

---

---

**STAFF MEMORANDUM**

---

---

**TO:** COMMISSIONERS AND ADVISORS  
**FROM:** BRITTANY MEHLHAFF AND KAREN CREMER  
**RE:** EL14-026: Third Amendment to Electric Power Service Agreement between Black Hills Power, Inc. and South Dakota Science and Technology Authority  
**DATE:** September 10, 2014

---

Commission Staff (Staff) submits this Memorandum in regard to the contract with deviations filed by Black Hills Power, Inc. (BHP or Company) in Docket EL14-026.

**BACKGROUND**

On March 31, 2014, the Commission received an application by Black Hills Power, Inc. for approval to increase rates for electric service to customers in its South Dakota service territory by approximately \$14.6 million annually or approximately 9.27%.

On September 4, 2014, BHP filed a Motion for Approval of Settlement Agreement Between Black Hills Power, Inc. and South Dakota Science and Technology Authority and Settlement Agreement Between Black Hills Power, Inc. and South Dakota Science and Technology Authority.

**STAFF'S REVIEW OF THE CONTRACT WITH DEVIATIONS**

Staff reviewed the contract with deviations and submitted data requests to the Company to address whether the rates established in this contract with deviations are just and reasonable and in the public interest. Staff believes in order for a customer to be on a contract with deviations the Company must fully demonstrate the unique circumstances that warrant a customer deviating from the tariff rates. Further, the rates should not be discriminatory or adversely affect other customers. Staff's data requests aimed to address these concerns. Responses to these questions have not yet been received.

At this time, there is not enough data to determine whether these rates are just and reasonable and whether these rates are based on the customers' true cost of service. Until Staff has completed its analysis of this rate case, including the revenue requirement and class cost of service study, any data currently available is subject to change.

Therefore, Staff recommends the Commission conditionally approve the contract with deviations on an interim basis until such time as the Commission has additional information available upon which to base its decision.

BHP's Motion for Approval of Settlement Agreement with SDSTA states: "if this Motion is not subsequently approved by the Commission, the rates to be paid by SDSTA on and after October 1, 2014, shall be those rates in effect on September 30, 2014, with the difference between the applicable rates and the implemented rates subject to true-up and refund or repayment as the case may be." This means that if the Commission were to conditionally approve the contract with deviations on an interim basis, the Company is requesting that the rates paid by SDSTA between October 1, 2014, and the effective date of final rates would be the rates paid under the previous contract with deviations and therefore SDSTA would only be subject to the final rates as of the Commission decision date rather than October 1, 2014. As all other customers will be subject to interim rates on October 1, 2014, subject to refund, Staff feels the contract with deviations should be treated the same. In other words, any rate approved by the Commission that differs from the interim contract with deviations rates should be paid back to October 1, 2014. Staff also believes the refund or repayment should be with interest.

## **RECOMMENDATIONS**

In summary, Staff's recommendations are as follows:

1. Take no action on the contract with deviations until such time as Staff has further information regarding the contract with deviations; and
2. Conditionally authorize on an interim basis the implementation of the rates set forth in the contract with deviations commencing on October 1, 2014, subject to the conditions that:
  - a. this conditional approval does not pre-determine a Commission decision in the current or future rate case proceedings regarding rate treatment concerning possible cost recovery shortfalls resulting from rates approved as contracts with deviations; and
  - b. if the contract with deviations is not subsequently approved by the Commission, the rates to be paid by SDSTA shall be the rates in effect on October 1, 2014, with the difference between the applicable rates and the implemented rates subject to true up and refund or repayment, with interest; and
  - c. if the contract with deviations is subsequently approved by the Commission with some modification of the implemented rates to be paid by SDSTA, that the rates to be paid by SDSTA on and after October 1, 2014, shall be such rates as approved by the Commission, with the difference between the implemented rates and the final rates (as approved by the Commission) subject to true up and refund or repayment, with interest.