will be not

25 suggesting necessarily that they do not have a need

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1 for those facilities within that docket.

2 **Q.** Okay. So in one of the recommendations

3 under -- recommendations for the Commission's

4 consideration, reassess the need for the Minnesota

5 competitive resource docket based on wind

6 acquisition just announced, clarify what you mean

7 by that.

8 **A.** Okay. Well, it seems like the

9 Minnesota -- because that's their largest

10 jurisdiction, seems to take precedence over any

11 other jurisdiction in which they serve, so they are

12 going to be filing another resource plan in

13 February of 2014 and then they also have all these

14 other pending dockets, and so maybe what they

15 should do is wait until that next resource plan

16 before they make decisions on all of this

17 additional need for power.

18 **Q.** Okay. And we'll take that into

19 consideration. We'll continue that discussion in

20 our --

21 **A.** ADPs.

22 **Q.** -- ADP process.

23 **A.** Yes.

24 **Q.** Okay. You have in your testimony also the

25 chart of recent -- well, not recent, but rate

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1 increases, it's on page 2 of your testimony, and

2 you list the -- you list them all here going back

3 to 1980. I'm particularly interested in the two in

4 2010 and then 2012 is pending. Why is that listed

5 as pending, the authorized increase?

6 **A.** That's the current case that we're --

7 **Q.** Oh, that's this case?

8 **A.** Yes.

9 **Q.** Okay. I see. So if you go back to '07

10 until now, have you done the math as to what is the

11 cumulative rate increases that customers have

12 weathered -- NSP customers? Can we just add those

13 all together? Would that be effective math? Can

14 you do that?

15 **A.** You're not supposed to add percentages

16 mathematically, but you could probably kind of, you

17 know, for squishiness kind of say it's like a 15,

18 16 percent increase since. And you have to

19 remember that the 2007 filing was for a 2008 test

20 period, so those rates didn't go into effect until

21 either late 2008 or the first part of 2009.

22 **Q.** So this would be for about the past six

23 years and then whatever sort of a decision we make

24 would be added on top of that?

25 **A.** That's correct.

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1 **Q.** Okay. Is this -- has advocacy staff done

2 any research back into past periods of build-out?

3 From what I understand and have learned about this

4 industry, it goes through phases of build-out, and

5 is this level of increase consistent with past

6 phases where the companies have had to invest a

7 whole bunch to update their system and then there's

8 a period where the rates stabilize. Is this

9 consistent with that? Is that what we're

10 experiencing, or are you just concerned that this

11 is just runaway spending by NSP?

12 **A.** No, it could have -- it could very likely

13 have something to do with the spending cycle, but,

14 you know, what I'm trying to say, have they looked

15 at all things that they could do within the company

16 to ensure that the spending cycle and the increases

17 to customers are the best they can do at this point

18 in time.

19 COMMISSIONER FEDORCHAK: Fair enough.

20 Thank you. That's all my questions.

21 JUDGE FETCH: Thank you. Commissioner

22 Kalk.

23 COMMISSIONER KALK: Thank you, Your Honor.

24

25

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1 **EXAMINATION**

2 **BY COMMISSIONER KALK:**

3 **Q.** Thank you, Sara, for your testimony and,

4 quite honestly, for your work with the advocacy

5 staff because I know we've got a lot of good people

6 that came to provide their work, but between you

7 and Mike, I think you pulled probably the lion's

8 share of coordinating all this over the last year

9 or so. So thank you. You guys presented a pretty

10 good case, and so has the company too, but thank

11 you for that.

12 Just a couple questions, I guess. You've

13 done a good job of pointing out the potential wind

14 resources that are coming in front of this

15 Commission via ADP, and this Commission rejected an

16 ADP from the company because it wasn't timely, they

17 already bought the wind farm and then they came to

18 us after the fact. So I share your frustration

19 with the company just acquiring wind just for the

20 sake of acquiring wind to meet Minnesota's mandate.

21 In my opinion, that's very clear.

22 But the question is, what do we do? We're

23 faced with a set of facts that says we're putting

24 money into nuclear plants so they get some return,

25 they're building new transmission so they get some

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1 return. What are you recommending that this

2 Commission really do during this rate case to curb

3 this, what you'd call, excessive spending other

4 than making these verbal comments, and which they

5 hear, but what do you recommend, we disallow --

6 what are you trying to get to that you would like

7 to see this Commission do for discipline in their

8 spending?

9 **A.** That is a very good question. I don't

10 know that we have a complete set of facts to make

11 that kind of determination, but what we can do is

12 there are certain things that we cannot include for

13 sure. I mean, economic development costs,

14 charitable contributions, incentive compensation,

15 and then, too, some of the things that we talked

16 about in terms of the wind projects and the biomass

17 projects where the company has paid above-market

18 rates for those projects, what we can do is within

19 that fuel cost adjustment review filing that we'll

20 be doing is look at those intently and determine

21 the extent to which those particular projects were

22 done merely to meet Minnesota requirements and as a

23 result potentially look at ways that we can cut

24 costs there.

