GW97-001

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GW97-001

DOCKET NO.

In the Matter of

IN THE MATTER OF THE ESTABLISHING WAREHOUSE RATES FOR THE STORAGE, RECEIVING, HANDLING AND REDELIVERY OF GRAIN

Public Utilities Commission of the State of South Dakota

DATE		MEMORANDA
12/18	97	Commission voted to open docket;
4/13	98	Order for and Notice of Hearing;
4/24	98	Amended Order for and Notice of Hearing;
5/7	98	Transcript of Hearing held on 4/30/98;
6/29	98	Find of Fact and Con of Law; Notice of Entry of Order;
6/29	98	Docket Closed

PUBLIC UTILITIES COMMISSION MEETING
December 18, 1997; 10:00 A.M.
State Capitol Building, Room 464
Pierre, South Dakota

MINUTES OF THE COMMISSION MEETING

Chairman Burg called the meeting to order at 10:00 a.m. Present were Commissioner Pam Nelson, Commissioner Laska Schoenfelder, Executive Director Bill Bullard, General Counsel Rolayne Ailts Wiest, Staff Attorneys Karen Cremer and Camron Hoseck, Fixed Utilities Division Director Greg Rislov, Telecommunications Analysts Harlan Best and Charlie Bolle, Utility Analysts Bob Knadle, Dave Jacobson and Tammi Stangohr, Business Manager Sue Cichos, Consumer Representative Leni Healy, Engineer Martin Bettmann, Transportation/Warehouse Division Director Ed Anderson and Administrative Secretary Shirleen Fugitt.

Also present were Rich Coit, SDITC, and Bob Mercer, Rapid City Journal.

Joining the meeting by phone were Robert Marmet, Dakota Telecommunications Group, Denny Law and Rick Johnson, Sioux Valley Telephone; Bill Heaston, Jon Lehner and Colleen Sevold, U S WEST; Michelle Engel, AT&T; Suzan Stewart and Marv Sorenson, MidAmerican Energy; Dennis Schnabel, Wayne Fox and Rita Mulkern, Montana-Dakota Utilities; Jim Wilcox and Sally DeNeui, Northern States Power; Bill Haas, McLeod USA; Angelia Qualls, Complainant in TC97-023, and Jodi Bentz and Michele Burgers, complainants in TC95-120 and TC95-122.

Administration

1. **Approval Of The Minutes Of The Commission Meeting Held On December 2, 1997. (Staff: Shirleen Fugitt.)**

Commissioner Nelson moved to approve the minutes of the December 2, 1997, Commission Meeting. Commissioner Schoenfelder seconded and Chairman Burg concurred. Motion passed 3-0.

Consumer Affairs

1. **Status Report On Consumer Utility Inquiries And Complaints Recently Received By The Commission. (Consumer Representative: Leni Healy.)**

Ms. Healy presented an update on consumer inquiries and complaints received since the last Commission meeting.

Electricity

1. **EL97-018 IN THE MATTER OF THE APPLICATION OF MONTANA-DAKOTA UTLITIES CO., A DIVISION OF MDU RESOURCES GROUP, INC. FOR APPROVAL OF MODIFICATION**

OF ELECTRIC SERVICE AREA BETWEEN MONTANA-DAKOTA UTILITIES CO. AND CAM WAL ELECTRIC COOPERATIVE, INC. (Staff Engineer: Martin Bettmann. Staff Attorney: Camron Hoseck.)

Mr. Bettmann explained the application and recommended approval.

Commissioner Schoenfelder moved to approve the application. Commissioner Nelson seconded and Chairman Burg concurred. Motion passed 3-0.

2. **EL97-023 IN THE MATTER OF THE COMPLAINT FILED BY ANGELIA QUALLS, SIOUX FALLS, SD AGAINST NORTHERN STATES POWER COMPANY REGARDING PREVIOUS BALANCES. (Consumer Representative: Leni Healy. Staff Attorney: Camron Hoseck.)**

Angelia Qualls explained her complaint against Northern States Power. Jim Wilcox addressed the complaint. Ms. Healy recommended finding probable cause.

Commissioner Nelson moved to find probable cause. Chairman Burg seconded. Commissioner Schoenfelder dissented. Motion passed 2-1.

Gas/Electric

1. **GE97-003 IN THE MATTER OF THE FILING BY MIDAMERICAN ENERGY COMPANY FOR APPROVAL OF REVISIONS TO ITS ELECTRIC AND GAS TARIFFS. (Staff Analyst: Dave Jacobson. Staff Attorney: Karen Cremer.)**

Marv Sorenson, MidAmerican Energy, explained the filing. Following discussion, action was deferred.

Telecommunications

1. **TC95-120 IN THE MATTER OF THE PETITION OF DAVID GLADER FOR EXTENDED AREA SERVICE BETWEEN COLTON, SOUTH DAKOTA, AND SIOUX FALLS, SOUTH DAKOTA. (Staff Analyst: Harlan Best. Staff Attorney: Karen Cremer.)**

2. **TC95-122 IN THE MATTER OF THE REQUEST FOR ONE-WAY EXTENDED AREA SERVICE FROM DELL RAPIDS, SOUTH DAKOTA, TO SIOUX FALLS, SOUTH DAKOTA. (Staff Analyst: Harlan Best. Staff Attorney: Karen Cremer.)**

Rick Johnson addressed the requests for extended area service and noted that Sioux Valley Telephone is willing to provide the service if an interconnection agreement can be reached with U S WEST on a basis other than switched access charges. Bill Heaston noted that the exchanges are not contiguous as required in previous Commission orders. Chairman Burg asked the companies to develop more information and negotiate further. Action was deferred.

3. TC97-168 **IN THE MATTER OF THE APPLICATION OF ATLAS EQUITY, INC,. D/B/A PERFORMANCE TELECOM FOR A CERTIFICATE OF AUTHORITY TO PROVIDE TELECOMMUNICATIONS SERVICES IN SOUTH DAKOTA. (Staff Analyst: Tammi Stangohr. Staff Attorney: Camron Hoseck.)**

Ms. Stangohr explained the application and recommended approval.

Chairman Burg moved to approve the application. Commissioner Schoenfelder seconded and Commissioner Nelson concurred. Motion passed 3-0.

4. TC97-173 **IN THE MATTER OF THE APPLICATION OF VISTA COMMUNICATIONS, INC. FOR A CERTIFICATE OF AUTHORITY TO PROVIDE TELECOMMUNICATIONS SERVICES IN SOUTH DAKOTA. (Staff Analyst: Tammi Stangohr. Staff Attorney: Camron Hoseck.)**

Ms. Stangohr requested deferral. Action was deferred.

5. TC97-178 **IN THE MATTER OF THE COMPLAINT FILED BY BEN HOFER, CARPENTER, SD, AGAINST U S WEST COMMUNICATIONS, INC., REGARDING UPDATING LINES. (Staff Analyst: Steve Wegman. Staff Attorney: Camron Hoseck.)**

Ben Hofer explained his complaint against U S WEST. Colleen Sevold, U S WEST, reported that the company will answer the complaint within 20 days and has no objection to the finding of probable cause.

Commissioner Schoenfelder moved to find probable cause. Chairman Burg seconded and Commissioner Nelson concurred. Motion passed 3-0.

6. **IN THE MATTER OF EXCESSIVE CONSUMER COMPLAINTS AGAINST BASIC LONG DISTANCE FOR QUESTIONABLE MARKETING PRACTICES AND UNAUTHORIZED SWITCHING OF LONG DISTANCE SERVICE. (Consumer Affairs: Leni Healy.)**

Ms. Healy reported that Basic Long Distance has not responded to her request for information. Ms. Wiest recommended a follow-up letter be sent to the company stating actions which can be taken against the company and a specific time frame for sending the requested information.

Transportation/Warehouse

1. **IN THE MATTER OF INVESTIGATING THE CURRENT RATE STRUCTURE FOR RECEIVING, HANDLING, REDELIVERING AND STORING GRAIN AT STATE LICENSED PUBLIC GRAIN WAREHOUSES. (Division Director: Ed Anderson.)**

Mr. Anderson noted that this subject was addressed last in 1991, and pointed out several reasons why he is requesting that it be revisited at this time.

Commissioner Schoenfelder moved to open an investigative docket. Chairman Burg seconded and Commissioner Nelson concurred. Motion passed 3-0.

