

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

CT05-001

ORIGINAL

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IN THE MATTER OF THE COMPLAINT FILED
BY WWC LICENSE, LLC AGAINST GOLDEN WEST
TELECOMMUNICATIONS COOPERATIVE, INC.,
VIVIAN TELEPHONE COMPANY, SIOUX VALLEY
TELEPHONE COMPANY, ARMOUR INDEPENDENT
TELEPHONE COMPANY, BRIDGEWATER-CANISTOTA
INDEPENDENT TELEPHONE COMPANY, AND
KADOKA TELEPHONE COMPANY REGARDING
INTERCARRIER BILLINGS

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Transcript of Proceedings
May 24, 2005

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BEFORE THE PUBLIC UTILITIES COMMISSION,
GARY HANSON, CHAIRMAN
BOB SAHR, VICE CHAIRMAN (by telephone)
DUSTY JOHNSON, COMMISSIONER

COMMISSION STAFF
Rolayne Ailts Wiest
John Smith
Karen Cremer
Sara Greff
Greg Rislov
Harlan Best
Keith Senger
Dave Jacobson
Michele Farris
Tina Douglas
Heather Forney
Pam Bonrud

APPEARANCES

Darla Pollman Rogers
Talbot Wieczorek (by telephone)

Reported By Cheri McComsey Wittler, RPR

PRECISION REPORTING
L I M I T E D

1 THE PUBLIC UTILITIES COMMISSION
 2 OF THE STATE OF SOUTH DAKOTA
 3 =====
 4 IN THE MATTER OF THE COMPLAINT FILED
 5 BY WWC LICENSE, LLC AGAINST GOLDEN WEST
 6 TELECOMMUNICATIONS COOPERATIVE, INC.,
 7 VIVIAN TELEPHONE COMPANY, SIOUX VALLEY
 8 TELEPHONE COMPANY, ARMOUR INDEPENDENT
 9 TELEPHONE COMPANY, BRIDGEWATER-CANISTOTA
 10 INDEPENDENT TELEPHONE COMPANY, AND
 11 KADOKA TELEPHONE COMPANY REGARDING
 12 INTERCARRIER BILLINGS CT05-001
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 14 Transcript of Proceedings
 15 May 24, 2005
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 27 APPEARANCES
 28 Darla Pollman Rogers
 29 Talbot Wieczorek (by telephone)
 30
 31 Reported By Cheri McComsey Wittler, RPR
 32

1 APPEARANCES BY TELEPHONE 2
 2 Colleen Sevold
 3 Melissa Thompson
 4 Denny Law
 5 George Strandell
 6 Ron Spangler
 7
 8 =====
 9
 10 TRANSCRIPT OF PROCEEDINGS, held in the
 11 above-entitled matter, at the South Dakota State
 12 Capitol, Room 412, 500 East Capitol Avenue, Pierre,
 13 South Dakota, on the 24th day of May 2005, commencing
 14 at 9:30 a.m.
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 25

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 4 CHAIRMAN HANSON: CT05-001, In the
 5 Matter of the Complaint Filed by WWC License, LLC
 6 Against Golden West Telecommunications Cooperative,
 7 Inc., Vivian Telephone Company, Sioux Valley
 8 Telephone Company, Armour Independent Telephone
 9 Company, Bridgewater-Canistota Independent
 10 Telephone Company, and Kadoka Telephone Company
 11 Regarding Intercarrier Billings.
 12 The question before the Commission today is
 13 shall the Commission grant the Motion for Partial
 14 Summary Judgment? There are also some other
 15 questions that the Commission will need to rule on.
 16 Specifically, does the Commission have jurisdiction
 17 on this issue?
 18 We are here to listen to the Plaintiffs and
 19 the parties. Who is going first here?
 20 MR. WIECZOREK: Mr. Chairman, this
 21 is Talbot Wieczorek on behalf of WWC. Since I'm
 22 the moving party, I'm assuming I would go first,
 23 unless somebody has an objection or wants to take
 24 them in a different order.
 25 CHAIRMAN HANSON: No. Go right
 ahead, Tal.
 MR. WIECZOREK: Our Motion is a
 partial summary judgment, meaning it won't dispose

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 5 of all the issues, but I think there's issues that
 6 by the Pleadings can be disposed of immediately to
 7 move forward.
 8 And what we did is we made a partial summary
 9 judgment to deal with three issues. One being
 10 whether this Commission has jurisdiction to hear
 11 the Complaint WWC filed, the second whether the
 12 Commission Order payment of the undisputed amount
 13 at this time, and the third being whether interest
 14 is available.
 15 Now the reason these come up and we've filed
 16 the Complaint in the Answer, the Golden West
 17 Companies -- and I'm going to refer to them as just
 18 the Golden West Companies if that's okay -- raised
 19 in a Joint Answer a jurisdictional question. They
 20 cited to a couple of electrical cases.
 21 Now we thought it prudent to deal with the
 22 jurisdictional issue up front. If this Commission
 23 for some reason feels it doesn't have jurisdiction,
 24 there's no sense going through a lot of procedural
 25 or discovery issues.
 Our brief is fairly distinct on it. The
 electrical cases that the Golden West Companies
 rely on there is not a similar set of statutes
 where the procedure on Complaints that are found in

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1 the code under Chapter 49-13 as it exists for
 2 telecommunications, and that's what we've brought
 3 the Complaint under. And if you look at those
 4 statutes, specifically 49-13-14, 14.1, those give
 5 you very broad power as a Commission to determine
 6 issues such as what we've asserted here and that
 7 is, look, we've overpaid a substantial sum while we
 8 were negotiating this Interconnection Agreement and
 9 we should be paid back that money immediately.
 10 For those reasons I believe jurisdiction is
 11 fairly clear under the statute, and the Commission
 12 has jurisdiction to go forward.
 13 I would point out in the brief of the Golden
 14 West Companies that was filed last Friday it does
 15 appear Golden West -- Golden West does admit there
 16 is jurisdiction at least to the extent that Golden
 17 West's Counterclaim asserts an interpretation or
 18 enforcement of the Interconnection Agreement.
 19 Now on this overpayment issue there is some
 20 argument as to whether that's part of the Agreement
 21 because the overpayments weren't specifically
 22 addressed in the Interconnection Agreement or the
 23 overpayments ended up in that we paid under the old
 24 rate while we negotiated the Interconnection
 25 Agreement. Once you approved the Interconnection

