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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION EL14-026
OF BLACK HILLS POWER, INC. FOR
AUTHORITY TO INCREASE ITS ELECTRIC
RATES

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Transcript of Proceedings
March 2, 2015

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BEFORE THE PUBLIC UTILITIES COMMISSION,
CHRIS NELSON, CHAIRMAN
KRISTIE FIEGEN, VICE CHAIRMAN
GARY HANSON, COMMISSIONER

COMMISSION STAFF
Rolayne Ailts Wiest
John Smith
Karen Cremer
Kristen Edwards
Greg Rislov
Patrick Steffensen
Eric Paulson
Joseph Rezac
Brian Rounds
Darren Kearney
Katlyn Gustafson

APPEARANCES
Andrew Moratzka and Mark Moreno
Amy Koenig, Black Hills Power
Lee Magnuson, Black Hills Power (by telephone)

Reported By Cheri McComsey Wittler, RPR, CRR

1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State Capitol
3 Building, Room 413, 500 East Capitol Avenue, Pierre,
4 South Dakota, on the 2nd day of March, 2015, commencing
5 at 2:02 p.m.

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1 CHAIRMAN NELSON: EL14-026, In the Matter of the
2 Application of Black Hills Power, Inc. for Authority to
3 Increase its Electric Rates.

4 The questions that are posed, today shall the
5 Commission grant the Joint Motion for Approval of the
6 Amended Settlement Stipulation, approve the terms and
7 conditions stipulated therein? And shall the Commission
8 approve the interim rate refund plan? Or how shall the
9 Commission proceed?

10 Commissioner Hanson, for your --

11 COMMISSIONER HANSON: Benefit --

12 CHAIRMAN NELSON: Benefit. Yeah.

13 Counsel Smith was pointing something out to me
14 so just give me a second.

15 Yeah. The other question that we will deal with
16 before we're done today, if we get that far today, and
17 we're not sure exactly what direction we're going to go,
18 but the other question that needs to be resolved is
19 whether the Commission shall approve the Contract with
20 Deviations with the South Dakota Authority, Science and
21 Technology Authority.

22 But whether we get to that point today or not,
23 we'll see.

24 So, Commissioner Hanson, for your benefit, we do
25 have representatives from Black Hills Power here. We

1 have Mr. Moratzka here in the meeting room. Lee Magnuson
2 is on the phone line. And so that's kind of where folks
3 are physically located so far as the proceeding.

4 At this point the parties have filed their
5 briefs. I want to say on behalf of myself to all of the
6 parties, thank you, first of all, for accommodating the
7 tight time line that we have, if there's any hope of
8 resolving this in a timely manner. And I guess we'll
9 find out today whether or not that happens or not.

10 But thank you for getting those briefs timely
11 filed to both and all parties. They were very, very
12 helpful to us, and I appreciate that.

13 And so I think at this point I am going to turn
14 to Commissioner questions, if there are questions arising
15 out of those briefs or anything else.

16 Commissioner Fiegen, I'll turn to you first.

17 COMMISSIONER FIEGEN: First of all, I'd like to
18 reiterate what Chairman Nelson just said. I appreciate
19 the post briefs, how timely they were and how thorough
20 they were.

21 Black Hills Industrial Interveners made a
22 couple good points, or interesting points maybe, that I
23 want the company to address. So I don't know if I'm
24 asking Mr. White.

25 First one is going to be on pension expense

1 normalization.

2 The Black Hills Industrial Interveners made a
3 point in their post brief, didn't bring it up a lot in
4 the hearing in January, but they were going to
5 Jon Thurber's rebuttal testimony that was before the
6 hearing.

7 And they talked -- Jon Thurber talked about the
8 2015 pension expense being -- knowing that actual
9 expense. And what I'd like to know is when did you know
10 that?

11 Because we certainly could have went with the
12 Black Hills Industrial Interveners' idea, but I don't
13 know exactly when you knew information.