Miscellaneous

1. **IN THE MATTER OF THE CONTRACT WITH WESTERN REGIONAL BIOMASS ENERGY PROGRAM. (Staff Analyst: Steve Wegman.)**

Ms. Cichos presented a brief explanation of the proposed contract.

Commissioner Schoenfelder moved to approve the contract. Chairman Burg seconded and Commissioner Nelson concurred. Motion passed 3-0.

Addendum

Natural Gas

1. NG97-020 **IN THE MATTER OF THE APPLICATION OF MONTANA-DAKOTA UTILITIES CO., A DIVISION OF MDU RESOURCES GROUP, INC. FOR APPROVAL OF A PLAN TO DEVIATE FROM PURCHASED GAS COST ADJUSTMENT RATE 88. (Staff Analyst: Dave Jacobson. Staff Attorney: Camron Hoseck.)**

Wayne Fox, MDU, explained the application. Mr. Jacobson recommended approval with the following conditions:

1. $136,104.72 be submitted to the Commission for reimbursement of regulatory expense.
2. Waiver of MDU's natural gas tariff, section 5 (a) (3) of rate 88 is approved.
3. MDU's recovery of out of pocket costs from the refund is approved.
4. MDU shall submit a refund report to the Commission at the time unclaimed refunds are forwarded to the State Treasurer's Office.
5. The notification to customers be approved by Commission Staff.

Chairman Burg moved to approve the plan with the conditions listed above. Commissioner Nelson seconded and Commissioner Schoenfelder concurred. Motion passed 3-0.

Telecommunications

1. TC97-020 **IN THE MATTER OF THE FILING BY U S WEST COMMUNICATIONS, INC. FOR REVISIONS TO ITS ACCESS SERVICE TARIFF. (Staff Analyst: Tammi Stangohr. Staff Attorney: Camron Hoseck.)**

Colleen Sevold, U S WEST, explained the filing. Ms. Stangohr recommended approval.

Commissioner Schoenfelder moved to approve the filing. Commissioner Nelson seconded and Chairman Burg concurred. Motion passed 3-0.

2. TC97-142 **IN THE MATTER OF THE COMPLAINT FILED BY RAYMOND AND GENENE SAND D/B/A SAND CONSTRUCTIONS, DALLAS, SD, AGAINST U S WEST COMMUNICATIONS, INC. REGARDING TELEPHONE LINE LOCATION. (Staff Analyst: Steve Wegman. Staff Attorney: Karen Cremer.)**

Chairman Burg moved to find that U S WEST had not committed an unreasonable act and to deny the complaint. Commissioner Schoenfelder seconded and Commissioner Nelson concurred. Motion passed 3-0.

Transportation/Warehouse

1. **IN THE MATTER OF THE CONTRACTS FOR INSPECTING GRAIN DEALER RECORDS FOR THE SOUTH DAKOTA WHEAT COMMISSION, SOUTH DAKOTA OILSEEDS COUNCIL, SOYBEAN RESEARCH AND PROMOTION COUNCIL, AND SOUTH DAKOTA CORN UTILIZATION COUNCIL. (Division Director: Ed Anderson.)**

Mr. Anderson requested approval of the contracts with the South Dakota Wheat Commission and the South Dakota Soybean Research and Promotion Council.

Commissioner Schoenfelder moved to approve the two contracts noted above. Commissioner Nelson seconded and Chairman Burg concurred. Motion passed 3-0.

The meeting was adjourned.

Shirleen Fugitt

Shirleen Fugitt
Administrative Secretary

South Dakota
Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

Capitol Office
Telephone (605)773-3201
FAX (605)773-3809

Transportation/
Warehouse Division
Telephone (605)773-5280
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-877-1113

Internet
billb@puc.state.sd.us

April 9, 1998

NOTICE TO ALL GRAIN WAREHOUSE OWNERS AND OPERATORS LICENSED UNDER STATE LAW, FARMERS, FARM ORGANIZATIONS AND ALL OTHER INTERESTED PARTIES

RE: Grain Warehouse Rates For The Storage, Receiving, Handling, And Redelivery Of Grain

At the Commission meeting held on December 18, 1997, the Commission voted to schedule a hearing for the purpose of determining whether current rates for receiving, handling, redelivering and storing grain are just and reasonable.

The enclosed order stipulates the time and place for the hearing and the deadline for submitting written comments prior to the hearing.

We encourage all interested parties to attend the hearing or submit written comments to the Commission. If you have any questions concerning this matter, please contact our office at 605-773-3201.

Sincerely,

Edward R. Anderson

Edward R. Anderson, Director
Transportation/Warehouse Division

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION INTO GRAIN WAREHOUSE RATES FOR THE STORAGE, RECEIVING, HANDLING AND REDELIVERY OF GRAIN	))))	ORDER FOR AND NOTICE OF HEARING (GW97-001)

Pursuant to SDCL 49-43-7, the Public Utilities Commission (Commission) is required to investigate from time to time the cost of receiving, handling, redelivering and storing grain by public grain warehouses licensed with the Commission. The Commission last reviewed these costs in 1991.

Increasing levels of competition in the industry may place state licensed grain warehouses at a competitive disadvantage to facilities that are allowed to offer lower applicable rates as Federal facilities licensed under the provisions of the United States Warehouse Act. Additionally, in an effort to control costs, a growing number of producers are foregoing the bonding protection offered under a warehouse receipt in favor of lower fees offered under various voluntary credit sale contracts which are not protected by any bond. Finally, the costs associated with receiving, handling and redelivering grain are different at each facility. Requiring the application of the same rates at all facilities prohibits the establishment of rates based on individual economies obtained and restricts ability to react to other market forces.

On December 18, 1997, at a regular Commission meeting, the Commission moved to open a docket to consider current rates for receiving, handling and redelivery of grain. Consistent with this motion, the Commission hereby establishes the following proceedings. The Commission will hold a hearing on April 30, 1998, at 1:30 pm CDT, in Room 412 of the Capitol Building. Prior to the hearing, interested parties may submit written comments to the Commission by April 28, 1998, regarding justifications for changing the current warehouse rates or leaving the current system in place. Comments may include suggestions for raising or lowering rates, creating a new rate design such as a filed tariff system, establishing minimum and maximum rates only or elimination of regulation relative to receiving, handling and redelivery rates. Persons who wish to testify at the hearing may provide their comments orally and/or in writing. The hearing will not be an adversarial proceeding. Individuals may testify on their own behalf without an attorney.

Through the written comments presented prior to the hearing and the testimony presented at the hearing, the Commission shall conduct a comprehensive review of the current warehouse rates. It is therefore

ORDERED, that by April 28, 1998, all interested parties may submit written comments to the Commission regarding the reasonableness of the current warehouse rates.

FURTHER ORDERED, that a hearing shall be held in this matter at 1:30 pm, CDT, on April 30, 1998, in Room 412 of the State Capitol to determine whether current warehouse rates are just and reasonable.

Dated at Pierre, South Dakota, this 13th day of April, 1998.

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, CHAIRMAN

Pam Nelson
PAM NELSON, VICE CHAIRMAN

Laska Schoenfelder
LASKA SCHOENFELDER, COMMISSIONER

PUBLIC UTILITIES COMMISSION
OFFICIAL SEAL
SEAL
STATE OF SOUTH DAKOTA

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF ESTABLISHING WAREHOUSE RATES FOR THE STORAGE, RECEIVING, HANDLING AND REDELIVERY OF GRAIN	))))	AMENDED ORDER FOR AND NOTICE OF HEARING GW97-001

Pursuant to SDCL 49-43-7, the Public Utilities Commission (Commission) is required to review from time to time the cost of receiving, handling, redelivering and storing grain by public grain warehouses licensed with the Commission. Pursuant to this law, the Commission has jurisdiction to conduct this inquiry and fix just and reasonable rates as described in this Order. The Commission last reviewed these costs in 1991.

Increasing levels of competition in the industry may place state licensed grain warehouses at a competitive disadvantage to facilities that are allowed to offer lower applicable rates as federal facilities licensed under the provisions of the United States Warehouse Act. Additionally, in an effort to control costs, a growing number of producers are foregoing the bonding protection offered under a warehouse receipt in favor of lower fees offered under various voluntary credit sale contracts which are not protected by any bond. Finally, the costs associated with receiving, handling and redelivering grain are different at each facility. Requiring the application of the same rates at all facilities prohibits the establishment of rates based on individual economies obtained and restricts ability to react to other market forces.