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1 Agreement our argument is we're clearly entitled to
 2 a refund of that overpayment, and that should be
 3 done immediately.
 4 Somebody might dispute whether that
 5 overpayment is part of the Interconnection
 6 Agreement or the Interconnection Agreement is just
 7 used to establish the amount. But, in any case,
 8 under Chapter 49-13 I believe this Commission has
 9 jurisdiction to determine whether to roll the money
 10 back.
 11 The second issue is the payment issue. In
 12 this case there's been a letter attached to the
 13 Complaint as Exhibit C signed by Mr. Law on behalf
 14 of the Golden West Companies. In that letter dated
 15 December 1, 2004 Golden West Companies go through
 16 and say, yeah, you've overpaid us and here's the
 17 amount we're just going to credit you.
 18 In their Answer the Golden West Companies
 19 admit to that letter being the amount as of that
 20 date that constitutes the overpayments. What we're
 21 asking today is that the Commission Order those
 22 amounts be immediately repaid less any credits
 23 they've given us since December 1. The reason
 24 being is this: That is a substantial chunk of
 25 money. They have acknowledged -- the Golden West

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1 Companies have acknowledged we've overpaid. It's
 2 in excess of a half a million dollars.
 3 Now we believe we're owed even more, but if
 4 they've stood up and admitted they owe us a half a
 5 million dollars, they should pay us the half a
 6 million dollars and not take the position that we
 7 don't have to pay you the half a million dollars
 8 until we figure out and force you to the table,
 9 WWC, to negotiate this inter MTA issue and that's
 10 essentially the position they've taken in their
 11 Brief.
 12 They've taken the position, look, we think
 13 they owe us more money in this inter MTA so we can
 14 hold onto this half a million bucks that we admit
 15 we owe them until we negotiate MTA. That's not
 16 equitable. That's not fair. That's not
 17 appropriate.
 18 Now in their Brief Golden West Companies take
 19 the position, look, we have to figure out all the
 20 moneys owed on the Interconnection Agreement before
 21 we have to pay anybody back. I disagree with their
 22 analysis on the case law. The case law they cited
 23 are like foreclosure cases where the contracts are
 24 completely finished or foreclosure where the
 25 payments aren't being made at all.

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1 In this case you have an Interconnection
 2 Agreement that still runs throughout this year.
 3 Well, we're not going to be totally done with this
 4 contract until essentially we renegotiate a new
 5 contract. If you take Golden West Company's
 6 position, they would argue that, look, we have to
 7 fulfill all of these contracts before anybody can
 8 claim damages. That makes absolutely no sense to
 9 me.
 10 What we have here is an acknowledged
 11 overpayment. They should take care of what they
 12 acknowledge that has been overpaid, and then if
 13 we've got other issues, let's sit down, let's
 14 litigate them out, if necessary, and get those
 15 figured out. If it's determined by this Commission
 16 through the Counterclaim that we owe money, we'll
 17 pay them the money when that amount's determined.
 18 But they shouldn't be able to use -- they
 19 shouldn't be able to use the fact that we have an
 20 argument over how to calculate inter MTA as a sword
 21 to prevent them from having to refund money they've
 22 acknowledged they owe us.
 23 The third issue then is interest. The issue
 24 on interest is simply that in the Answer it appears
 25 they've taken the position that they can hold this

1 money, credit it to us for months and months and
 2 months and months but they don't owe us any
 3 interest. What I've asked the Commission is not to
 4 determine the amount of the interest, just that,
 5 look, if you have an overpayment, interest needs to
 6 be paid on those overpayments.

7 And I've asked for that and a partial summary
 8 judgment. The amount of the interest I've not
 9 asked for to be determined today. I've not asked
 10 for you to calculate it. I don't believe that --
 11 look, if you're going to hold these funds, you have
 12 to pay interest on them. That interest is going to
 13 accumulate. You're going to owe it.

14 Those are the three issues. Specifically,
 15 I've submitted a Brief on it with some legal
 16 analysis, summarized them here, but if there are
 17 any questions, I'd be glad to answer those.

18 CHAIRMAN HANSON: Thank you. Tal,
 19 do you have anyone else to present at this time --
 20 witnesses or anyone to present at this time?

21 MR. WIECZOREK: I am not presenting
 22 any witnesses at this time.

23 CHAIRMAN HANSON: All right. Thank
 24 you. Darla Rogers I believe is here representing
 25 Golden West and the other companies.

1 standard.
 2 First of all, they've failed to submit any
 3 supporting Affidavits in this case but have merely
 4 recited certain factual allegations in their
 5 Pleadings and their Motion and Brief.

6 Let's look, first of all, at the issue of
 7 jurisdiction. I'd think that if you look at all of
 8 the jurisdictional statutes and the case law that
 9 is out there, I'm not sure that summary judgment
 10 would ever lie because I don't think they are a
 11 model of clarity as to exactly what the Commission
 12 does have the jurisdiction over.

13 I don't think that and we do not believe that
 14 this Commission has jurisdiction over all of the
 15 claims that Western Wireless is raising in this
 16 Complaint, and since that is the case, I don't
 17 believe that summary judgment on this issue is
 18 proper.

19 I believe that, as stated, this Commission has
 20 jurisdiction to clarify or interpret the
 21 Interconnection Agreement, and in its Brief Western
 22 Wireless says that that's what they're seeking. On
 23 the other hand, if you view their Pleadings and
 24 look at what they are asking for, and that also is
 25 not real clear, they're asking for an awfully,

1 MS. POLLMAN ROGERS: Yes. Good
 2 morning, members of the Commission. As you have
 3 stated, my name is Darla Pollman Rogers, and I
 4 represent Golden West Companies in this Docket. I
 5 will refer to all of the Defendants or Respondents
 6 as Golden West Companies.

7 We are here in resistance to WWC's Motion for
 8 Partial Summary Judgments for the following
 9 reasons: First of all, I would just like to give
 10 you a little bit or review a little bit the
 11 background of Summary Judgment Motions for you.

12 The standard is high for granting summary
 13 judgment motions. The evidence must be viewed in a
 14 light most favorable to the nonmoving party. And
 15 if the Commission is found -- or forced to engage
 16 in fact-finding to resolve a Summary Judgment
 17 Motion or request, it should not grant the request.

18 For a Summary Judgment Motion to be granted --
 19 or it can be granted only when it's shown that
 20 there is no room for controversy. In fact, it's
 21 such clarity that there is no room for controversy
 22 on any of the facts. Only in that instance is a
 23 Summary Judgment Motion appropriate.

24 And I would submit that in this case it is
 25 not. Western Wireless has not met that high

1 awfully lot more than just clarification of the
 2 Interconnection Agreement.