25 **But, you know, I don't have all the**

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1 **answers as to how the company could cut costs. I**

2 **think one of the things was just trying to make an**

3 **awareness to the company as to think about it.**

4 **Q.** Because the rate cases you've talked about

5 and Commissioner Fedorchak brought out, I mean,

6 I've lived all those rate cases since 2007.

7 You had a comment the last thing in page 7

8 of your testimony, "Consider capping future rate

9 increases so that NSP has an incentive to not

10 spend." So how would you envision that

11 recommendation playing out?

12 **A.** Well, you know, there's different ways

13 that you can do this sort of thing -- I think

14 Charlie King might have talked about something

15 too -- where you have a rate of return cap type

16 thing where you say, if you earn more than this,

17 you know, there's a sharing and below this, you can

18 ask for a certain percentage of a rate change. So

19 there are various mechanisms out there in use that

20 put so-called caps or incentives, so to speak.

21 **Q.** So I understand that discussion because I

22 thought that was good with Mr. King. But do you

23 know if it's legal? And it's a question I can ask

24 our attorney, but if as a result of this order we

25 say this is what -- now to the company -- you get,

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1 don't come see us again for 36 months, is that

2 something the Commission can legally put in an

3 order, or would that be only a settlement agreement

4 kind of thing?

5 **A.** Well, I'm not sure, but I know in South

6 Dakota in their most recent rate case they got an

7 infrastructure rider, and as part of that

8 infrastructure rider, the company is not supposed

9 to come back for an increase prior to 2015. And I

10 believe in the 2007 -- settlement of the 2007 case,

11 the company was also told that they could not come

12 back such that any interim rate increase would be

13 in effect prior to the beginning of 2011.

14 COMMISSIONER KALK: Thank you, Sara.

15 JUDGE FETCH: Thank you, Commissioner.

16 Commissioner Christmann.

17 COMMISSIONER CHRISTMANN: I think all my

18 questions have been asked, Judge.

19 JUDGE FETCH: All right. We'll go back to

20 Mr. Norrell.

21 MR. NORRELL: Thank you, Your Honor. No

22 questions.

23 JUDGE FETCH: Ms. Valley, any further

24 questions?

25 MS. VALLEY: No, Your Honor.

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1 JUDGE FETCH: Ms. Jeffcoat-Sacco?

2 MS. JEFFCOAT-SACCO: No. Thank you.

3 JUDGE FETCH: Well, we're back to

4 Commissioner Fedorchak.

5 COMMISSIONER FEDORCHAK: No thanks.

6 JUDGE FETCH: No followup. All right.

7 Then you're excused, Ms. Cardwell.

8 Mr. Norrell, does that comprise the staff

9 advocacy case?

10 MR. NORRELL: Yes, Your Honor, it does.

11 JUDGE FETCH: Before I ask whether the

12 company has any rebuttal witnesses, I'm going to

13 ask at this time -- I think it's apparent, the

14 answer, but I, for the record, am going to ask

15 whether there is anyone else who wishes to provide

16 any testimony today? Any members of the public?

17 All right. Seeing none, then I'm going to

18 go back to NSP and ask Ms. Valley and/or Mr.

19 Johnson whether the company wishes to recall any

20 witnesses.

21 MS. VALLEY: No, Your Honor, we don't

22 intend to recall any witnesses, but we have one

23 other exhibit.

24 MR. JOHNSON: Your Honor, we do now have

25 available late-filed Exhibit F and perhaps this

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1 would be a good time to make that available to

2 people.

3 JUDGE FETCH: That would be fine. Thank

4 you. I will mark that then -- I mean, it's already

5 been admitted, but I will mark that as having been

6 received.

7 And we are going to handle exhibits,

8 counsel -- I'm going to ask the attorneys to stay.

9 We don't need to take up Commission time for that,

10 but we'll sort through and make sure we're on the

11 same page as far as all the exhibits and what needs

12 to be admitted. So we have Exhibit F. All right.

13 And I believe that -- Ms. Valley, that the

14 company was also going to handle the corrections

15 and replacements or whatever for the exhibits in an

16 exhibit at the end, is that correct, rather than

17 try to go through each exhibit for the record, not

18 the Commissioners' copies now. I'm talking about

19 the official exhibits for the record. And rather

20 than go through and red-line and handle that, was

21 it your intent to submit all of the corrections in

22 an additional exhibit?

23 MS. VALLEY: Yes, Your Honor.

24 JUDGE FETCH: All right. And I have to

25 get back to my numbering here. That would be NSP

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1 Exhibit 38. And what about you, Mr. Norrell, there

2 were a few corrections?

3 MR. NORRELL: Your Honor, advocacy staff

4 would propose the same arrangement, and I believe I

5 had spoken about this with Ms. Valley and Ms.

6 Jeffcoat-Sacco as well. We would propose that as a

7 late-filed exhibit.