On December 18, 1997, at a regular Commission meeting, the Commission moved to open a docket to consider current rates for receiving, handling and redelivery of grain. Consistent with this motion, the Commission will hold a hearing on April 30, 1998, at 1:30 pm CDT, in Room 412 of the State Capitol.

The issue at the hearing shall be the reasonableness of the current warehouse rates charged by warehouse licensees to all patrons of their public grain warehouse and whether the Commission shall establish rates for handling, redelivering and storage of grain.

The hearing is an adversarial proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to attend and represent themselves or be represented by an attorney. However, such rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on testimony and evidence, if any, presented during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20.

The Commission, after examining the evidence and hearing testimony presented by the parties, shall make Findings of Fact, Conclusions of Law, and a Final Decision. As a result of this hearing, the Commission may fix just and reasonable rates charged by warehouse licensees to all patrons of their public grain warehouse for handling, redelivering and storage of grain or determine that present rates are just and reasonable. The Final Decision made by the Commission may be appealed by the parties to the circuit court and the South Dakota Supreme Court as provided by law. It is therefore

ORDERED, that a hearing shall be held in this matter at 1:30 pm, CDT, on April 30, 1998, in Room 412 of the State Capitol to determine whether current warehouse rates are just and reasonable or establish new just and reasonable rates.

Please contact the Commission at 1-800-332-1782 at least 48 hours before the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 24th day of April, 1998.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By Shirleen Fugitt

Date 4/24/98

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:
Commissioners Burg, Nelson and Schoenfelder

William Bullard

WILLIAM BULLARD, JR.
Executive Director

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

RECEIVED
MAY 07 1998
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF ESTABLISHING WAREHOUSE RATES FOR THE STORAGE, RECEIVING, HANDLING AND REDELIVERY OF GRAIN) GW97-001

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS: April 30, 1998
1:30 P.M.
Room 412, Capitol Building
Pierre, South Dakota

PUC COMMISSION: Jim Burg, Chairman
Laska Schoenfelder, Commissioner
Pam Nelson, Commissioner

COMMISSION STAFF PRESENT: Rolayne Ailts Wiest
Camron Hoseck
Ed Anderson

Reported by: Lori J. Grode, RMR

INDEX

EXHIBITS

PROCEEDINGS

CHAIRMAN BURG: I'll begin the hearing for Docket GW97-001, In the Matter of Establishing Warehouse Rates for Storage, Receiving, Handling, and Redelivery of Grain.

The time is approximately 1:30 p.m. The date is April 30, 1998; and the location of the hearing is Room 412, State Capitol Building, Pierre, South Dakota. I'm Jim Burg, Commission Chairman. Commissioners Laska Schoenfelder and Pam Nelson are also present.

I'm presiding over this hearing. This hearing was noticed pursuant to the Commission's Order for a Notice of Hearing issued April 13, 1998, and the Amended Order For and Notice of Hearing issued April 24, 1998.

The issue at this hearing shall be the

reasonableness of the current warehouse rates charged by warehouse licensees to all patrons of their public grain warehouse and whether the Commission shall establish rates for handling, delivery, and storage of grain.

All parties have the right to be present and be represented by an attorney. All persons so testifying will be sworn in and subject to cross-examination by the parties. The Commission's final decision may be appealed by the parties to the State Circuit Court and the State Supreme Court.

I have got one question on this. Is this limited to public grain warehouses?

MR. ED ANDERSON: Yes.

CHAIRMAN BURG: It is? Okay. Rolayne Wiest will act as Commission counsel. She may provide recommended rulings on procedural and evidentiary matters. The Commission may overrule its counsel's preliminary rulings throughout the hearing. If not overruled, the preliminary rulings will become final.

I'll turn it over to Rolayne to actually conduct the hearing at this time.

MS. WIEST: First, I would just like to find out what persons intend to testify today.

MR. CARL ANDERSON: For the record, Carl

Anderson.

MS. WIEST: Okay. Anyone else? Okay. And staff.

MR. HOSECK: Ed Anderson would be testifying on behalf of staff.

MS. WIEST: Any opening statements before we get down to testimony?

MR. HOSECK: None by staff.

MS. WIEST: Mr. Anderson, would you care to come forward and give your testimony?

CARL ANDERSON,

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

DIRECT EXAMINATION

MR. CARL ANDERSON: Well, it will be brief. The only thing I wanted to say is what kind of response we had from our members, and I would have to say it was very little. I think I had three telephone calls. And if I could categorize them in general, what people have said is, look, with all the delayed pricing and so on that's going on now, where the elevator in effect takes possession of the grain and then they negotiate some sort of a service charges, in effect, we have a rate structure that is actually going up and down.

And how do you want to call it? Well,

basically we don't have a fixed storage rate for a great amount of the grain that we have in elevators now. And the managers said why should we stick with a fixed rate? I think that pretty well summarizes that.

Now, just exactly what form that takes. I haven't had any suggestions, whether we set a minimum and a maximum, or adapt a plan somewhat like the Federal Government. Those have been suggestions, but I'll leave that up to you.

CHAIRMAN BURG: Could you give us the nature of the Federal Government approach?

A. Well, once a year -- and there's not a lot of this going on now because there isn't much government-owned grain out there. But once a year they could file a rate, whatever rate they wanted to, and I'm not sure within -- there are some parameters, which I believe Ed has. And then you could charge whatever you wanted to, or as little as you wanted to within those parameters, but you could never -- once you set that, you could not charge the Federal Government any more than that figure that you had established once a year. Some elevators feel protected. You know, they like to have it in the statute so there's no arguing about the price. But then about the time there's a federally-licensed facility right down the road and he lowers his to get the grain to his facility, well, then suddenly the guy that's got the fixed charge under the state system, and he doesn't like it. So -- That's all I have.

MS. WIEST: Any other questions?

MR. HOSECK: None.

MS. WIEST: Thank you.

MR. CARL ANDERSON: Thank you.

MS. WIEST: It's the other Mr. Anderson.

ED ANDERSON,

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

DIRECT EXAMINATION

BY MR. HOSECK:

Q. Would you state your name for the record, please.

A. Ed Anderson.

Q. And what's your job?

A. Director of the Transportation Warehouse Division.

Q. The subject matter that we're dealing here with today, could you just briefly tell the Commission on how this matter arose?

A. From multiple sources. Number one, the Commission does have a statutory responsibility to take a look at these rates. The statutes don't dictate when and how often; however, the last time that the rate issue was addressed was in 1991. So, if nothing else, at the staff level we decided that there's been enough time since they were looked at last that it may be prudent to look at them again.

Number two, I have over the past several months received a few phone calls, not a lot by any means, a few phone calls from elevator managers just inquiring about the rate and whether or not there was any leeway in the rates and how the rates were set.

And, finally, at the staff level, specifically in reference to our inspection process, we do have some concern surrounding the use of voluntary credit sell contracts. We aren't concerned about the use of the voluntary credit sell contracts, but we have seen over the years a dramatic decline in the amount of grain that is being stored and versus the amount of grain that is being -- title is being transferred under voluntary credit sell contracts.

It's our understanding, based on conversations that we have had with producers with elevator managers and, quite frankly, to a certain extent an assumption on our part, that the reason that at least some of the grain has moved away from storage towards the VCS contract activity is because the storage rates are set at three cents right now. And the elevator managers, under a voluntary credit sell contract, have the ability to lower the cost to the producer by offering a lower handling rate, not storage, but a lower handling rate.

So for those reasons staff, believed that once again it was prudent to take a look at the rates again.

Q. And in this process were a couple of notices sent out to the grain warehouse operators throughout the state?

A. Yes, they were.

Q. And did you have any responses from any of those people?

A. I received one written response.

(STAFF'S EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION.)

Q. I show you what has been marked as Exhibit 1 and ask you to identify that document for the record, please.

A. A letter dated April 16, 1998. It's from Mark Lee, who is the manager at Dell Rapids, Key Grain in Dell Rapids, South Dakota.

Q. This was a document received in the course of business in your position as the director of the Grain and Warehouse Division; is that correct?

A. Yes.

MR. HOSECK: At this time I would move Exhibit 1 in.

MS. WIEST: Any objection? If not, it's been offered and received.

Q. Would you describe for the Commission just briefly what methods you used in your analysis of these charges for, or these rates for warehouse?