3 They're asking for double damages. They're
 4 asking for attorney's fees. They claim that they
 5 have been -- that we have been, that is Golden West
 6 Companies have been unjustly enriched at their
 7 expense. Unjust enrichment is an equitable claim.
 8 I do not believe the Commission has jurisdiction
 9 over equitable claims.

10 I believe that the statute specifically
 11 confers jurisdiction for double damages and
 12 attorney's fees on the court and not on this
 13 Commission.

14 Now if Western Wireless wishes to amend its
 15 Pleadings and eliminate all other claims and claim
 16 only clarification of this Agreement, then the
 17 appropriate -- this Motion with regard to
 18 jurisdiction may be appropriate. But that's not
 19 what has happened here. And, therefore, I think
 20 that the Commission should deny the Motion for
 21 Summary Judgment on the issue of jurisdiction.

22 Second of all, let's look at damages. I
 23 believe that you need to look at the Pleadings as a
 24 whole, not just at the Complaint that's been filed.
 25 Western Wireless is claiming damages on the

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1 reciprocal compensation rates under the Agreement.
 2 Golden West Companies are claiming damages for
 3 failure of Western Wireless to come forward and in
 4 good faith negotiate a methodology to adjust the
 5 inter MTA factor. That has resulted in
 6 underpayment of access charges under the Agreement.
 7 So those claims are both in the Pleadings when
 8 you look at them as a whole. You have -- and those
 9 claims involve factual determinations. You also
 10 have other factual issues, not just those two
 11 claims. You have the factual issue of the credits
 12 that have been given by Golden West Companies to
 13 WWC. You have, as I said, the offset to figure.
 14 You also have the factual determination of, what is
 15 the appropriate method of adjusting these payments
 16 due from one party to the other.
 17 In fact, it's a little hard to imagine a case
 18 that would require anymore factual determinations
 19 than the one that you have before you. Under
 20 South Dakota Law the full performance by both sides
 21 must occur before there can be a final
 22 determination of amounts due from one party to the
 23 other.
 24 A partial summary judgment on the issue of
 25 damages is not appropriate. This is demonstrated

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1 further by the Affidavit of Denny Law that we have
 2 submitted in support of our resistance to the
 3 Motion. That Affidavit clearly sets forth factual
 4 disputes between the parties. In fact, in its own
 5 Brief Western Wireless says that they believe the
 6 actual amount of damages is higher than what was
 7 stated in Mr. Law's letter. Again, those are
 8 factual determinations that need to be made in a
 9 full hearing before the Commission.
 10 Western Wireless's assertion in its Brief that
 11 the amount due is uncontroverted is incorrect. Any
 12 amounts due either party are in dispute, and, thus,
 13 summary judgment is not appropriate. And we would
 14 rely on the Butler Machinery case and other cases
 15 cited in our Briefs.
 16 Not only is the amount of potential damages
 17 from one party to the other or vice versa in
 18 dispute, there is also dispute about the
 19 methodology of repayment by either party to the
 20 other. As the Agreement is silent on this issue,
 21 these are, as I stated, issues that must be
 22 determined after a full hearing on the merits of
 23 the case.
 24 Finally, with regard to the issue of interest,
 25 I believe it's very similar to the issue of

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1 damages. And we would rely on the First National
 2 Bank case cited in our Brief. When a party asserts
 3 an offset against a claim, interest cannot properly
 4 be awarded. Western Wireless has completely
 5 ignored the offset claim contained in Golden West's
 6 Pleadings.
 7 Furthermore, I don't believe at this point in
 8 the process you can determine a date certain upon
 9 which to calculate interest without further factual
 10 determinations. There must be a factual finding on
 11 Golden West's offset claim, and until that time I
 12 don't believe the Commission can determine whether
 13 there is an amount actually owing and if there is,
 14 by whom and then the date that it would start.
 15 The Commission has the authority to determine
 16 the manner and methodology of payment, and that
 17 will also affect any claim of interest. Western
 18 Wireless's claim for interest predates its demand
 19 for payment. And I think the Commission needs to
 20 consider that fact as well.
 21 For these reasons we would request that
 22 Western Wireless's Motion for Partial Summary
 23 Judgment be denied because when you view the
 24 evidence in the light most favorable to the
 25 nonmoving party, it clearly shows that there are

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1 genuine issues of material fact to be determined by
 2 the Commission and, therefore, summary judgment is
 3 not appropriate.
 4 Thank you.
 5 CHAIRMAN HANSON: Thank you, Darla.
 6 Do you have any other counsel representing the --
 7 MS. POLLMAN ROGERS: No.
 8 CHAIRMAN HANSON: Thank you.
 9 Rolayne Wiest.
 10 MS. AILTS WIEST: This is
 11 Rolayne Wiest, representing Commission staff.
 12 Going to the first issue on jurisdiction,
 13 apparently Golden West does agree the Commission
 14 can interpret the party's obligations under the
 15 Interconnection Agreement. In its Brief, however,
 16 Golden West questions whether the Commission can
 17 enforce its offer through a refund.
 18 I believe that the Commission's powers under
 19 49-13 are very strong and explicit. The Northwest
 20 Public Service gas case is not applicable. It's an
 21 electric case. The electric cases are not subject
 22 to 49-13, the Commission's Complaint jurisdiction.
 23 Now whether the Commission will have the
 24 authority to award the double damages or be able to
 25 apply 4.1 is something the Commission will need to

1 decide at a later date, but, generally speaking, I
 2 think the Commission could find that it has
 3 jurisdiction to go forward with this Complaint
 4 under 49-13 and under our authority to settle
 5 disputes regarding Interconnection Agreements.

6 With respect to the second issue on summary
 7 judgment for the undisputed amount, I believe that
 8 looking at the evidence most favorably to the
 9 nonmoving party with reasonable doubt results
 10 against the moving party. I would recommend that
 11 the Commission deny Western Wireless's request for
 12 summary judgment on this matter.

13 Looking at what has been presented thus far,
 14 there appears to be too many unanswered questions
 15 that would allow the Commission to come up with an
 16 exact amount. First there's the issue of offset
 17 for interLATA MTA traffic that's been raised by
 18 Golden West.

19 Second, the amount of overpayments is
 20 disputed. You know, in its Brief Western Wireless
 21 didn't even have a specific number. It just stated
 22 that it's entitled to overpayments in excess of
 23 \$535,000. Now today I believe Mr. Wieczorek stated
 24 that they would take that amount and subtract the
 25 credits, but I would just note that I still haven't

1 subject to a late charge.
 2 Moreover, is Western Wireless really asking
 3 for prejudgment interest? Is it asking for late
 4 payment charges, undisputed amounts? If the
 5 Commission awards the late payments charges for
 6 undisputed amounts, is Western Wireless allowed the
 7 prejudgment interest?