8 JUDGE FETCH: Okay. And that is -- okay.

9 That would be PSC Exhibit 22 then.

10 MR. NORRELL: Yes, Your Honor.

11 JUDGE FETCH: And that's the corrections.

12 Okay. And both PSC Exhibit 22 and NSP Exhibit 38

13 are admitted.

14 All right. Counsel, anything else before

15 we proceed to the agreed-upon time for closing

16 statements. Ms. Jeffcoat-Sacco?

17 MS. JEFFCOAT-SACCO: I do have one request

18 and we talked about this at the break also and I

19 think maybe it should have an exhibit number. We

20 talked about -- staff had requested of the parties,

21 and it could be jointly filed, a spreadsheet that

22 basically showed the main issues, the company's

23 numbers, the staff's numbers, the difference, so

24 that it was a simple -- I say a spreadsheet, but I

25 mean a simple spreadsheet.

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1 JUDGE FETCH: You mean like a comparison?

2 MS. JEFFCOAT-SACCO: With the numbers, the

3 revenue requirement number changes. So I think the

4 parties probably can file that together because I'm

5 going to guess that they're going to agree on those

6 numbers. If not, they can each file one

7 separately, but we can give it an exhibit number or

8 two, if that's okay.

9 JUDGE FETCH: So that will be a

10 joint-filed exhibit.

11 MS. VALLEY: Your Honor, we can certainly

12 work to put that together jointly.

13 JUDGE FETCH: And then as a late-filed

14 exhibit, I'm going to label that Exhibit N, as in

15 Nancy, and that will be admitted as well. And

16 that -- what are you going to call that?

17 MS. JEFFCOAT-SACCO: I'd say revenue

18 requirement impact of the positions -- the two

19 positions -- two parties' positions, something like

20 that. Have you got a better name over there?

21 MS. VALLEY: Sure. Sometimes, you know,

22 we have put similar things together and we just

23 call them the issues list. It's sort of just a

24 summary of what the issues are and the parties'

25 positions, if that would be acceptable.

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1 JUDGE FETCH: Issues list. I like it.
 2 All right.
 3 MS. JEFFCOAT-SACCO: That's fine. As long
 4 as the dollars are in there, not just the issues.
 5 I can do that one myself. Thanks. It's true.
 6 JUDGE FETCH: Well, I think revenue
 7 probably is one of the issues. All right.
 8 Anything else, counsel, before we proceed to
 9 closing statements?
 10 MR. NORRELL: Your Honor.
 11 JUDGE FETCH: Mr. Norrell.
 12 MR. NORRELL: I do have one thing that was
 13 requested by Commissioner Fedorchak, and that was a
 14 capital structure comparison between advocacy
 15 staff's witness and the company's witness. Mr.
 16 King did prepare that. However, he fell ill and is
 17 back at the hotel. I have presented this to a
 18 couple members of the company's -- of the company.
 19 What staff is proposing at this point is to have
 20 that admitted as a late-filed exhibit so that way
 21 the company could do their due process and
 22 double-check to make sure these are correct before
 23 this comes on the record without an opportunity to
 24 examine the preparer.
 25 JUDGE FETCH: Okay. So are you asking

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1 that I not rule on that until there has been an
 2 opportunity to review?
 3 MR. NORRELL: Yes, Your Honor.
 4 MR. JOHNSON: Your Honor, I wonder if we
 5 could -- I mean, following the protocol we've just
 6 talked about to fit within the -- admitted during
 7 the hearing part, we'll either agree to it or we'll
 8 provide whatever variant on it we think is
 9 appropriate. I mean, it will be kind of like the
 10 issues list, we can either get it right or we'll
 11 each tell you what we think and with all -- with
 12 good luck, it will be the same.
 13 JUDGE FETCH: Okay. Thank you. Then with
 14 that caveat it is admitted. And what are you
 15 calling that?
 16 MR. NORRELL: The title that Mr. King put
 17 on this is the response to Commissioner Fedorchak's
 18 question regarding capital structure.
 19 JUDGE FETCH: Okay. Capital structure.
 20 I'm going to back up and I'm going to label that
 21 Exhibit N, as in Nancy, and the issues list Exhibit
 22 O. I see some closure in having the issues list be
 23 last.
 24 Anything else, counsel?
 25 MR. NORRELL: No, Your Honor.

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1 JUDGE FETCH: Do you need a few minutes to
 2 get your thoughts together or do you have them
 3 together?
 4 MS. VALLEY: Thank you, Your Honor. I
 5 have them together. I can proceed.
 6 COMMISSIONER KALK: Your Honor, can I
 7 interject a quick question?
 8 JUDGE FETCH: Yes, Commissioner Kalk.
 9 COMMISSIONER KALK: Different times,
 10 different protocol for the Commissioners to give
 11 their two minutes of closing thoughts. That's
 12 something you don't have to let us do, but it would
 13 be nice.
 14 JUDGE FETCH: Do you want to do that
 15 before their closing?
 16 COMMISSIONER KALK: That's what I would
 17 ask the attorneys, because it doesn't matter to me.
 18 I just don't want them to give their thoughts and
 19 me to pontificate. They might want to say their
 20 thoughts after they've heard our thoughts. I don't
 21 know. That's really up to counsel. For me
 22 personally I would like about two minutes just to
 23 give my thoughts, then trust me --
 24 JUDGE FETCH: I had intended to do that at
 25 the end, but we can proceed with that now.