A. Well, it's certainly a dramatic departure from a rate-making case in the utility side, I can guarantee you that. Very, very simply, what we have done is just taking the rate structure that was in place in 1991, the last time they were addressed -- and they weren't changed then. The last time they were changed was in the middle eighties. If you look at them then and even apply one percent inflation factor from that day forward, you know, that in and of itself would justify about a 40 cent annual storage rate today, at a one percent inflation factor.

So and we did that very simple process. The only other thing that we looked at -- and perhaps I'm not going to say more importantly, but the other thing that concerns us, once again, is to establish some parity, establish a level playing field in the industry between state-licensed facilities and those that are under the Federal Warehouse Act. And that was a concern of ours.

Q. And as a result of this, do you have a recommendation to the Commission?

A. Yes, we do. We have a preliminary recommendation subject to adjustment based on Commission concerns or any other concerns.

Q. And please proceed and give that recommendation to the Commission.

A. Our recommendation is to establish a maximum storage rate of .1042 cents per bushel per day for all grains. And to save everybody the time, that will multiply out to 38 cents per bushel per year. Elevators may establish rates at any level below the maximum, but the rates so established must be applied to all patrons alike in accordance with SDCL 49-43-7. We recommend establishing a maximum rate of seven cents per bushel for receiving and handling and seven cents per bushel for redelivering of all types of grain, not to exceed, however, a combined total of 12 cents per bushel.

Additionally, we recommend that licensees have the option of waiving the charge for receiving and handling grain if they take title to the grain. Finally, we recommend that each licensee establish the rates to be charged at each of their facilities annually by submitting a tariff to the Commission at the time of licensing on a form supplied by the Commission. We recommend that amendments to the annual -- or the original tariff be allowed up to two times in any given calendar quarter, but no more than four times a year. That is our recommendation.

MR. HOSECK: No further questions.

MS. WIEST: Commissioners?

COMMISSIONER SCHOENFELDER: Ed, when Carl Anderson was testifying about the variable -- I call it a variable rate structure that really happens under the voluntary sales contract, do you consider that reasonable there in that instance? I mean, I think the statute speaks to a reasonable rate. And I want to know how you arrive at reasonable and what's reasonable in this industry.

A. Under voluntary credit sell contracts?

COMMISSIONER SCHOENFELDER: Both. I'm going to ask two questions, so go ahead.

A. Of course, under the voluntary credit sell contracts we don't have any jurisdiction to determine what's reasonable or is not reasonable.

COMMISSIONER SCHOENFELDER: Right. I just asked you if that was reasonable.

A. And it certainly depends on, I guess, what they're charging. Now, from what I've seen, Laska, when I'm out in the field, what they typically charge on voluntary credit sell contracts is either at or below what the warehouse receipt rate -- or the storage rate is.

Is the -- are the storage and the handling rates reasonable? In order to answer that question, with a fair amount of certainty, I think you might have to look at the costs for each and every facility to determine what is reasonable and what is not. Perhaps the best indication that the rates are reasonable today is that there has not been a real outcry to make any adjustment in those rates.

COMMISSIONER SCHOENFELDER: From producers there's not been an outcrying is what you're saying?

A. We have not heard, and typically we don't, Commissioner, but we have not heard any complaints from South Dakota producers or from the industry itself.

COMMISSIONER SCHOENFELDER: Okay. And, obviously, if I would assume that your recommendation would be that if we could avoid it not to do an elevator-by-elevator cost analysis --

A. Yes.

COMMISSIONER SCHOENFELDER: -- for that reason?

A. And if at any point in the future that in the Commission's opinion, the Commissioners' opinion, that became necessary, then obviously that burden would rest on the industry to analyze their own expenses.

COMMISSIONER SCHOENFELDER: Go through for me just a little bit and explain to me what kind of an impact this rate, or any rate, has on the amount of grain that's in storage on the state side. And we know that most of the federal storage is gone; and that wasn't a function of the storage rate, if I understood it correctly. That's just a function of the Federal Government is not storing any more grain. Am I right about that?

A. To a great extent the Federal Government has gotten out of the storage business.

COMMISSIONER SCHOENFELDER: Will these rates impact the elevators' volume of storage and the way they do business? Do we have any indication that it will increase their storage or decrease it and therefore their income?

A. No. It is, quite frankly, once again from staff's standpoint, it is our hope and it's not our hope that it will increase the level of storage. It is our hope that if we establish the ability within the industry to establish rates, you know, based on individual economies, that there will not be as great a temptation -- not a temptation really, but not as great of a -- not as much interest in avoiding storing grain under warehouse receipt versus going to a voluntary credit sell contract.

If I'm a producer today and I take my grain into the elevator and say, "Well, I'd like a warehouse receipt. You know, what's it going to cost me?" Well, it's going to cost you three cents a month to store the grain. As an alternative, and of course it is a legitimate alternative -- I'm not accusing the industry of pushing this alternative. But as an alternative, you can either store at three cents a bushel a month or we can write a voluntary credit sell contract title. You know, you can pass title to us and I'll charge you two cents a bushel as a handling charge on that.

Now, once again, we have not done an extensive formal survey to determine exactly, you know, how often that is happening. It is our belief, though, that if we -- and it is our belief and hope that if we can establish a rate structure that will level that out, if nothing else, the producers will not be subject to the temptation to avoid the protection under a warehouse receipt to save themselves a little money.

COMMISSIONER SCHOENFELDER: Thank you. And I just have one question. Step through your recommendation with me again. If I wrote it down right and I understand it, it's 38 cents a bushel a year for storage?

A. Correct.

COMMISSIONER SCHOENFELDER: It's a nondiscriminatory price. And they can -- that's a ceiling?

A. That's a ceiling.

COMMISSIONER SCHOENFELDER: They can offer -- they can do it cheaper, but they have to hold that same price out to everybody, big guys, little guys, everything?

A. Correct. And, Commissioner Schoenfelder, that is a direct function of the statutory requirement too.

COMMISSIONER SCHOENFELDER: Okay, okay. And then the seven cents for handling, receiving and handling, is mandatory. Is that a ceiling? I need to make sure that I understood it.

A. Right, right, maximum rate of seven cents a bushel for receiving and handling and a maximum rate of seven cents a bushel for redelivery.

COMMISSIONER SCHOENFELDER: But those would still have the nondiscriminatory application and they could go anywhere below that ceiling if they chose. So they're allowed to do their own business if they wish below that ceiling. There is no floor?

A. Right. And, additionally, if you -- you know, the seven and the seven is 14. But we've capped that at 12, so you can -- they can work within that, but we are capping the total at 12.

Now, as a follow-up to that, as you're aware right now, the current rates are at seven cents for receiving and handling and five cents for redelivery. That and, of course, with the drop in storage, it's not as significant an issue as it used to be. But when there was a lot of storage around and South Dakota having the redelivery rate at five cents made South Dakota grain pretty attractive because it was one of the lowest redelivery rates in the nation. And so when the Federal Government was cataloging grain, our grain was pretty attractive and it had the tendency to get cataloged first and went out a lot of times because the end users can save themselves a substantial amount of t oney.

And so then, you know, for the industry if the storage should ever come back, this changing this should provide -- or level the playing field for the industry too. So, you know, South Dakota versus Nebraska versus Minnesota, it should level that out.

COMMISSIONER SCHOENFELDER: And then the waiver, you gave them a waiver on the redelivery charges if the title transferred to the elevator under a voluntary sales contract or an out-and-out sale? Did I understand that right or not?

A. Right, any time the title passes. So if they issue them a check, if they write a contract, title is passed. So if the elevator takes title to the grain, then they have the right -- they would have the right to waive that.

COMMISSIONER SCHOENFELDER: But it's still optional?

A. Yes.

COMMISSIONER SCHOENFELDER: But still a nondiscriminatory clause would still apply?

A. Right.

COMMISSIONER SCHOENFELDER: That's all I have. Thank you.

CHAIRMAN BURG: One question I had, what was the nature of the letter?

A. It's really short. I can read it to you.

"Dear Sirs: After reading a letter from the PUC on grain storage rates, I would rather have the rates variable so I can be more competitive in the marketplace. The cost of operation is different in each elevator. So if I have an opinion in this matter, I would like to see a change."

CHAIRMAN BURG: Thank you. I think that's all I have.

MS. WIEST: Why didn't you set a minimum?