8 In addition, according to the case law
 9 submitted by Golden West Companies, prejudgment
 10 interest is allowable only when exact amount of the
 11 damages is known or readily ascertainable.
 12 Western Wireless may certainly be entitled to
 13 prejudgment interest, but I don't think we have
 14 sufficient facts to answer that question yet. And,
 15 therefore, I don't think it is an issue that should
 16 be decided on the basis of summary judgment.

17 Thank you.
 18 CHAIRMAN HANSON: Thank you very
 19 much, Rolayne, Darla, and Tal. Are there any
 20 questions by the Commissioners?
 21 COMMISSIONER JOHNSON: Thank you,
 22 Mr. Chairman.

23 Mr. Wieczorek, you mentioned double damages
 24 and attorneys fees in your Brief. Don't you think
 25 these statutes in South Dakota really make that

1 heard a specific number from Western Wireless on
 2 the undisputed amount.

3 There's also the question at what point in
 4 time the overpayment should be calculated. If you
 5 look at the Complaint Western Wireless -- in their
 6 Complaint they used paragraph 7.24 for the rate for
 7 late payments. And if they're relying on that
 8 paragraph, then the issue may become when did
 9 Western Wireless give the Golden West Companies a
 10 billing statement since the provision provides that
 11 undisputed charges not paid within 30 days of
 12 receipt of the billing statement may be subject to
 13 the late charge at the rate of 1.5 percent per
 14 month or the maximum amount allowed by law.

15 Thus, I don't think that the Commission is
 16 able to come up with an undisputed amount at this
 17 point in time.

18 Going on to the third issue, summary judgment
 19 and prejudgment interest, this probably is a little
 20 bit of a closer question, but I think that summary
 21 judgment should be denied on this issue also.
 22 Again, Western Wireless, in its Complaint it relied
 23 on Section 7.24, the one I just cited previously,
 24 for the calculation of interest due. Well, that
 25 section states that undisputed charges may be

1 clear, that it's only for lawsuits and not for a
 2 proceeding such as this?

3 MR. WIECZOREK: Well, for the
 4 purposes of this Motion, I wasn't asking for a
 5 determination on those damages, Commissioner. To
 6 determine -- here's where I differ with Golden
 7 West's interpretation. When I asked for a
 8 determination of jurisdiction I didn't ask for a
 9 determination of what damages were allowable, which
 10 are different things.

11 I understand Golden West's argument that the
 12 statute talks about suit, and I haven't
 13 specifically briefed that issue. I understand
 14 their arguments. It's our position that we can
 15 argue that this Commission when we make the
 16 election can also give those damages.

17 But it wasn't something we briefed
 18 specifically to ask you to determine. We have
 19 today.

20 COMMISSIONER JOHNSON: Thank you.
 21 On page 9 of the response to the Motion, Golden
 22 West, et al. seems to suggest that because there is
 23 some ambiguity about what payment method could be
 24 used, that would be a question of material fact.
 25 Do you have a response to that?

1 MR. WIECZOREK: Well, I don't see
 2 how you can have an ambiguity. If you make an
 3 overpayment to somebody, they're not entitled to
 4 that money. They would have to -- to refute the
 5 fact that they need to refund that money, they'd
 6 have to point to something that allowed them to
 7 hold that money and use it for a year with -- and
 8 provide repayment in some other method.
 9 Because in this situation we've overpaid half
 10 a million dollars. They've acknowledged that. But
 11 they're just saying, well, we're just not going to
 12 give it back to you. We'll just give you credit.
 13 Essentially, they're saying we get to keep your
 14 money but we can't point to anything that allows us
 15 to keep it. It's just that that's how we're going
 16 to repay you.
 17 They've made that election. They have no
 18 right to make that election.
 19 COMMISSIONER JOHNSON: There has
 20 been raised on the staff's side the question of,
 21 well, what number are we shooting for here? I
 22 mean, what is the request? What is the uncontested
 23 amount that you're putting forth, Mr. Wieczorek?
 24 MR. WIECZOREK: Well, here's the
 25 position that -- I understand staff's position.

1 Here's where I believe these amounts become
 2 undisputed. In Mr. Law's letter of December 1 he
 3 sets forth these are minimal amounts. And our
 4 position is, look, we think we're entitled to more,
 5 but they shouldn't be able to hold back what
 6 they've admitted they owe us. In his letter he
 7 admits that.
 8 My problem is I can never give you a full
 9 amount because every month they're giving us
 10 credits. By the time I file my Motion, by the time
 11 they have another hearing set, they've given us
 12 another credit. So my request today is not that
 13 you say, okay, give them this amount, say -- give
 14 me an order that says, look, you guys admitted an
 15 amount, Golden West Company, that you know you owed
 16 them on December 1, 2004. You've given credits so
 17 to the extent you haven't given credits on those
 18 amounts, pay them that money.
 19 Both sides know what credits have been given
 20 during that time period, but every month we're
 21 getting new credits. Since I've filed my Motion
 22 we've gotten credits, I think, twice. So those
 23 amounts keep going down that they claim they owe
 24 us, but I think you can do an Order today saying
 25 pay them what you haven't given them credits for

1 based on that letter and we'll figure out what the
 2 exact number is later or if Western Wireless is
 3 entitled to more.
 4 COMMISSIONER JOHNSON: Couldn't some
 5 of those calculations constitute a question of
 6 fact?
 7 MR. WIECZOREK: Well, I don't think
 8 they really would because every month Golden West
 9 sends us a bill showing us a credit. So it's their
 10 bill, but every month that number changes because
 11 they're sending us a new bill showing that they're
 12 not going to charge for it because they've credited
 13 against the amount of money -- the amount of money
 14 they've got of ours that they're holding.
 15 COMMISSIONER JOHNSON: The Agreement
 16 had a statute of limitations. Does that have any
 17 effect on the dollar amounts that are owed?
 18 MR. WIECZOREK: I don't believe so.
 19 I don't believe it was raised in the Brief as a
 20 counter. Also the amounts we paid -- there's two
 21 things going here. We have overpayments --
 22 Golden West is correct that they did not -- the
 23 Agreement does not set forth -- even discuss the
 24 overpayments. Because the overpayments were made,
 25 but the statute to me wouldn't have started to run