14 MR. WHITE: Yeah. Pension expense is calculated
15 on a calendar year basis. So it was just early
16 January --

17 CHAIRMAN NELSON: If would you just identify
18 yourself, please.

19 MR. WHITE: I'm sorry. Kyle White representing
20 Black Hills Power.

21 And so the 2015 actual pension expense -- or the
22 pension expense under discussion wasn't known until, you
23 know, early January, and the Settlement was filed --
24 basically negotiated October, November and filed in
25 December. So it was well after the initial Settlement.

1 COMMISSIONER FIEGEN: Okay. I just wanted to
2 make sure of that. Because they certainly brought up a
3 good point. But if it wasn't known in your meeting in
4 October 28, and certainly they were part of that meeting,
5 I can see why you kept it out.

6 But I would expect, like Mr. Thurber said, you
7 should be able to kind of normalization pension expenses
8 in the future, maybe decades to come, because of the
9 defined contribution.

10 Do you see your pension expense being less in
11 the future because of the defined contribution or just
12 the volatility will be flatter?

13 THE WITNESS: Well, the pool of candidates
14 eligible for the pension will be more stable going
15 forward since the company froze its pension plan and is
16 now offering a defined contribution plan for all new
17 employees.

18 What's going to continue to be volatile is the
19 earnings on the pension plan because it's a large pool of
20 sums that are invested in the market, and it's based upon
21 those expected earnings. And, as you know, they vary
22 from year to year and particularly have the last years.
23 Which is why the Staff suggested that we normalize that
24 on a five-year basis.

25 The company in the Settlement has agreed to

1 normalize that again if there's a rate case within the
2 next five years.

3 COMMISSIONER FIEGEN: And one last question,
4 just for my information.

5 When did you change the new employees or the new
6 hires to a defined contribution? So you have a very
7 large pool, I assume, in the defined benefit because you
8 have a very stable staff.

9 MR. WHITE: Yes. The company has approximately
10 2,000 employees. And it was probably four or five years
11 ago when we froze our defined benefit pension plan.
12 Essentially, at that point you had to be 45 years of age
13 and 10 years of service or you were not eligible to
14 continue under the program and were automatically
15 switched to the defined contribution plan.

16 The utility actually was fairly early in the
17 industry in making that switch. But as we looked at
18 future liabilities, it was something that we needed to
19 get better predictability under.

20 COMMISSIONER FIEGEN: I certainly appreciate
21 that. Because I've been kind of a stickler of the
22 defined benefit versus the defined contribution. And
23 what you have done has certainly protected ratepayers in
24 the future.

25 Instead of putting the risk in their hands, you

1 have really put it in the employees' hands to manage
2 their own 401(k) so I certainly appreciate that.

3 The second question that the Black Hills
4 Industrial Interveners brought up was incentive
5 compensation.

6 And this question actually is going to go to --
7 is Dave Peters on the line?

8 Okay. Good.

9 This question is really going to go to
10 Dave Peters -- Peterson. Thank you.

11 And stay here, Mr. White, in case I'll ask you a
12 question too.

13 They brought up the disallowance of the
14 666 million [sic] dollars out of the 3.7 million dollars
15 incentive pay. My question for Dave Peterson, the Staff
16 witness, is do you feel adequately prepared in your data
17 requests -- and just realize that I think you had over
18 500 data requests and the Commission does not get to see
19 all of those so I'm sure you asked a lot of questions
20 that we didn't all see.

21 Do you feel confident that there was the --
22 \$666,000 is the only financial incentive in -- or in the
23 performance paid portion of it? Or did you go through
24 that? Or did you just take the number from Black Hills
25 Power?