A. The basic reason -- and we talked about a minimum too. And the basic reason that we decided not to set a minimum is because there are no minimums under the federal program. And if one of our hopes is to level that playing field, establishing a minimum on the state side could potentially create some problems again.

MS. WIEST: So they could charge nothing?

A. If they wanted to.

MS. WIEST: The cap is the seven cents and the seven cents is capped at 12 cents?

A. Right. So they can't go higher than seven cents under one of those or 12 combined.

MS. WIEST: Right. Any other questions?

A. And certainly Carl or Keith at this juncture may have, if they would be allowed to, they may have something else to say at this point too. I don't know.

MS. WIEST: Okay. Thank you. Any other comments from anyone?

KEITH HAINY,

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

DIRECT EXAMINATION

BY MR. HAINY: My name is Keith Hainy. I'm on the board of Directors of the South Dakota Grain and Feed and also general manager at North Central Farmers Elevator, Ipswich, South Dakota.

I just want to clarify a little bit in regards to voluntary sales contracts. Voluntary sales contracts aren't always a lesser amount. It's more supply demand driven than, say, storage rates. That whatever you with get into the harvest time when the storage is short, there's oftentimes it's at the storage rate or it's higher with the minimum charges to apply.

For instance, like last year's harvest, it was three cents a bushel a month with a nine cent minimum type of a program. What we're saying and when that's being done is that if you're going to allocate that storage space or the space for the voluntary sales contract, you want to make sure that it's going to be carried sufficient enough beyond the harvest to justify taking it on.

And, likewise, there's many times that it's zero. That if the conditions are such and you need to allow the producers -- in fact, we do a lot of this, to allow the producer to haul in prior to road postings so they can get their grain in position to be marketed, we'll offer free service charges. So it's a really supply demand driven type of a charge in many instances.

In many instances storage is not an option for some producers when there is a lot of demand for storage at harvest time or the space for grain. Many elevators will offer only delayed price, which is the voluntary sales contracts, and not allow any storage tickets to be applied. And the reason for that is that if you're getting a three cents a bushel a month with nine cent minimum, or four cents a bushel a month with a three-month minimum, which would be 12 cents, you know, if you only offer the storage ticket, you're only getting the three cents a bushel a month with no minimums.

The biggest concern that I've got with the way the whole trend is going and in this delayed price versus storage, is that we don't have the protection for the farmer and in case of elevator failure. So it's a real concern that our producers out there know who they're doing business with so that they don't have a piece of paper that's worthless. And the more and more that the industry goes to delayed price contracts and away from the storage tickets, the more risk there is out there for the producers.

I think the variability of the storage rates are good. I think it's good to have it as a supply/demand type of a structure. I think it's good to have the handling rates the way you're proposing them too. Let's face it, the redelivery is almost extensively used for government grain redelivery. And it would be more attractive to have a higher load out charge than what we have. But it allows everyone to do what they -- you know, to put in what they feel is justifiable to them.

I guess that's all I have for comments. Any questions?

CHAIRMAN BURG: I'm trying to remember what's the load out rate now?

A. Five cents, seven in, five --

CHAIRMAN BURG: Seven in, five out? And red:livery is what?

A. Five out.

CHAIRMAN BURG: That's all I have.

MS. WIEST: Do you disagree with any of the recommendations made by Ed?

A. No. I was just saying it's more of a clarification of some of the things we talked about.

MS. WIEST: Any other questions? If not, thank you. Any other comments from anyone?

MR. ED ANDERSON: Do Commissioners have additional questions of staff?

CHAIRMAN BURG: I don't think so. I think we're ready for a bench decision actually. I'll move that we establish the rates as recommended by staff.

COMMISSIONER NELSON: I'd second it.

COMMISSIONER SCHOENFELDER: I'll concur.

CHAIRMAN BURG: Do you need any other clarification on the motion? Go ahead.

MR. ED ANDERSON: My only question would be -- request, recommendation, whatever, would be that you're making the approval subject to what I would call foreman style changes in my recommendation.

CHAIRMAN BURG: Yeah.

COMMISSIONER SCHOENFELDER: What do you mean by foreman style?

MR. ED ANDERSON: In changing the rates, no, no change in the rates. But, you know, after general counsel has the opportunity to take a look at this, she, on your behalf, may not like the way that it reads.

MS. WIEST: That's fine. Because what will happen is we'll write up the Order. The Commissioners will read it and sign it.

CHAIRMAN BURG: We still approve the Order. We're just approving to move forward on the recommendation that you made.

COMMISSIONER SCHOENFELDER: I do have one more question though. Mr. Anderson had something.

MR. CARL ANDERSON: I raised the question before the meeting started. It seems to me that the senior Mr. Anderson, the Cliff Anderson that you know, he recollects that there is someplace -- and maybe our attorneys here today would remember this. But he seems to think there is a provision somewhere, either in the rules or in the statutes, that says when rate changes can be made.

COMMISSIONER SCHOENFELDER: I was going to ask about implementation date.

MR. CARL ANDERSON: And I said to Ed, I had some vague recollection of this, that maybe you couldn't do it in the middle of the of harvest, or it was maybe seasonally related. But I don't know where that is, but I think it might be out there. So we need to look at that issue.

COMMISSIONER SCHOENFELDER: I do think, though, we need a definite implementation date, do we not, or is when the Order is issued, it will be effective?

MS. WIEST: It can be on the effective date of the Order, unless there's a different recommendation.

COMMISSIONER SCHOENFELDER: I guess I'm concerned about notification to the facilities, that they all know what we've done, because sometimes we notice this but they don't know what we've done.

MS. WIEST: Because we probably put some dates in for when they have to have their tariffs in.

COMMISSIONER SCHOENFELDER: Do they have to file tariffs?

MR. ED ANDERSON: That is what we are recommending.

COMMISSIONER SCHOENFELDER: Oh, boy, I missed that one. I'm sorry.

CHAIRMAN BURG: I would just either amend or secularly amend they're implemented 30 days after the Order becomes official.

MR. ED ANDERSON: From -- excuse me,

Commissioner.

COMMISSIONER SCHOENFELDER: Go ahead.

MR. ED ANDERSON: From a procedural standpoint, we are -- as Carl well knows, we are moving into the licensing period right now. We're beginning the licensing period right now. The applications have already been sent out. The best time to have initiated this process would have been to include a tariff form with the application. That doesn't prevent us from, you know, implementing it yet in the near future. It's this first year, though, it will not be done. It would not be done during the licensing period. It may take a little more time. It's going to require some effort on our part, which we're happy to do to let people know what's going on, to get the forms out, to get them back in. So the first year may not run quite as smoothly as subsequent years.

COMMISSIONER SCHOENFELDER: But I do have a concern also about the implementation date as it affects the industry and the producers because, you know, I don't think there's going to be a lot of grain stored now. But I know a lot of grain that's still out there that's undelivered, and I don't know how that's going to play out in the industry, and I'm not going to try to figure that out. I don't think that's my job.

I would have a problem, though, if we were into the middle of a season of some kind and then we change the rates.

And then I guess I need another question since I thought of them all after the motion, but I still want the question answered. How will this impact grain that's already stored? That's an existing contract so there will be no impact? Would I be understanding that correctly.

MR. ED ANDERSON: If we need to delineate that further, then we certainly should do that. It would be my opinion that these rates would be effective to new grain.

COMMISSIONER SCHOENFELDER: I would agree with that, but I guess I thought we should have a legal determination on that also.

MS. WIEST: It will be in the Order.

MR. CARL ANDERSON: Those storage rates are in the --

MR. ED ANDERSON: Yeah, that's --

MR. CARL ANDERSON: They're printed in the warehouse receipt.

MR. ED ANDERSON: The only thing I just happened to think about -- I apologize for not including it in my recommendation. The last time that these rates were addressed in 1984, the Order was issued on the 22nd day of June 1984, and it included the change to the rates. In this instance it was further ordered that grain warehouse licensees who have on hand considerable quantities of warehouse receipts may modify such receipts to conform with the increases of this order by means of a rubber stamp or otherwise which prints on the receipt the following: And then it simply lists the rates.

I don't know. You know, the industry may have some input into that. Ordering and paying for warehouse receipts is not a cheap proposition by any means. So depending on how the Commission feels about allowing them to do that and depending on how the industry feels about working through that, that would be something that staff would consider working into the recommendation.

MS. WIEST: So what are you proposing? Do you have a proposal?