1 until you actually new what the overpayments were.
 2 And we brought this matter I think in less
 3 than 2 years when the overpayments began. Some of
 4 these overpayments were made less than a year ago.
 5 COMMISSIONER JOHNSON: Well, if the
 6 effective date is 1-1-03, and this was -- I mean,
 7 it certainly wouldn't be a large amount. I think
 8 maybe we'd be talking about a month and a half.
 9 But maybe you filed in the middle of February.
 10 MR. WIECZOREK: I think that's
 11 correct.
 12 COMMISSIONER JOHNSON: Thank you,
 13 Mr. Chairman. That's all I have for Mr. Wieczorek.
 14 CHAIRMAN HANSON: Commissioner Sahr,
 15 do you have any questions?
 16 VICE CHAIRMAN SAHR: No.
 17 CHAIRMAN HANSON: Commissioners, how
 18 do you wish to proceed? Is there a Motion?
 19 COMMISSIONER JOHNSON: I have some
 20 questions for the other party, the Respondents, if
 21 that's appropriate.
 22 CHAIRMAN HANSON: Go ahead.
 23 COMMISSIONER JOHNSON: Ms. Rogers,
 24 you indicate on page 4 of your Response that the
 25 numbers provided in Dennis Law's letter are not

1 factually correct both as to amount and as to the
2 noninclusion of recalculated rates after adjustment
3 of the inter MTA factors.

4 Could you explain that to me a bit?

5 MS. POLLMAN ROGERS: Yes. I believe
6 that Mr. Law's letter was an attempt to explain
7 what Golden West was going to be crediting on a
8 go-forward basis. However, the letter does not
9 address and specifically did not waive any
10 contractual rights that the Golden West Companies
11 have with regard to the inter MTA factor. That is
12 clearly part of the same contract, Commissioner.

13 And what has happened here is that the
14 contract requires the parties to negotiate in good
15 faith a methodology to adjust the default inter MTA
16 factor that was set in the statute. And that was
17 to be done within I think it was 60 or 90 days from
18 the date that the Agreement was signed.

19 Instead of coming to the table and negotiating
20 with us on the inter MTA factor and coming up with
21 a methodology to effectuate that adjustment,
22 Western Wireless has failed to do that. And until
23 we get some type of records from them so that we
24 can figure that adjustment ourselves, it's hard to
25 determine the exact amount. And, therefore, the

1 letter does not address that with you. That does
2 not mean that those moneys are equally due and
3 owing to Golden West Companies. And that's what
4 I'm referring to in that portion of the Brief.

5 COMMISSIONER JOHNSON: In your
6 response to the Brief you refer to Carlson vs.
7 First National Bank and suggest that that case
8 would indicate that even if jurisdiction does
9 exist, that summary judgment cannot be entered as
10 to damages. And yet in that case in Section 2,
11 Subsection 3, it says there is no dispute that
12 Carlson's executed the promissory notes as to the
13 amount of debt owed. Pleadings and testimony
14 verify that \$75,000 plus accrued interest was
15 borrowed. The only amount subject to dispute is
16 \$6,000 plus interest. That amount is a defense to
17 the bank's Counterclaim and the trial court
18 properly denied a directed verdict as to that
19 amount because the liability of that debt is
20 disputed. However, as to \$68,000 plus accrued
21 interest, there is no dispute. And then the court
22 awards the \$68,000.

23 Is this analogous to the current situation
24 where there is an amount that is undisputed but the
25 Counterclaims or offsets would be something that

1 would be handled later on?

2 MS. POLLMAN ROGERS: No, not
3 exactly, Commissioner, because I do not believe
4 there are uncontroverted or undisputed amounts.
5 And I think even as the argument today has
6 indicated, it is not possible to even calculate or
7 figure out who owes whom what without further
8 factual determinations for any portion of the
9 Pleadings.

10 COMMISSIONER JOHNSON: But certainly
11 Golden West, et al. acknowledges that the debt is
12 owed.

13 MS. POLLMAN ROGERS: There are some
14 sums that we have been crediting, yes. That is
15 correct. Are those amounts certain that we can
16 come in here and say this is it? No, they're not.
17 There are certainly factual determinations,
18 including our offset claim, which Western Wireless
19 seems to ignore.

20 COMMISSIONER JOHNSON: Why did your
21 clients feel that they had, you know, the
22 unilateral power to determine in what method those
23 debts would be repaid?

24 MS. POLLMAN ROGERS: The contract is
25 silent with regard to the methodology or manner of

1 repayment either way by either party to the other.
2 And I disagree with Western Wireless's
3 interpretation that we would have to have a
4 specific authority to do an offset or a credit. I
5 think those things are done all the time under
6 agreements.

7 But the Agreement is silent. And, therefore,
8 I don't believe that we have violated or breached
9 anything under the Agreement by proceeding with the
10 credits as we have done.

11 COMMISSIONER JOHNSON: My final
12 question deals with on page 2 of your Response you
13 seem to suggest that the PUC's Order should have
14 been more robust in clarifying those areas that the
15 Agreement was silent, specifically the manner to
16 which the respective parties should receive their
17 compensation.

18 To me that seems if you carry that a little
19 further, you're suggesting the PUC should be, you
20 know, expansive, it should cover a variety of areas
21 to clarify their jurisdiction to, you know,
22 essentially address all areas in which an Agreement
23 is silent.

24 Do you really think that's appropriate?

25 MS. POLLMAN ROGERS: The point that

1 I was trying to make there, Commissioner, is just
2 the fact that the Agreement is silent. I did not
3 mean to imply that every Order is going to cover
4 everything because, of course, that can't happen.
5 That's one of the reasons that we're here today.

6 But the point was that the Agreement is
7 silent. That's not a settled issue under the
8 contract -- or the Agreement or the Order as
9 written.

10 COMMISSIONER JOHNSON: Thanks,
11 Ms. Rogers.

12 Mr. Chairman, those are all the questions I
13 have. Although, if General Counsel has questions,
14 I'd certainly be interested in hearing them.

15 CHAIRMAN HANSON: I have one
16 question of Rolayne first.

17 Rolayne, do you believe that the Commission
18 has jurisdiction on all issues?

19 MS. ALTS WIEST: I think that the
20 Commission could find as a general matter it has
21 jurisdiction over -- general jurisdiction to decide
22 these matters.

23 I would agree with Mr. Wieczorek with respect
24 to the applicability of 49-13-14.1. The Commission
25 can decide that within the confines of this case,

1 that you don't have to make a decision on that
2 right now, but you do have the jurisdiction to go
3 forward with this Complaint.

4 CHAIRMAN HANSON: Okay. Thank you.

5 Mr. Smith, do you have some questions?

6 MR. SMITH: I do. I think maybe
7 starting with Ms. Rogers, isn't it true in
8 South Dakota that the determination of whether or
9 not a contract is ambiguous is a question of law?
10 I have a case that says that.