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1 COMMISSIONER KALK: Whatever. I just
 2 wanted to make sure we were thinking that.
 3 Whatever the company wants and advocacy staff.
 4 MR. NORRELL: Advocacy staff is fine with
 5 that at the end.
 6 MS. VALLEY: And thank you, Commissioner
 7 Kalk and Judge Fetch. We'll defer to your
 8 preference.
 9 COMMISSIONER KALK: I think you should go
 10 then.
 11 COMMISSIONER CHRISTMANN: Your Honor.
 12 JUDGE FETCH: Yes, Commissioner
 13 Christmann.
 14 COMMISSIONER CHRISTMANN: Before we start
 15 these closing comments, could I have just a few
 16 seconds to consult with Ms. Jeffcoat-Sacco?
 17 JUDGE FETCH: Sure. But let me get this
 18 straight. We're going to go with the Commission's
 19 sort of closing statements before we go to the
 20 attorney's; right?
 21 MS. JEFFCOAT-SACCO: After.
 22 COMMISSIONER KALK: After.
 23 JUDGE FETCH: After. All right. We'll
 24 take just a couple minutes.
 25 (Recess taken.)

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1 JUDGE FETCH: All right. It is 3:20 p.m.,
 2 Central Time. We're back on the record. At this
 3 time we're going to proceed to closing statements
 4 by the counsel for the two parties and then we'll
 5 take some closing statements from the Commissioners
 6 and after that I will finish up with some
 7 instructions about briefing and such.
 8 Ms. Valley, are you prepared to proceed?
 9 MS. VALLEY: Yes. Thank you, Your Honor.
 10 JUDGE FETCH: Thank you.
 11 MS. VALLEY: Thank you, Commissioners,
 12 Judge Fetch and Commission staff. The company
 13 appreciates the time and attention the Commission
 14 and its staff have taken to review our case, and we
 15 thank you for the opportunity to present additional
 16 information and answer the Commission's questions
 17 directly through the course of this proceeding.
 18 As Commissioner Fedorchak stated as this
 19 hearing began, the goal is the result that balances
 20 the interests of our customers and the company and
 21 that ensures continued safe, reliable service at
 22 reasonable rates. The record supports that the
 23 company's request appropriately balances these
 24 interests.
 25 As explained by company witnesses Laura

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1 McCarten, Tim O'Connor, and Steve Foss, to reliably
 2 serve our customers we must invest in and maintain
 3 our infrastructure and operate our business to meet
 4 our obligation to serve today and into the future.
 5 The overall purpose of this ratemaking process is
 6 to set rates that allow the utility to recover its
 7 reasonable costs it incurs to satisfy that
 8 obligation.
 9 Our rate request reflects the costs
 10 necessary to serve our customers and is consistent
 11 with standard ratemaking principles, is consistent
 12 with the Commission's precedence, and follows
 13 standard accounting procedures and reflects an
 14 equitable distribution of costs between
 15 jurisdictions.
 16 In contrast, the staff consultants'
 17 proposals depart from standard ratemaking processes
 18 and this Commission's precedence and violates the
 19 regulatory compact between the state and the
 20 company.
 21 Company witness Ms. Ann Bulkley explained
 22 the standards used by this Commission and
 23 established by the Supreme Court for setting ROE.
 24 This includes consistency with the allowed return
 25 of other businesses having similar risks, adequacy

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1 of the return to provide access to capital and
 2 support credit quality and that is reflective of
 3 current market conditions.
 4 Company witness Mr. Tyson further
 5 explained the adverse result of an ROE outside the
 6 range of comparable returns.
 7 In this case, the staff consultant has
 8 proposed an ROE so low as to fail to meet the test
 9 of being reasonably comparable to like investment
 10 opportunities and is not consistent with the market
 11 conditions. Such a result doesn't balance the
 12 interest of our customers and the company and, as
 13 Mr. Tyson explained, could adversely affect
 14 customers by raising cost of capital needed to
 15 support system investments.
 16 Mr. Tyson explained that North Dakota is
 17 not insignificant. The investment community is
 18 paying attention to what happens here. The ROE is
 19 -- the ROE should be set at a rate comparable to
 20 investments of similar risk to ensure credit
 21 quality and that directly benefits customers in a
 22 time like today of significant system investment.
 23 With respect to the jurisdictional
 24 allocator, Mr. Brockett testified that the 12 CP
 25 method does continue to be the appropriate method