MR. ED ANDERSON: If staff amended their recommendation, it would be with the permission of -- I guess, with the support of the industry, staff would recommend that we include language very similar to this, or exactly like this into the recommendation and subsequently in the Order.

MS. WIEST: Just explain what would that -- what would the effect of that be?

MR. ED ANDERSON: The effect of it would be to allow the industry to continue to use existing stock of warehouse receipts until that stock was exhausted, at which time they would order new warehouse receipts that would have the new charges printed on those receipts.

CHAIRMAN BURG: Ed, did I understand you to say that in the past they were altered just with a stamp?

MR. ED ANDERSON: In 1984 the Commission voted to allow the industry to stamp existing inventory of warehouse receipts with the new charges or with the new rates.

CHAIRMAN BURG: Is that part of your recommendation to do the same?

MR. ED ANDERSON: It would be, and it probably should be, yes.

MS. WIEST: Before we act --

MR. ED ANDERSON: Depending on how the industry feels about it.

MS. WIEST: Any objection from anybody?

MR. ED ANDERSON: It may not be a big deal.

MR. HAINY: You're saying that the storage receipts are going to have to have a specific rate in there? I would suggest since you were allowed to change them four times a year, that it would be allowed to be fill in the blank type of a --

MR. ED ANDERSON: And I would agree. This would speak only to the use of existing stock of warehouse receipts.

CHAIRMAN BURG: You're basically saying existing stock has a specific rate in it. What you're saying is you can stamp something given the new language to substitute for that in the stock that they have, and when the new ones are printed, they would have the new --

MR. ED ANDERSON: When the new ones are printed, it's not going to have specific rates on it anymore. The Commission would vote to eliminate the flat rate.

COMMISSIONER SCHOENFELDER: That's right. Since we don't have -- if there's no flat rate, it would be fill in the blank; would that be correct?

MR. ED ANDERSON: Exactly.

CHAIRMAN BURG: Do you need a motion yet, Rolayne?

MS. WIEST: First, I'd like to go back to implementation dates and get that and put that all in one motion. What's going to happen is you are going to have to come up with a tariff form; is that correct, Ed, and you will send it to all of the --

MR. ED ANDERSON: Correct.

MS. WIEST: And then they'll have to figure out what their first rate or --

MR. ED ANDERSON: Correct, low.

MS. WIEST: So would the rates then -- should the rates then be effective upon filing of the tariff with the Commission?

MR. ED ANDERSON: That would be staff's recommendation. Staff will review the individual tariffs submitted for compliance with the maximum rates that are established. And if they fall within those established rates, then our recommendation would be that we approve the rates and send.

MS. WIEST: Okay. I guess just to go through the process, I'm just wondering about what type of approval that you're talking about and when the parties would know exactly what the effective date of those rates would be. Would you send them a letter saying these rates were approved as of such and such a date, or are effective as of such and such a date?

MR. ED ANDERSON: If it's workable, what I would suggest is that we simply send back to them a copy of what they sent in to us with either my signature or -- I would recommend avoiding having to have formal Commission approval on every one of the tariffs that are submitted.

COMMISSIONER SCHOENFELDER: I don't think the industry would like that either.

MS. WIEST: No. I was just more concerned about exactly when they would know that those rates were effective. You said you had to look them over to make sure they were within the ranges. And so what date will they know that they can start charging those?

MR. ED ANDERSON: One or two, either one of these would be workable: They could assume that they're effective when mailed as long as they fall within the requirements, or perhaps the best would be that they would become effective when they're approved and they receive them back. So if we receive a tariff, we review it for compliance with the new rates, we stamp it approved, and make a copy and send it back.

COMMISSIONER SCHOENFELDER: The only thing I would have a problem with that is that we must make sure we have a good turnaround on it, then, because they would be waiting for that and it would affect the bottom line.

MR. ED ANDERSON: Exactly. We would make sure -

CHAIRMAN BURG: Another thought, I would throw it in here. They become effective or ten days after receipt of the Commission unless notified otherwise?

MS. WIEST: Probably better to go from mailing dates. I would go by mailing date.

CHAIRMAN BURG: Carl, do you have a preference?

MR. CARL ANDERSON: A question here. If I understood this right now, the elevator, they would have the right to change this three more times during the year?

MR. ED ANDERSON: An additional four times.

MR. CARL ANDERSON: Four times are you going to require they refile that rate with you? Are we going to have a huge amount of paperwork here?

MR. ED ANDERSON: They would have to file an amended tariff so we always want to have on file a copy of the most current rates.

MR. CARL ANDERSON: Well, then, maybe the suggestion that somebody just made, that unless you hear otherwise, it's okay. Because you're going to have a huge amount of mail going back and forth if they mail one in and then you mail one back and then to just no sooner get that one laid to rest and something happens and then we go through that whole thing.

MR. ED ANDERSON: And I understand that that is a possibility as we were looking at this. And perhaps we shouldn't have made this assumption, not really an assumption, but as we were discussing this, it was our opinion that more likely than not, we will not be seeing storage rate wars, price wars. There certainly will be changes. We anticipate that. But, quite frankly, we are not anticipating, you know, tons of changes.

COMMISSIONER SCHOENFELDER: Is there some way we can do an electronic tariff approval filing that would get rid of the paperwork, the delay procedure, and is that -- I guess, number one, is it legal? Number two, is it doable and would the industry approve -- a lot of the industry use some of that, I guess, are questions I have?

MR. ED ANDERSON: From staff's standpoint, if as long as it's legal, we can sure make it work. Jeff can make it work.

MR. CARL ANDERSON: I don't know that -- I think we are going to see grain elevators more and more and more on line all the time, particularly with things that are happening in the Secretary of State's office with the Burlington Railroad. And that's probably a good idea. But I still kind of like the idea of -- I think the Division of Insurance uses -- they call it file and use. And they say if -- let's say the bonding companies came in with a new rate. They will say, okay, if you don't hear from us in X number of days, go ahead and use it, but understand that we may come back at some point and say that is unreasonable and at that time you will be required to refund.

MS. WIEST: How about ten days from the date they mail it or send it electronically? Is that too short?

COMMISSIONER NELSON: Does that mean you have to have some kind of proof of when you mailed it?

MR. ED ANDERSON: We would key off the receipt date, I would imagine. You know, we stamp everything received with the date.

MS. WIEST: Well, the tariff itself should have something in there the date you mailed it, and that would be your effective date then. They would be saying we mailed it on this date. It would be you would count from that date.

MR. ED ANDERSON: Right.

MS. WIEST: Not from the date of receipt

because I always have a problem with they don't know.

COMMISSIONER NELSON: If you had a postmark date, if you want a legitimate date, then you got to send it registered or certified.

MS. WIEST. I think if they have the tariff and they say that we mailed this right on that tariff sheet, we mail it on the 2nd on May --

COMMISSIONER SCHOENFELDER: And they sign it.

MS. WIEST: -- they sign it, that would be good enough for me.

MR. ED ANDERSON: From our purposes, I mean, you know, we would know if we didn't get it until 45 days later, we know they didn't mail it on the -- so that is certainly workable from our standpoint.

MS. WIEST: And then it would be effective ten days from the day that they mailed it or sent it electronically.

COMMISSIONER NELSON: If you send it electronically, why do you need ten days?

MS. WIEST: I was just trying to be consistent.

MR. ED ANDERSON: I guess that would be -- from an administrative standpoint would be providing Commission staff, you know, the opportunity to review the rates for reasonableness.

MS. WIEST: Right. And so the assumption would be that within those ten days, if there was something wrong, you would get back to them?

MR. ED ANDERSON: We would be contacting them.

MS. WIEST: And the rates would not go into effect, but they would know it at that time.

COMMISSIONER NELSON: This is working differently than I -- how I thought when we set that amount. That means they could set it anywhere as long as they were within that range and that was fine?

MS. WIEST: Part of it was that they had to file tariffs.

CHAIRMAN BURG: And the reason for that, Pam, is if somebody comes in and says I was charged a different rate than what my neighbor was charged, that's discrimination. They can set it where they want to, but they have to treat everybody the same.

COMMISSIONER NELSON: Why are we going to review it to see if it's reasonable?

MS. WIEST: He's going to review it to see if it's under the maximums. I mean 99 percent are definitely going to comply.