1 MR. PETERSON: Hello.

2 CHAIRMAN NELSON: Dave Peterson, are you on the
3 line?

4 MR. PETERSON: Do you hear me?

5 CHAIRMAN NELSON: Yes. We hear you now.

6 MR. PETERSON: Yes. Okay. I'm confident that
7 the \$666,000 represents the financial portion of
8 incentive pay.

9 COMMISSIONER FIEGEN: Thank you, Mr. Peterson.
10 So I'm assuming you have information that we weren't all
11 privy to.

12 MR. PETERSON: Yeah. We had a copy of the
13 complete performance plan and the goals and criteria for
14 reaching those goals, yes.

15 COMMISSIONER FIEGEN: Thank you.

16 This is a question that I'm going to try to stay
17 out of confidentiality, Mr. White.

18 In the Black Hills Industrial Interveners'
19 Brief, post brief to us, they copied part of your
20 performance compensation plan in that brief. And on
21 page 37 in Article 12 it gave a list of performance
22 incentives that you look at. And the list, I think, was
23 A through T.

24 Is that only for stock, or is that for stock and
25 cash?

1 MR. WHITE: I believe that under that plan it
2 specifically addresses stock compensation.

3 COMMISSIONER FIEGEN: Okay. So when I look at
4 that list, they mostly look like financial incentives.
5 So were those the ones that were mostly pulled out?

6 CHAIRMAN NELSON: And I would just say to the
7 company if at any point you think we're getting into
8 confidential, flag us. I'll let you be the judge of
9 that.

10 COMMISSIONER FIEGEN: It looks like when I look
11 at the list A through T, except customer satisfaction, I
12 think there was one -- most of them look very financial
13 based or -- so is that --

14 Are those the incentives pretty much that were
15 pulled out, that \$666,000? Based on those type of
16 incentives?

17 MR. WHITE: Yes. It's based upon financial
18 incentives. Some of these have not historically been
19 considered the financial threshold. Specifically, what's
20 been looked at in the past has been earnings per share.

21 And so as we went through and categorized these
22 we essentially disallowed those that were primarily
23 shareholder driven in their results.

24 COMMISSIONER FIEGEN: Okay. Now I have to think
25 about this. If they were shareholder driven, you pulled

1 those --

2 MR. WHITE: So, in other words --

3 COMMISSIONER FIEGEN: So ratepayers aren't
4 paying that?

5 MR. WHITE: Right. So the argument historically
6 has been there are certain types of compensation that's
7 been objectionable in this state. As I testified to in
8 January, we have 100 percent recovery of our incentive
9 compensation programs in four different jurisdictions
10 last year.

11 In this state there's been a resistance to
12 financial incentive compensation, basically on public
13 policy grounds. They are actual expenses of the
14 corporation. They're expenses that we've testified to
15 that we believe are required to attract, motivate, and
16 retain qualified employees.

17 There's been no demonstration of imprudence in
18 our actions. In fact, they're consistent with industry
19 practice. But in negotiating with Staff, they've had a
20 resistance to recovery of these types of costs, and so,
21 therefore, we negotiated a disallowance of \$666,000 of
22 these types of expenses.

23 COMMISSIONER FIEGEN: Okay. Thank you.

24 So any type of shareholder incentive is paid by
25 the shareholders? Their stock price, all of that type

1 of --

2 MR. WHITE: The ones that are principally
3 oriented for shareholders, yes.

4 COMMISSIONER FIEGEN: Thank you.

5 Those are the two questions I have right now,
6 Mr. Chairman.

7 CHAIRMAN NELSON: Commissioner Hanson, any
8 questions?

9 COMMISSIONER HANSON: No. Thank you.

10 CHAIRMAN NELSON: And also for your benefit,
11 Gary, Mr. Moreno has joined us in the meeting room.

12 I have a question, and it's going to be for
13 Mr. Moratzka, if you would join us.

14 Again, I want to thank you for the posthearing
15 brief. You challenged me in a lot of different areas,
16 and I appreciate that. It occupied my week last week
17 picking through that.