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1 in this case and is consistent with the standard
 2 expressly set by the Commission. It reasonably
 3 reflects the incremental cost caused by each
 4 jurisdiction, is consistently applied among each of
 5 the jurisdictions and is understandable,
 6 inexpensive to administer and does not result in
 7 large swings in jurisdictional costs or
 8 responsibility.
 9 In contrast, the 1 CP method recommended
 10 by Dr. Pavlovic fails to meet that test. It is
 11 inconsistent with precedent and could result in --
 12 and would result in large swings in jurisdictional
 13 cost responsibility and is not consistently
 14 applied. Dr. Pavlovic failed to identify any basis
 15 to adopt the method the Commission has repeatedly
 16 rejected for the NSP system.
 17 As Dr. Pavlovic recommended that we
 18 continue to look at something in the future,
 19 adopting the 1 CP method in the interim when
 20 admittedly it is not the right fit for this company
 21 would result in a \$20 million reduction to our
 22 revenue requirement without any basis in the
 23 record.
 24 Company witness Ms. Lisa Perkett further
 25 supported the depreciation expense in this case,

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1 both legal and nonlegal asset retirement
 2 obligations or cost of service that need to be
 3 recovered from customers. If nonlegal AROs are
 4 excluded, those costs will be recovered from future
 5 ratepayers who may have never received the benefit
 6 of the asset. The accounting treatment proposed by
 7 the company in this case is consistent with
 8 standards of accounting and the history of
 9 regulatory practice.

10 With respect to the test year, Ms. Anne
 11 Heuer explained that it's consistent -- our
 12 proposed test year is consistent with the statutory
 13 requirement that it be based on 12 consecutive
 14 months of data.

15 In contrast, Mr. Mgrace's recommendations
 16 match a historical average of expenses with
 17 projected future test year revenues in sales. It
 18 fails to apply a consistent allocator to the cost
 19 and adjustments and it in fact doubles the sales
 20 forecast. He has not provided any evidence that
 21 any of the costs are imprudent in this case and has
 22 not questioned the company's budgeting process.

23 With respect to the annual incentive, the
 24 company has proposed recovery of this incentive
 25 capped at 25 percent of base pay, and as company

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1 witness Ms. Sharon Koenig explained, it is part of
 2 a total compensation package, and by including
 3 compensation that is at risk for our employees does
 4 save costs for our customers.

5 In order to attract and retain the
 6 talented workforce that we need to support company
 7 operations, we do need to compensate them at market
 8 comparable rates. And by having this
 9 differentiated process actually keeps us keep costs
 10 low for our customers as other benefits such as
 11 retirement, other offerings the company makes to
 12 its employees are often tied to the base salary.
 13 And by keeping the base salary low with the annual
 14 incentive component on top of that to get to a
 15 market level actually reduces the cost of these
 16 other benefits.

17 And Mr. O'Connor explained the extremely
 18 competitive market for nuclear employees. Those
 19 employees are particularly vulnerable to
 20 recruitment from other companies that offer higher
 21 compensation, more advancement opportunities and
 22 sometimes a more preferable location. So retention
 23 agreements to keep those folks at our plants once
 24 they're trained, they know our systems is a
 25 cost-effective practice for our customers in terms

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1 of avoiding the costs of recruiting, training and
 2 getting new employees.

3 We are listening to the concerns of staff
 4 and the Commission about the investments that we're
 5 planning to make in the future and we have filed
 6 those advance determinations of prudence to allow
 7 the Commission, as it has the right under statute,
 8 to review whether those are the right investments
 9 for our customers, and we look forward to the
 10 opportunity to do that, recognizing that those
 11 costs aren't part of the case today.

12 We appreciate the discussion on the power
 13 purchase agreements and the additional information
 14 that the Commission and staff would like regarding
 15 those. We do think that the appropriate treatment
 16 of those or review of those should be in a separate
 17 proceeding, but we look forward to the opportunity
 18 to provide the Commission with the information that
 19 it's looking for for these resources that are
 20 currently being used.

21 As the Commission knows, its role is to
 22 weigh the evidence presented and exercise its
 23 reasoned judgment to determine just and reasonable
 24 rates, rates that are fair for the customer and
 25 fair for the company. In determining just and

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1 reasonable rates, the Commission considers the
 2 public need for adequate, efficient, economical,
 3 and reasonable service and the utility's need for
 4 revenue sufficient to enable it to meet its cost of
 5 service and to earn a fair return.

6 The testimony in the record and the
 7 evidence provided by the witnesses through this
 8 proceeding supports the company's rate request, is
 9 reasonable to recover the costs of service, and
 10 that balances the interests of our customers and
 11 the company ensuring the continued safe, reliable
 12 service at reasonable rates. Thank you.

13 JUDGE FETCH: Thank you, Ms. Valley.
 14 Mr. Norrell, please give the staff
 15 advocacy closing statement.

16 MR. NORRELL: Thank you, Your Honor.
 17 Judge Fetch, members of the Commission,
 18 representatives of NSP-Minnesota. I would like to
 19 thank you for your time and engagement in this
 20 case. I would also like to thank my fellow members
 21 of advocacy staff for their hard work, which has
 22 highlighted the big issues in play in this case.