11 MS. POLLMAN ROGERS: I was going to
12 say, is this a trick question.

13 MR. SMITH: No, it's not. The case
14 is Orion Financial. It's actually a Federal
15 District Court case.

16 MS. POLLMAN ROGERS: The Orion case?

17 MR. SMITH: Right.

18 MS. POLLMAN ROGERS: And we've
19 referred to that. I don't know that our claim is
20 necessarily that the Agreement is ambiguous. I
21 think our Counterclaim deals with and our whole
22 point here today is that there are genuine issues
23 of material fact outstanding and, therefore, a
24 Summary Judgment Motion on the issues raised by
25 Western Wireless is not appropriate.

1 MR. SMITH: And would you also agree
2 with me that interpretation of a contract is purely
3 a question of law in South Dakota if there is no
4 ambiguity, if the Commission were to find that the
5 Agreement is not ambiguous?

6 MS. POLLMAN ROGERS: Is the
7 interpretation of a contract a matter of law?

8 MR. SMITH: Is that a question of
9 law or a question of fact?

10 My reading of the case law would just indicate
11 point blank that it's a question of law.

12 MS. POLLMAN ROGERS: Again --

13 MR. SMITH: Where there's no
14 ambiguity.

15 MS. POLLMAN ROGERS: Providing that
16 there's not ambiguity and providing that -- I mean,
17 if the only issue before the court or the
18 Commission is an interpretation of the contract as
19 opposed to all of the factual issues that are
20 included in the case in the current docket.

21 MR. SMITH: Thank you. Some recent
22 holdings of the South Dakota Supreme Court have
23 very strongly asserted that prejudgment interest,
24 at least statutory prejudgment interest, is always
25 payable on a damage award.

1 Is that not true?

2 MS. POLLMAN ROGERS: Have the cases
3 stated that? Is that your question to me?

4 MR. SMITH: Uh-huh.

5 MS. POLLMAN ROGERS: I think there
6 is case law to that effect. I do not think it's
7 necessarily applicable in this case, and I think
8 we've tried to point out those distinctions in our
9 Brief.

10 MR. SMITH: And maybe you could
11 explain why you don't think that's applicable, if
12 the Commission -- let me point you to
13 Section 49-13-14.

14 Would it be your position that the Order of
15 the Commission to the telecommunications company to
16 pay such person, would it be your argument then
17 that that's not an award of damages?

18 MS. POLLMAN ROGERS: I don't have --

19 MR. SMITH: Is that the argument?

20 MS. POLLMAN ROGERS: I'm sorry. I
21 don't have that particular statutory section in
22 front of me but -- you're referring to?

23 MR. SMITH: Section 14.

24 MS. POLLMAN ROGERS: I think my
25 understanding of that statutory section is that the

1 Commission must first make a determination of the
2 extent of damages, which would necessarily be a
3 factual determination. If and when or once that
4 determination is made, then the Commission can take
5 appropriate action with regard to any interest.

6 But I think that there must be that factual
7 determination. And in this case because of all the
8 ambiguities with regard to the dates and everything
9 under the Agreement, I don't believe that that can
10 be determined without further factual findings by
11 the Commission.

12 MR. SMITH: Well, as I understand
13 Mr. Wiczorek's -- what he's asking for a summary
14 judgment on -- I guess I'm not quite sure as to
15 motivation for it, but he's not requesting that the
16 Commission determine what the interest amount is.
17 He's merely requesting that the Commission make a
18 ruling that the prejudgment interest will be due
19 and payable under the statute or under the
20 contractual penalty provision -- I guess not
21 penalty provision but interest provision.

22 MS. POLLMAN ROGERS: Well, I believe
23 that the cases that we've cited in our Brief do
24 support the position that there does have to be a
25 date certain, and I don't think that that is at all

1 easy.

2 And the other question is at this stage I
3 don't believe this Commission is capable based on
4 the facts in front of it now to determine who is
5 going to owe whom money at the end of the day.

6 MR. SMITH: Well, and if the
7 Commission were to make such a ruling regarding
8 interest, it would be applicable, any damages
9 award, interest on any damages award running in
10 either direction, that ruling would apply to both
11 parties, if it were based on at least statutory
12 prejudgment?

13 MS. POLLMAN ROGERS: I would say it
14 would depend on how the Commission enters an order,
15 enters its order. But certainly if there is going
16 to be an order, it should go both ways because at
17 this point I don't believe we're capable of
18 determining who is going to owe who money at the
19 end of the day.

20 I guess that's another reason why I think that
21 there is no pressing need to grant summary judgment
22 on that issue.

23 MR. SMITH: With respect to
24 jurisdiction, you've pointed out some potential
25 statutory conflicts and so forth and so forth.

1 What issues of fact in this case are in
2 dispute which would affect the issue of whether the
3 Commission has jurisdiction or not? Issues of fact
4 that will affect that determination.

5 MS. POLLMAN ROGERS: The issues of
6 fact concerning damages and the issues of fact --

7 MR. SMITH: I'm not talking about
8 damages. I'm just talking about jurisdiction.

9 MS. POLLMAN ROGERS: But the factual
10 issues surrounding damages, if they extend beyond
11 what I construe to be the statutory authority for
12 this Commission to consider damages, for example,
13 double damages, that would be a factual dispute. I
14 don't believe that the Commission has jurisdiction
15 over that.

16 MR. SMITH: But the issue of whether
17 or not the Commission has jurisdiction or
18 ultimately has authority to issue that award has
19 nothing to do with the facts of this case, does it?
20 It's strictly a matter of interpretation of the
21 law.

22 MS. POLLMAN ROGERS: Interpretation
23 of the statutes and the case law, but necessarily
24 in interpreting or looking at the rights of parties
25 under a contract, I believe that there are often

1 factual issues that come to play on that. I think
2 it's hard to draw a line in the sand and say never
3 will these spill over, one into the other.

4 MR. SMITH: I guess as just a
5 general matter, what -- and, again, I realize the
6 contract does not talk about overpayment and does
7 not include a mechanism for refund of overpayment,
8 but just from the point of view of common rules of
9 equity, if you want to call it that, or business
10 fairness here, I mean, we're talking a significant
11 sum of money.

12 And what is it that makes the Golden West
13 Companies think they can hang on to a half a
14 million dollars of somebody else's money for years
15 and just keep it in their bank account?