MR. ED ANDERSON: It's not going to be a problem. And, frankly, the other thing, too, from our standpoint in going with the tariff system is that it will allow staff the opportunity to establish some history in storage rates. And, you know, from this point forward, we will be able to build some history on storage rates in the state and changes in the rates over time, different rates during different times of the year, different rates in different areas of the state. So there could be some, you know, added benefits to the Commission by going to a tariff system. Certainly information that would be available to the industry too.

MS. WIEST: Should there also be a date where all of the tariffs need to be filed by such and such a date, the first tariff from everyone to make sure?

MR. ED ANDERSON: That's why I mentioned the first of the year. And I don't know, quite frankly, Rolayne, how you would want to deal with that. Because if you build into the Commission Order language that says, you know, be charged at each of their facilities annually by submitting a tariff at the time of licensing, the first year would be contradictory to that language.

MS. WIEST: Right. But all we need is a sentence for the first year, though, I mean, to be different.

MR. HAINY: My recommendation would be to leave it the way it is until the tariff would be given or asked for that, it would stay at current rates unless -- in other words, people, if they wanted to keep the current rates, they wouldn't send anything in.

CHAIRMAN BURG: Plus, the fact the current rates would not violate the statute; right, or the rule?

COMMISSIONER SCHOENFELDER: But we wouldn't have anything on file. Am I understanding this right?

CHAIRMAN BURG: They've got one on file now, don't they?

MR. CARL ANDERSON: They don't?

MR. ED ANDERSON: Until we received a tariff, they would be subject to the three cent, the current rates, until we received the tariff and approved it.

COMMISSIONER SCHOENFELDER: I have a question of Mr. Hoseck maybe or Mr. Anderson, either one. I don't know. But is there a process or a procedure that you've contemplated in your discrimination language that says that if I feel I've been discriminated, if I feel there's price discrimination going on in my local facility, that I have a process to file a complaint?

MR. ED ANDERSON: That is not --

COMMISSIONER SCHOENFELDER: Or I have some kind of right to find out whether that's happening?

MR. ED ANDERSON: 49-43-7, which gives the Commission the authority to look at the rates and to set the rates, the last sentence, all that it says, Commissioner Schoenfelder, is each warehouse man shall apply the rates in effect to all patrons of his public grain warehouse alike. Now, that may not go far enough in that particular statute. I guess all I would say is that they always have the right to come before the Commission and file.

COMMISSIONER SCHOENFELDER: A producer?

MR. ED ANDERSON: Producer file a complaint, and then the Commission could act on that.

COMMISSIONER SCHOENFELDER: My question is do we need a process or procedure for them to do that, or are we contemplating anything like that happening? And I guess I think we maybe need to address it whether we're contemplating that happening or not, there ought to be a procedure, or at least now that could be rule perhaps. I don't know. I'm just asking the question.

MR. ED ANDERSON: And I don't know that I have an answer. I can tell you that during the inspection process, what will happen is the inspectors, when they're out in the field, will have a copy of the most recent tariff. And when they're reviewing the warehouse receipt obligations, they will be on a random basis looking at the storage rates that are being applied. And if during the inspection process we find a problem, then we will be bringing that before the Commission for possible action.

COMMISSIONER SCHOENFELDER: I hate to belabor this, but I can see if you change three or four times a year and I come in today and I get a storage rate and tomorrow the storage tariff changes and my neighbor gets more, I think we got a problem. And I don't know if that's a problem that the facilities are going to have to deal with or if that's going to be a problem that's going to come before us. And I certainly would not like to start a whole new windfall of things like this happening. And I'm not sure from my perspective that I think it's fair unless there's notice to those producers that it's going to change on X day. So I didn't mean to open a whole new can of worms, but I think it's possible those things could happen.

MR. ED ANDERSON: And you're correct, it may. I would hope that it would not be an issue. And, of course, that's what I said. But -- and, quite frankly, I'm sure you would agree more likely than not, it may be a problem that the industry also has to deal with. Certainly it's going to come to them first, but ultimately this is where it rests.

MR. CARL ANDERSON: Isn't that a PR problem for the elevator manager to handle? I mean, if he already knows that, if he knows what date when the ten days is going to be up that we talked about, and he better say to that guy that's delivering a whole bunch of grain, "Do you know if you wait until tomorrow, my storage rates are going to be going down." That's if he's not smart enough to tell that to that big customer, he probably wouldn't come in out of the rain. I mean --

COMMISSIONER SCHOENFELDER: I know. But can we require in the Order some kind of a posting notice for producers? And is that too much to ask them to do? And will that avoid some problems? And I'm only asking the question.

MR. ED ANDERSON: And I'll answer the question with a question to Camron or Rolayne. We were not real sure how far we could take this under a storage rate proceeding. I mean our feeling was that we may go too far and all of a sudden it's not rates anymore, it's rules, it's statutes. And so, Commissioner, we were not real sure how far we could go

COMMISSIONER SCHOENFELDER: No, and I

understand what Carl Anderson is saying that there is some responsibility on the part of the facility. I guess, I just see some potential here to game the system a little bit if I were a manager I might do that and maybe reward my large customers doing that if it was possible. I don't know that that will happen. I've only been around long enough to know there might be some problems.

MS. WIEST: The problem is the posting statute was repealed that would actually require exactly what you stated.

COMMISSIONER SCHOENFELDER: Well, I don't even know if I want to require it. I just want to know that there's not going to be floods of complaints here and that there's more than one way to discriminate. And when you allow to change it four times a year. I think the potential for discrimination would be arrived at in that process. And I don't know that it will, I'm just wondering.

MR. CARL ANDERSON: But they obviously are already dealing with that issue as they change their agreements under the delayed pricing any way. I mean, they already have this up and down situation.

COMMISSIONER SCHOENFELDER: So you don't see it as a problem?

MR. CARL ANDERSON: I have never had a complaint. Not that they'd call me. Obviously, they're dealing with that issue already.

COMMISSIONER SCHOENFELDER: You're saying the managers are dealing with that issue?

MR. CARL ANDERSON: Yes.

COMMISSIONER SCHOENFELDER: It may be totally unnecessary to address it at all.

MR. CARL ANDERSON: But we got management here. I'd ask them. Keith.

MR. HAINY: I don't think it's necessary. We address it at an early stage. Whenever we change delayed price charges, we make sure everybody knows when they're delivering that there's changes. And I personally don't think you're going to see very many facilities changing even more than just the once a year. In fact, I would venture to say that you're going to put in a tariff and it's probably just going to stay there indefinitely and could be a couple years, three years.

MR. CARL ANDERSON: He doesn't want to rewrite those tickets anyway.

CHAIRMAN BURG: That's my feeling. I don't think we're going to see the four-time-a-year change like you're talking about. Even if we did, it's no different than changing the bread at the grocery store, whatever it is. You need to be aware as a seller what your costs are.

MR. ED ANDERSON: I think Carl's point was good. And the other thing that I would add to that is that, yes, the elevator managers are already dealing with that market-driven rate change on voluntary credit sell contracts. Additionally, they legally have the right to discriminate too. I mean, they can change it every five minutes if they want.

COMMISSIONER SCHOENFELDER: Under the sales contracts. And I'm not trying to add more bureaucracy to this. I'm just wondering what the fallout would be and if there's some responsibility for the Commission to set a procedure forth if someone has a complaint.

MR. ED ANDERSON: And whether you choose to do that in a formal proceeding, I don't know. I can tell you that we'll do everything we can at the staff level to try to --

COMMISSIONER SCHOENFELDER: Are you telling us not to address it until the problem arises?

MR. ED ANDERSON: Not at all, no, not at all. All I am saying is that we understand your concern. We'll do everything we can to avoid it.

COMMISSIONER SCHOENFELDER: Thank you.

MR. HOSECK: Just one thing on that. There are the general powers of the Commission under 49-42-2.1 which says the Commission shall administer the laws and to investigate and correct complaints of fraud or oppression in the management of public warehouses and supervise storage and personal property. That probably wouldn't apply here. But anyway the general powers are there to do something about this, I think, if something happened, yeah.

COMMISSIONER SCHOENFELDER: Okay. Thank you.

MS. WIEST: So then is there any date by which everyone has to file a tariff? Or if you don't file a tariff, it's just assumed that you're going under the current storage rates?

MR. ED ANDERSON: For the initial year.

MS. WIEST: I guess my question is they don't necessarily -- do they have to file a new tariff every year? What if they want to keep the rate the same? Is there any requirement to make them update a tariff every year?