23 These issues have an impact on everyday
 24 North Dakotans. We urge you to keep in mind that
 25 impact that your decision will have on the fellow

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1 North Dakotans as you take this case under
 2 advisement. Thank you.
 3 JUDGE FETCH: Thank you, Mr. Norrell.
 4 Do you want to say anything in closing,
 5 Ms. Jeffcoat-Sacco?
 6 MS. JEFFCOAT-SACCO: No. Thank you.
 7 JUDGE FETCH: I thought I would give you
 8 the chance. All right.
 9 MS. JEFFCOAT-SACCO: Nice of you. Thanks.
 10 JUDGE FETCH: Thank you. And at this time
 11 I'd like to give the opportunity to Commissioners
 12 to give closing statements, and we'll go first with
 13 Commissioner Fedorchak.
 14 COMMISSIONER FEDORCHAK: Thank you. Well,
 15 I too want to start by saying thanks to everyone,
 16 to the company for all the efforts you made to
 17 presenting your best case, digging up all the
 18 information we've asked for over the last eight
 19 months, for your very professional presentations,
 20 and all-around general pleasantness. It's been
 21 appreciated. The same with you, staff. You're
 22 pleasant too, and the consultants were too,
 23 although I think we made them sick and now they
 24 left.
 25 No, but I really do appreciate the extra

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1 time that everyone has taken to help educate me and
 2 willingness to do so. This is a complicated matter
 3 and I really have great respect for all the
 4 experience of everyone in the room and everyone who
 5 has left and the professionalism as well.
 6 Energy is one of the core components of
 7 our society, and while there wasn't a lot of -- or
 8 any members of the public who came today or the
 9 last few days to participate in this process, we
 10 know it isn't because they don't care about energy.
 11 If we didn't -- if we don't get this right, our
 12 lives as we know it come to a standstill, so what
 13 you all are doing as a company is vital and what
 14 we're doing here helps shape that and so what we're
 15 doing is also extremely vital, and I don't think we
 16 should ever interpret the public's lack of
 17 involvement as decreasing importance of these
 18 proceedings.
 19 This has been -- this is a complicated
 20 case. I'm glad of it because it's given us an
 21 opportunity to learn about a whole bunch of things
 22 that I don't know we'd otherwise have dug into, so
 23 that's great and it's revealed some areas that I
 24 think that we can dig into and need to perhaps
 25 consider.

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1 We're in dynamic times and this industry
 2 has changed a lot and is continuing to change, and
 3 so while precedent is important, and I appreciate
 4 the consistency and the measured approach that this
 5 Commission has followed over the past 20 years, 30
 6 years, and I want to continue that, I also think
 7 that changing times demand some alternative
 8 approaches, and so I think we need to all be open
 9 to that and to work on some of those issues that
 10 we've identified, moving forward with an open mind
 11 and with an eye on having the best possible outcome
 12 for today's era regardless of how it has been done
 13 in the past, and then setting out a -- I'm not
 14 changing everything overnight, by any means, but
 15 setting out a course to get to where we need to be
 16 for the current state of the industry.
 17 So that kind of concludes where my mind is
 18 at today. I don't know if we're in -- if this is
 19 halftime or if this is the third period. I have no
 20 idea having been the first rate case. It feels to
 21 me like halftime, and so we've got a lot of work
 22 left to do, a lot of material still to consider, a
 23 lot of discussions to be had, and I look forward to
 24 doing that together with all of you. Thank you.
 25 JUDGE FETCH: Sounds like everyone's minds

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1 is going to football, so thank you, Commissioner
 2 Fedorchak.
 3 COMMISSIONER FEDORCHAK: Basketball for
 4 me.
 5 JUDGE FETCH: Oh, okay. Basketball. And
 6 now we'll hear from Commissioner Kalk.
 7 COMMISSIONER KALK: Thank you, Your Honor.
 8 Thank you, like Julie and, I guess, everyone, Randy
 9 has talked about, thanks everyone for all their
 10 work.
 11 My biggest concern coming into this
 12 hearing was that it would degrade into a
 13 free-for-all of finger-pointing, because the issues
 14 are pretty far apart. We've seen that in different
 15 hearings before, and that's just the way it lays
 16 out, but I appreciate, you disagreed, you weren't
 17 disagreeable about it.
 18 And as we get to what this final solution
 19 is, I don't know whether we are at halftime or
 20 we're at the first quarter. I mean, the issues are
 21 pretty big right now. But when I go through -- I
 22 mean, kind of like Kari laid out the first time the
 23 12 CP, 1 CP, the depreciation, return on equity,
 24 employee compensation, the fuel cost rider,
 25 incentive compensation, charitable contributions,

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1 the transmission cost recovery rider, these are all
 2 issues that I have definite thoughts on today, but
 3 I won't share at this time, Illona, but I will say
 4 that I have made decisions on these in previous
 5 rate cases that will have some bearing on what I'll
 6 say in our first work session, which we'll probably
 7 schedule pretty quick.