18 I'd like to focus on one sentence that in my
19 mind really maybe hinges all of this for me from your
20 brief on page 8.

21 Do you have the brief in front of you?

22 MR. MORATZKA: Yes, I do, Mr. Chair.

23 CHAIRMAN NELSON: The bottom of the full
24 paragraph, the second sentence. And the second sentence
25 in the brief says this: "The Commission is, however,

1 required to analyze the completeness and accuracy of a
2 utility's filed cost of service pursuant to ARSD
3 20:10:13:44."

4 Where does it say that the Commission is
5 required to do what you have laid out in this sentence?

6 You've made a bold statement, but I'm failing to
7 find where that's directed, and that's what I need to
8 see, please.

9 MR. MORATZKA: Mr. Chair, Commissioners,
10 Andrew Moratzka here on behalf of the Large Industrial
11 Interveners.

12 It seems to me that what we know is required
13 under the rules is that the utility files a Cost of
14 Service Analysis. If the Commission is not required to
15 analyze that Cost of Service Analysis, then the
16 rhetorical return question could be why would they have
17 filed it.

18 You know, the utility bears the burden of proof
19 here. One of the many requirements that underlie that
20 burden of proof are putting forth the various financial
21 schedules that not only hit on cost but hit on revenues.

22 And so what our point here on page 8 lays out is
23 that to meet that burden of proof the utility has to file
24 these schedules. And then the Commission has to look at
25 them.

1 I mean, the Commission is here to protect not
2 just our members, Industrial ratepayers, but all
3 ratepayers, and in order to do that, in order to assess
4 the accuracy of what is filed and test it, as the way
5 that Commission Staff has done, as a way the Black Hills
6 Industrial Interveners has done, the way Dakota Rural
7 Action have done, we all have to -- it is our obligation
8 to look at what they filed.

9 CHAIRMAN NELSON: And so you acknowledge that
10 the particular rule in question, 20:10:13:44, is a rule
11 that directs the Applicant what they must file; is that
12 correct?

13 MR. MORATZKA: Mr. Chairman, that is correct.

14 CHAIRMAN NELSON: But you would also admit that
15 nowhere in that rule does it require the Commission to
16 only consider or be bound by the wording of that rule; is
17 that correct?

18 MR. MORATZKA: Mr. Chair, I'll try to answer the
19 question, and if I misinterpret it, please let me know.

20 As a Commission sits in reviewing the analysis
21 that is filed, it has to look at the -- at the entire
22 record; correct?

23 That said -- and this, I think, is consistent
24 with Black Hills Power's proposed rate mitigation -- that
25 doesn't mean necessarily that when assigning the revenue

1 requirement among the customer classes that the
2 Commission is bound to adhere to only what is in the
3 record.

4 So I'm not sure if I answered your question.

5 CHAIRMAN NELSON: Partially.

6 Your posthearing brief makes a very big deal,
7 and, frankly, does a good job of making a big deal out of
8 the precise language of this rule in question. And,
9 frankly, I don't disagree with a lot of your analysis,
10 but I don't find anywhere in that rule that confines the
11 Commission, the three folks that are going to make a
12 decision here today, to the directives in that that are
13 directed to what the company needs to file.

14 And so what I'm simply asking, is there anywhere
15 in that rule that requires the Commission, the three
16 Commissioners, to adhere to what is a company requirement
17 for what they ought to file?

18 MR. MORATZKA: Mr. Chair, Commissioners, I think
19 perhaps we're looking at the rule slightly differently.

20 The rule lays out kind of a -- as I would see
21 it, a ceiling for what the -- for what the Commission
22 could approve.

23 CHAIRMAN NELSON: Where does it say that? Where
24 does the rule talk about the Commission at all, first of
25 all, or that it is a ceiling?