MR. ED ANDERSON: For probably multiple reasons. I mean, management changes a lot. And at elevators, things may change within the industry in general. And we don't see it as being onerous for them to file a rate each year because we will be asking them to just include that with their application when they send their application in.

CHAIRMAN BURG: You're going to make up what's in the application? We just went through that; right?

MR. ED ANDERSON: Pardon? We will be establishing creating the form.

CHAIRMAN BURG: Right. Just have that as well with the lines on it?

MR. ED ANDERSON: It will be most likely, Commissioner, a separate form. But it is our intent to make it part of the application process. So, hopefully, it would not be difficult for them to file it annually.

MR. HAINY: We file it annually with the Uniform Grain Storage Agreement right now.

CHAIRMAN BURG: But what you're saying is the people that's already licensed for this year, they could maintain that until they relicense.

COMMISSIONER NELSON: So by next year you will have a current tariff for everybody but this year you might not?

MR. ED ANDERSON: Right. What I intend to do is once we've established the form, we will mail it to all of them; and along with that, they will receive a copy of the Commission Order and a cover letter from staff indicating the change that has taken place, the procedure that will be followed, general explanation of the process itself, and probably language indicating that the effective date of the rules and to encourage them to review their current rate structure and to submit a tariff of their rates as soon as possible.

And my inclination would be that we will continue to encourage them to complete that process until we have -- until everybody has done it. My concern is that if we don't encourage them and just say, well, if you don't submit one, then you're just going to remain under the existing rate structure, then it will be that much harder to get them to go through the process again next year during licensing. So I would like to encourage them to complete the process yet this year.

How do you tie a date to that, Rolayne? I don't know, except that we would do it as expediently as possible. Once the order is issued and the form is completed, we will send them out and the tariff, adjusted tariffs, will become effective within ten days. Are you concerned, Rolayne? I mean we're never going to be receiving all of these at the same time. They're always going to be staggered.

MS. WIEST: Yeah, that's no problem. I thought perhaps you wanted everybody to file a tariff up front, but I don't think that's a problem either. So I think what the motion would be is the motion will be permission to include language -- the motion will be to allow to use existing stock of warehouse receipts by stamping on the new rates; that tariffs must be filed at least annually, and the effective date of the tariff is ten days from the date of mailing or sending electronically. Does that cover everything?

CHAIRMAN BURG: I'll so move.

COMMISSIONER NELSON: Second it.

COMMISSIONER SCHOENFELDER: Concur.

MS. WIEST: Anything else?

CHAIRMAN BURG: Thank you.

(THE HEARING CONCLUDED AT 2:30 P.M.)

STATE OF SOUTH DAKOTA)
)
COUNTY OF HUGHES)

I, Lori J. Grode, RMR, Notary Public, in and for the State of South Dakota, do hereby certify that the above hearing, pages 1 through 48, inclusive, was recorded stenographically by me and reduced to typewriting.

I FURTHER CERTIFY that the foregoing transcript of the said hearing is a true and correct transcript of the stenographic notes at the time and place specified hereinbefore.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Pierre, South Dakota, this 7th day of May, 1998.

Lori J. Grode

Lori J. Grode, RMR

April 16, 1998

Dell Rapids Coop Grain
211 N Ladell
Dell Rapids, SD 57022

Dear Sirs

After reading the letter from the PUC on grain storage rates. I would rather have the rates variable, so I can be more competitive in the market place. The cost of operation is different in each elevator. So if I have an opinion in this matter, I would liked to see it change.

Sincerely,

Mark Lee mgr

RECEIVED

APR 20 1998

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

EXHIBIT

Staff 1

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ESTABLISHING WAREHOUSE RATES FOR THE STORAGE, RECEIVING, HANDLING AND REDELIVERING OF GRAIN	)))))	**FINDINGS OF FACT AND CONCLUSIONS OF LAW; NOTICE OF ENTRY OF ORDER GW97-001**

Pursuant to SDCL 49-43-7, the Public Utilities Commission (Commission) is required to investigate, from time to time, the cost of receiving, handling, redelivering, and storing grain by public grain warehouses licensed with the Commission. The Commission last reviewed these costs in 1991.

At its December 18, 1997, meeting, the Commission moved to open a docket to investigate the current rates for storing, receiving, handling, and redelivering of grain. The hearing was scheduled for April 30, 1998, in Room 412 of the Capitol Building by order dated April 13, 1998, and amended order dated April 24, 1998. The hearing was held as scheduled.

At the conclusion of the hearing, the Commission unanimously voted to set a maximum storage rate of 0.1042 cents per bushel per day for all grains; a maximum rate of seven cents per bushel for receiving and handling and seven cents per bushel for redelivering of all types of grain, not to exceed a combined total of 12 cents per bushel; that licensees have the option of waiving the charge for receiving and handling grain if they take title to the grain; that each licensee establish the rates to be charged at each of his facilities by submitting an annual tariff to the Commission at the time of licensing on a form supplied by the Commission; that amendments to the original tariff be allowed up to two times in any given calendar quarter, but no more than four times a year; that licensees be allowed to use existing stock of warehouse receipts by stamping on the new rates; and that the effective date of the tariff will be ten days from the date of mailing or sending electronically.

Based on the evidence received at the hearing, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Ed Anderson, Director of the Transportation Warehouse Division, stated that the current rates are three cents per bushel for storage, seven cents per bushel for receiving and handling, and five cents per bushel for redelivery. Tr. at 8, 16.

2. Mr. Anderson stated that over the years there has been a dramatic decline in the amount of grain stored in comparison to grain sold under voluntary credit sale contracts which may be partly attributable to the flexibility in handling rates for voluntary sales contracts. Tr. at 7.

3 Mr Anderson recommended that maximum rates, with no minimums, be established in order to give public grain warehouses more flexibility Specifically, he recommended the following a maximum storage rate of 0 1042 cents per bushel per day for all grains, a maximum rate of seven cents per bushel for receiving and handling and seven cents per bushel for redelivering of all types of grain, not to exceed a combined total of 12 cents per bushel, that licensees have the option of waiving the charge for receiving and handling grain if they take title to the grain, that each licensee establish the rates to be charged at each of his facilities by submitting an annual tariff to the Commission at the time of licensing on a form supplied by the Commission; and that amendments to the original tariff be allowed up to two times in any given calendar quarter, but no more than four times a year

4 No one testified against the recommendation made by Mr Anderson

5 The Commission finds that the maximum rate structure and other conditions as proposed by Mr Anderson are fair and reasonable Thus, the Commission adopts the following rates as maximum rates for all grains that may be charged by a public grain warehouseman 0 1042 cents per bushel per day for storage; and seven cents per bushel for receiving and handling and seven cents per bushel for redelivering, not to exceed a combined total of 12 cents per bushel There are no minimum rates

6 The Commission further finds that licensees shall have the option of waiving the charge for receiving and handling grain if they take title to the grain Each licensee shall establish the rates to be charged at each of his facilities by submitting an annual tariff to the Commission at the time of licensing on a form supplied by the Commission The Commission shall allow amendments to the original tariff up to two times in any given calendar quarter, but no more than four times a year

7 The Commission further finds that public grain warehouses may use their existing stock of warehouse receipts by stamping on the new rates The Commission shall send out the tariff form to all public grain warehouses as soon as the form is completed. The completed tariff shall be mailed or sent electronically to the Commission and the effective date of the tariff is ten days from the date of mailing or sending electronically

8 Following the filing of the initial tariff, each public grain warehouse shall file an annual tariff along with its annual application for a public grain warehouse license

CONCLUSIONS OF LAW

1 The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-43, specifically 49-43-7 Pursuant to SDCL 49-43-7, the Commission must fix just and reasonable rates for the handling, redelivering, and storage of grain Each warehouseman is required to apply the rates in effect to all customers alike

2. The Commission adopts the maximum rates and terms and conditions as stated in Findings of Fact 5 through 8, inclusive.

It is therefore

ORDERED, that the maximum rates and terms and conditions as stated in Findings of Fact 5 through 8, inclusive, are hereby adopted by the Commission.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 25th day of June, 1998. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 25th day of June, 1998.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By [signature]

Date [illegible]

(SEAL)

BY ORDER OF THE COMMISSION:

[signature]
JAMES A. BURG, Chairman

[signature]
PAM NELSON, Commissioner

[signature]
LASKA SCHOENFELDER, Commissioner