16 MS. POLLMAN ROGERS: Mr. Smith,
17 under the facts and the circumstances in this case,
18 and I think this will be disclosed if we indeed
19 proceed to the merits, we were unable to get
20 Western Wireless to come to the table at all to
21 negotiate the inter MTA factor and the adjustment
22 of that. And I don't believe we would even be
23 there in any kind of negotiations today had we just
24 paid over the balance due. So that was one of the
25 reasons.

1 And the other is, as you say, there was
2 nothing in the contract that requires that. And in
3 our business oftentimes we do offsets and true-ups
4 and things like that. So it's not an uncommon
5 practice.

6 MR. SMITH: Okay. Thank you. I
7 have a couple of questions for Mr. Wiczorek too, I
8 think, here.

9 Your Motion does not request in any way,
10 shape, or form double damages, attorneys fees, or
11 anything like that, does it?

12 MR. WIECZOREK: No. The
13 jurisdiction and damages, at least as I've always
14 understood the law, are separate things.
15 Jurisdiction -- you have the jurisdiction, you hear
16 the case, damages, you know, do you have the legal
17 authority to award certain damages.

18 And so what I want is a clear determination
19 that the Commission has the jurisdiction to hear
20 the claims presented. I'm not asking them to make
21 a determination of damages. Because if you
22 determine you do not have jurisdiction, then I need
23 to get into Circuit Court and go pursuant to this
24 claim.

25 The difficulty in this has arisen out of the

1 fact that the reason the overpayments aren't
2 mentioned is they're not just talked about at all
3 in the contract. Very -- you know, since
4 Ms. Rogers has kind of gone into some of the past,
5 I guess I'll take the same liberty, and that is
6 when these claims were originally -- this
7 overpayment request was originally made there was
8 an assertion, and I believe it was before
9 Ms. Rogers came on, that our overpayments had
10 nothing to do with the Interconnection Agreement
11 because they were made separate and apart and not
12 part of the Interconnection Agreement, per se.

13 So my concern is that I'll get into a
14 situation and one of the reasons why I framed this
15 as a Complaint under 49-13 is that I would get into
16 a situation that they would be -- that Golden West
17 could assert, well, that's not part of the
18 Interconnection Agreement so you can't bring it as
19 a request for clarification under the
20 Interconnection Agreement.

21 And so I want to make sure that this
22 Commission's comfortable that it has jurisdiction
23 to make a determination to refund these
24 overpayments or to make a determination of how the
25 overpayments should be handled, even if they're

1 separate and apart from that Interconnection
2 Agreement.

3 As to the damages, I didn't get into those at
4 this point. To the extent I did get into damages,
5 given the fact they've admitted the amount owed,
6 I've asked that the amount they've admitted they
7 owe they should pay.

8 This inter MTA issue I do take exception with
9 how its been phrased. You know, Western Wireless
10 has made offers on this last fall as to how to
11 calculate MTA, and there's been offers going back
12 and forth and negotiations. It's not an easy thing
13 to calculate. But there's been counteroffers going
14 back and forth since last fall.

15 So this isn't something where we've just
16 turned a blind eye to those requests. It's
17 something that there's been a lot of work on both
18 sides to try to come up with a way to calculate.
19 And to the extent that now they're sitting here
20 saying we don't have to give you this money until
21 you come up with an Agreement we find acceptable
22 under inter MTA, they're holding our money hostage.

23 And that's what the issues -- one, the
24 jurisdiction issue and, issue 2, the damages to
25 say, look, to the extent they agree they owe us

1 money -- to the extent of the money they agree they
2 owe us, they should pay us, and they shouldn't be
3 able to use it as leverage on their inter MTA
4 argument.

5 I hope that answers your question.

6 MR. SMITH: With respect to the
7 interest determination, just to clarify, is it --
8 is your Motion directed solely at statutory
9 prejudgment interest under 21-1-13.1?

10 MR. WIECZOREK: It is, and here's
11 why. It goes back to that analysis where -- and --
12 if the overpayments are not subject to the
13 Interconnection Agreement, I want a determination
14 that I'm entitled to prejudgment interest, for a
15 couple of reasons. I don't want to get caught in
16 this argument where, oh, the overpayments aren't
17 address in the Interconnection Agreements so
18 they're not part of the Interconnection Agreements
19 so they're not entitled to interest, which I don't
20 think is appropriate.

21 I believe in their Answer they've basically
22 raised the position that you can't give me
23 interest. And I want that issue determined, and I
24 think that's an important issue to determine
25 because it's going to make -- you know, in all

1 frankness, it will make a determination on how we
 2 want to proceed going forward potentially with
 3 other claims.
 4 MR. SMITH: Okay. I think that's
 5 about -- and, basically, do you agree,
 6 Mr. Wieczorek, that the Commission cannot right now
 7 determine a specific dollar amount that would be
 8 due and owing to Western Wireless?
 9 MR. WIECZOREK: I agree that the
 10 Commission cannot make a determination of the
 11 amount we claim we're due and owing.
 12 I also believe, though, that this Commission
 13 could order -- to the extent Golden West has
 14 acknowledged the amount due and owing plus any
 15 credits they might have given, they should pay us
 16 that amount immediately. They could enter an
 17 Order as to that.
 18 MR. SMITH: Would you be asking then
 19 for just a -- what would it be, like a qualitative
 20 verbal --
 21 MR. WIECZOREK: The Order could read
 22 to the extent that Golden West and its affiliated
 23 companies pursuant to Exhibit C of the Complaint
 24 have agreed to amounts owed, they should pay that
 25 less any credits they've given since that letter

1 was written against those amounts, period. That's
 2 an easy quantitative amount.
 3 As I said, we keep getting credits every month
 4 so that's a moving target, but that's money of ours
 5 that they've acknowledged that they've got and
 6 they've taken the position we can just credit it
 7 against the amount owed as you go forward. And
 8 they don't have any authority to do that.
 9 You know, this argument that, you know, the
 10 Agreement is silent, well, there are set-offs done
 11 in this industry, but it's amounts that people
 12 know. It's I owe you \$5 this month and you owe me
 13 10. They give me 5. Fine. Those are discernible
 14 amounts.
 15 Here they don't have -- all they have is an
 16 argument they might be entitled to set-off so
 17 they're saying they get to keep a half a million
 18 bucks. That's inappropriate. The money should be
 19 paid. And on the flip side, if it comes back in
 20 the end inter MTA they say, well, you owe inter MTA
 21 this amount and it goes back two months and under
 22 the Agreement we'd owe interest under that. So I
 23 think that's the appropriate way to proceed.
 24 MR. SMITH: I just have one last
 25 question then, Mr. Wieczorek. Are you suggesting