8 But I will say for me coming into this
 9 proceeding, this being the third or fourth rate
 10 case I've been involved with Xcel Energy, this is
 11 where I'm at right now today. If we craft a
 12 decision that puts you back here next year, it will
 13 be the most stringent decision that I can come up
 14 with. If we craft a decision that gives the
 15 ratepayers some time to deal with this decision,
 16 there may be more flexibility in that decision, so
 17 I'll put that out there to all of you to haggle
 18 with, but I know that there's many different ways
 19 this can play out, that sides can get together and
 20 figure out what they agree on, present it to the
 21 Commission and we can accept and make changes and
 22 move forward, or you can leave it all to the three
 23 of us to decide. So that goes back to whether
 24 we're in the first quarter or in the third quarter,
 25 I think. I do really appreciate the dialogue.

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1 Go back to -- the last thought I would
 2 have is that I'm relatively convinced the
 3 regulatory model we have now throughout the country
 4 does not fit the way investor-owned utilities have
 5 developed over time, so that's a challenge for all
 6 three of us and the staff to promote law changes as
 7 required. And I'd even offer up to the company if
 8 there's things in North Dakota law that you like or
 9 don't like, we should change, we should change
 10 them, we should look at them because that's how ADP
 11 came around, that's how we created -- what's the
 12 word here -- you get the money right away --
 13 interim rates. That's how we created interim
 14 rates. So now we have interim rates in place which
 15 gives us more time to really work through these
 16 issues. If there was no interim rates at play
 17 right now, I suspect the company would be very much
 18 more animated about getting a decision, and us too.
 19 So those are the kind of things that came about
 20 because people put good ideas to paper and they
 21 developed into some kind of laws. So as we get
 22 into the new session here, 18 months or so away,
 23 just be thinking about that.

24 And just thank you all for your work and I
 25 look forward to moving forward on this.

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1 The power purchase agreements, I know
 2 we've talked about separate hearings. I'm not
 3 against that, but I certainly wouldn't be against
 4 if all this stuff got put away this time around
 5 either. So throw that out there. Thank you.

6 JUDGE FETCH: Thank you, Commissioner.
 7 All right. Commissioner Christmann, you get to
 8 follow up two excellent closing statements here.

9 COMMISSIONER CHRISTMANN: I'll apologize
 10 in advance, Judge, I don't have any sports
 11 metaphors to throw around, but before I'm done
 12 every once in a while the rancher ones slip out, so
 13 there's nothing you can do about them once the
 14 horse is out of the barn.

15 JUDGE FETCH: See, always appreciated.

16 COMMISSIONER CHRISTMANN: At any rate, I
 17 felt like I've worked hard on this case in
 18 preparing for it, and I appreciate the leadership
 19 that Commissioner Kalk has brought forward having
 20 actually done these before, and I know Commissioner
 21 Fedorchak has worked many, many hours preparing for
 22 this with this being her portfolio and I think with
 23 the questioning that we've seen here today has
 24 really helped also provide great leadership in
 25 this.

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1 I will say a lot has been talked about
 2 with Commission precedence, and I'm a big one on
 3 historical things and maintaining consistency, but
 4 there are times when things do change, and the
 5 world of utilities has evolved considerably since a
 6 lot of these precedences were established and
 7 sometimes elected officials can get used to doing
 8 something a certain way because they've already
 9 made that decision once and so then subsequently
 10 it's always easier to reach that same conclusion,
 11 but this is a unique time in North Dakota where two
 12 of the three have never done a rate case before and
 13 so I think a lot of these things that have maybe
 14 been done the last few times because they were
 15 precedence are going to get a fresher, tougher look
 16 here to see if we are doing things the way they
 17 ought to be done in 2013.

18 Commissioner Kalk mentioned this with the
 19 power purchase agreements. If I had my druthers,
 20 the PPAs would be in this, as would all the ADPs
 21 that are already on the table. It just seems to me
 22 we're doing something big and ignoring something
 23 that we know is out there in doing it. And this is
 24 one place where I'm going to certainly acknowledge
 25 past precedence and agree that there probably is

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1 good reason for not biting off more than we can
 2 chew here and that those things will be addressed
 3 later, but I'm still not convinced that it wouldn't
 4 be better to just have done everything all at once
 5 and look at the whole picture in one good look.
 6 Lastly, just as kind of a summary, I think
 7 people from NSP, from our advocacy staff, from our
 8 own staff, as well as you, Judge, have been
 9 acknowledged for doing a great job, but, you know,
 10 it goes even further than that. It goes to Scott
 11 and to our IT people and our record keeper, I can't
 12 remember the --
 13 MS. JEFFCOAT-SACCO: Court reporter.
 14 COMMISSIONER CHRISTMANN: -- court
 15 reporter, you know, all the people in the whole
 16 Commission that make things go so we can be
 17 properly prepared. And also I can't help but sit
 18 here now for three days in a big hearing, my first
 19 really big hearing in here, multiple days like
 20 this, and think back to a few years ago sitting in
 21 the State Senate helping the Commissioners at that
 22 time push through the money to redo this hearing
 23 room. And the fact that we've brought everyone
 24 together with volumes of information, it's
 25 recorded, people can listen electronically, they