1 then the Order we would issue -- if the Commission
 2 were to issue an Order relative to the "undisputed
 3 damages amount," would it be your view then that
 4 that would be a -- at least a partial final Order
 5 in the case that would trigger appeals and we would
 6 go down that track with respect to that particular
 7 component of the case?
 8 MR. WIECZOREK: Generally
 9 procedurally partial summary judgment does not
 10 trigger an appeal unless -- and the appropriate, I
 11 believe, Circuit Court Rule is Rule 54, the
 12 determination is made that it's final and
 13 conclusatory of all of that specific issue.
 14 And that's the discretion of the --
 15 generally -- and I'm not familiar with -- I'm not
 16 familiar with a similar Administrative Rule, but
 17 generally unless you say this is a final
 18 determination on this issue and make that specific
 19 finding in your Order, it's not -- it doesn't begin
 20 the running of the time of the appeal.
 21 MR. SMITH: And we wouldn't be able
 22 to do that here because Western Wireless, is it
 23 not, would be reserving a right to have additional
 24 damages related to that precise claim awarded
 25 following a factual determination?

1 MR. WIECZOREK: That would be true.
 2 MR. SMITH: Thank you.
 3 CHAIRMAN HANSON: Mr. Wieczorek,
 4 just out of curiosity -- this is Gary Hanson -- are
 5 you aware if there is a balance shown on a monthly
 6 basis or whatever when the credit is given, or is
 7 there just a line that states that a credit is
 8 given?
 9 MR. WIECZOREK: I believe they just
 10 show that it's credited and are not providing a
 11 what's left on the amount. I'd have to
 12 double-check that. Off the top of my head I can't
 13 tell you, Commissioner. I'm sorry.
 14 CHAIRMAN HANSON: All right. Thank
 15 you.
 16 Are there any further questions by the
 17 Commissioners?
 18 COMMISSIONER JOHNSON: No.
 19 VICE CHAIRMAN SAHR: Chairman
 20 Hanson, I have, I guess, a comment and question for
 21 perhaps Mr. Smith.
 22 John, you know, I think a lot of times we can
 23 kind of go round and round with some of these
 24 issues and we're oftentimes just better off moving
 25 to hearing and being able to resolve it all as one

1 piece and parcel.
 2 Do you have any feel for how quickly we could
 3 set this matter for hearing and try to have a --
 4 try to take care of all of these things at once?
 5 Just kind of curious to see what your thoughts are
 6 on that.

7 MR. SMITH: Well, one, I think it's
 8 totally appropriate for the Commission to determine
 9 its own jurisdiction because I don't think there
 10 are any facts in dispute that will affect our
 11 jurisdiction. I think that's a legal issue.

12 And, frankly, if we determine we don't have
 13 jurisdiction, I agree with Western Wireless that we
 14 ought to boot the case so they can move on to an
 15 appropriate forum.

16 With respect to scheduling, which I think,
 17 Commissioner Sahr, is where you're going with this,
 18 I think I'm going to have to defer to the
 19 administrative staff probably because I don't have
 20 the foggiest idea. I don't know where the parties
 21 are at with discovery either. And maybe, Bob,
 22 would you want to request of the attorneys where
 23 they are with discovery and what the discovery
 24 process might look like?

25 VICE CHAIRMAN SAHR: Well, and maybe

1 as much a comment as anything. You know, we've got
 2 a number of issues here that we're discussing, and
 3 I think both parties raise some very good issues
 4 through their pleadings. You know, at the same
 5 time, I think if we move this thing fairly quickly
 6 to hearing, we can get a lot of this resolved at
 7 that level.

8 So, you know, I would encourage the parties
 9 and staff to look to see if we can't go forward and
 10 move towards getting this thing set to try to get
 11 some of these things resolved, you know, sooner
 12 rather than later. And we can have a lot of
 13 motions hearings, but sometimes you're just better
 14 off getting into the actual hearing and getting it
 15 resolved once and for all and that's as opposed to
 16 parcelling things.

17 CHAIRMAN HANSON: Thank you,
 18 Commissioner. I have a Motion in regards that I
 19 think is followed from the standpoint of the
 20 information here, and I'll at least float it.
 21 Because of the ambiguities on the amount and the
 22 questions on the amount and the fact that interest
 23 needs to be determined by those amounts, I have
 24 concern that we can't make a decision on those at
 25 this time, but it certainly appears that at least

1 from the discussion that we should be able to have
 2 jurisdiction over this matter.

3 I will move that we grant WWC's Motion for
 4 Partial Summary Judgment with respect to the issue
 5 of jurisdiction and determine that the Commission
 6 does have jurisdiction to hear the case.

7 None of the disputed issues of fact in this
 8 case affect whether the Commission has jurisdiction
 9 or not, and certainly under SDCL Chapter 49-13 it
 10 seems at least on the face that the Commission does
 11 have the authority to hear the Complaint.

12 I also move that with respect to the issues of
 13 summary disposition for a determination that
 14 prejudgment interest must be awarded and of the
 15 overpayments made by WWC, that we take this matter
 16 under advisement to consider the information
 17 presented today and the arguments by the counsel so
 18 that we would not give summary judgment on those
 19 two matters.

20 VICE CHAIRMAN SAHR: Mr. Chairman,
 21 this is Commissioner Sahr. I would -- I just --
 22 are you done with your Motion?

23 CHAIRMAN HANSON: That's correct.

24 VICE CHAIRMAN SAHR: I would second
 25 that Motion and also add a caveat. If there are

1 some payments due that are not disputed that are
 2 not likely to be subject to offset of a like
 3 amount, you know, I would encourage the parties to
 4 try to resolve that and, you know, not be holding
 5 anybody's money except to the extent I think is a
 6 legitimate question of offset.

7 And, again, I hope we can move this matter to
 8 hearing quickly and can get this resolved sooner
 9 rather than later.

10 With that, I would second the Motion.

11 COMMISSIONER JOHNSON: I think the
 12 Commission's jurisdiction is clear and unambiguous
 13 and would consent.

14 CHAIRMAN HANSON: Motion carries.
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1 STATE OF SOUTH DAKOTA)
 2 :SS CERTIFICATE
 3 COUNTY OF HUGHES)
 4

5 I, CHERI MCCOMSEY WITTLER, a Registered
 6 Professional Reporter and Notary Public in and for the
 7 State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
 9 shorthand reporter, I took in shorthand the proceedings
 10 had in the above-entitled matter on the 24th day of
 11 May 2005, and that the attached is a true and
 12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 6th day
 14 of June 2005.

15
 16
 17 

18 Cheri McComsey Wittler
 19 Notary Public and
 20 Registered Professional Reporter

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 23
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