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1 can watch us on the Internet, all these things are
 2 possible.
 3 Commissioner Fedorchak mentioned nobody
 4 from the public. I challenge that. We did have
 5 one young lady stop in for a few minutes. Believe
 6 it or not, it was Ms. Fedorchak's mother, even
 7 though she looks far too spry for that to be
 8 possible, but I'm confident --
 9 COMMISSIONER FEDORCHAK: Those were just
 10 fans.
 11 COMMISSIONER CHRISTMANN: -- because of
 12 the great system this Commission has to make
 13 something like this possible, that there are a lot
 14 of people monitoring us, although not present in
 15 the room, and that's as it ought to be. This is
 16 open government and I think it will help us all to
 17 do what's right for the ratepayers and citizens of
 18 North Dakota. So thank you, everybody.
 19 JUDGE FETCH: Thank you, everyone. And
 20 I'm not going to even try to follow that up. I'll
 21 just echo, you know, all the recognition all the
 22 way around. It's excellent.
 23 And, yes, I -- sitting in on this hearing
 24 as I have, you know, literally thousands of others,
 25 I always appreciate parties' professionalism, and

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1 this could have been a very contentious hearing
 2 because the issues are contentious, but, thank you,
 3 we have some excellent staff and counsel and it's
 4 been handled extremely professionally and I always
 5 appreciate that. Thank you.
 6 And as we agreed in a prehearing
 7 conference prior to the hearing, the parties will
 8 be submitting written briefs of their positions,
 9 and included with the written briefs will be
 10 proposed findings for the Commission to consider.
 11 And I will hold the record open because we
 12 have a number of late-filed exhibits coming in and
 13 the record cannot be closed until we receive all
 14 the evidence and until we receive the briefs and
 15 the proposed findings, so -- and I'm not going to
 16 actually set a deadline date for that because it
 17 works better if the parties can work on those
 18 schedules themselves.
 19 And I am going to ask counsel to stay
 20 after I close the hearing so we can work it out.
 21 However, I want to go through and make sure we have
 22 all the briefs -- I mean, all the exhibits labeled
 23 and everybody is on the same page with those.
 24 Before I actually officially close the
 25 hearing today, is there any other matter which

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1 anyone wishes to bring to my attention or the
 2 attention of the Commission?
 3 And I'll start first with -- because
 4 you're looking at me, Mr. Norrell, I'll start with
 5 you.
 6 MR. NORRELL: I was just going to say no,
 7 Your Honor.
 8 JUDGE FETCH: Thank you. Ms. Valley or
 9 Mr. Johnson?
 10 MS. VALLEY: No, Your Honor.
 11 JUDGE FETCH: Ms. Jeffcoat-Sacco?
 12 MS. JEFFCOAT-SACCO: Do you need to
 13 mention on the record the Exhibit P, the
 14 Minnesota -- the chronology of the Minnesota
 15 legislation?
 16 JUDGE FETCH: Thank you. I am going to
 17 mention on the record that Commissioner Christmann
 18 brought to counsel's attention and my attention
 19 that we actually talked about an exhibit, but -- or
 20 something that -- information that Commissioner
 21 Christmann wanted and we have now placed a label on
 22 it, it's Exhibit P, as in Peter, which will be late
 23 filed, and we've called that a chronology of
 24 legislative and regulatory actions in Minnesota.
 25 All right. Anything else? Anything else

1 from the Commission?
 2 Thank you. And thank you for your
 3 professionalism.
 4 All right. Then if there is nothing else,
 5 I will close this hearing, noting the date and time
 6 is August 29th, 2013, at 3:45 p.m., Central Time.
 7 This hearing is closed. Thank you,
 8 everyone.
 9 (Concluded at 3:45 p.m., August 29, 2013.)

1 CERTIFICATE OF COURT REPORTER
 2
 3 I, Linda L. Gingery, a Registered
 4 Professional Reporter,
 5 DO HEREBY CERTIFY that I recorded in
 6 shorthand the foregoing proceedings had and made of
 7 record at the time and place hereinbefore
 8 indicated.
 9 I DO HEREBY FURTHER CERTIFY that the
 10 foregoing typewritten pages (Pages 141-305) contain
 11 an accurate transcript of my shorthand notes then
 12 and there taken.
 13 Bismarck, North Dakota, this 16th day of
 14 September, 2013.

 Linda L. Gingery
 Registered Professional Reporter

1 CERTIFICATE OF COURT REPORTER
 2
 3 I, Denise M. Andahl, a Registered
 4 Professional Reporter,
 5 DO HEREBY CERTIFY that I recorded in
 6 shorthand the foregoing proceedings had and made of
 7 record at the time and place hereinbefore
 8 indicated.
 9 I DO HEREBY FURTHER CERTIFY that the
 10 foregoing typewritten pages (Pages 1-140 and
 11 306-870) contain an accurate transcript of my
 12 shorthand notes then and there taken.
 13 Bismarck, North Dakota, this 16th day of
 14 September, 2013.

 Denise M. Andahl
 Registered Professional Reporter

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