1 MR. MORATZKA: Well, I'm reasonably certain,
2 Mr. Chair, that the utility is not entitled to get a rate
3 increase larger than it initially asked for. That's the
4 jurisdiction in almost -- that's the rule in almost every
5 jurisdiction I've ever appeared. If the utility comes in
6 and asks for 8 million, it can't then walk away with 10.

7 So if the utility comes in and lays out its
8 historic test year, which are based on actual costs, and
9 then suggests that at the time of filing that there are
10 additional proposed adjustments and that combination
11 comes up with a number, then that is the starting point
12 for the Commission in determining just and reasonable
13 rates.

14 It may disallow certain line items as being not
15 just and reasonable, but that's our starting point.

16 CHAIRMAN NELSON: I have no further questions.
17 I'm going to turn to fellow Commissioners.
18 Anything further?

19 Mr. Rislov?

20 MR. RISLOV: To follow up on that question,
21 would subsequent adjustments necessarily have to increase
22 the company's request?

23 MR. MORATZKA: Mr. Chair, Mr. Rislov, no.

24 MR. RISLOV: Thank you.

25 CHAIRMAN NELSON: Other Commissioners questions?

1 Hearing none, thank you.

2 MR. MORATZKA: Thank you.

3 CHAIRMAN NELSON: Are there any motions at this
4 point?

5 Commissioner Fiegen.

6 COMMISSIONER FIEGEN: Mr. Chairman, in EL14-026
7 move that the Commission grant the Joint Motion for
8 Approval of the Amended Settlement Stipulation and
9 approve the terms and conditions stipulated therein.
10 And -- yep.

11 That's it for now; correct?

12 CHAIRMAN NELSON: You can go ahead and do that
13 one also.

14 COMMISSIONER FIEGEN: And move that the
15 Commission approve the interim rate refund plan.

16 And do we also want to do the contract for --

17 CHAIRMAN NELSON: If you're -- yeah. With that
18 Motion that would fit.

19 COMMISSIONER FIEGEN: And move the approval of
20 the previous contract approved by the Commission on an
21 interim basis for South Dakota Science and Technology.

22 CHAIRMAN NELSON: Discussion on the Motion.
23 Commissioner Fiegen.

24 COMMISSIONER FIEGEN: First of all, I really
25 want to thank Staff for their hard work. When you come

1 in with a rate case and the first time we saw it at 14.6
2 it always raises eyebrows for the Commission.

3 And they worked extremely hard this past year to
4 bring that down to 6.8 million dollars, which, you know,
5 is less than 50 percent. And they worked really hard to
6 look at what should be disallowed and how to protect
7 ratepayers. And I certainly appreciate that.

8 This is more of a 4.35 increase versus a
9 9 percent.

10 I appreciate what the Staff have done to
11 continue to be conservative on rate of return and return
12 on investment. And they continue to be clear on that.

13 I do appreciate Mr. White's testimony in the
14 public hearing when I think he came back with some
15 rebuttal testimony to give us kind of a history lesson on
16 what's happened.

17 We kind of call your rate increases, which
18 Mr. Rislov calls it's lumpy. Your rate increases have
19 been lumpy because of your expansion and your capital
20 expansion, of course, now because of Storm Atlas and the
21 EPA.

22 So you think you have had five rate increases
23 in the last -- since '95, one coming in because of
24 Neil Simpson. Then it comes in in 2006 I think you had
25 an 11-year cost of adjustment. And then Wygen comes in

1 in 2009. In 2012, Cheyenne. And that came in pretty
2 much because of your phase in that you needed to bring
3 in.

4 And then, of course, this has all sorts of
5 things like Storm Atlas, decommissioning from the EPA
6 regulations of the three coal-fired power plants in the
7 Cheyenne.

8 And you said you hadn't seen a rate case since
9 you started in '82 so that's a long time not to have a
10 rate case, and now it's a little lumpy. But we certainly
11 expect you to stay out for a while because we believe
12 that your capital expansion is decreasing, unless the EPA
13 rules -- I never want to say that for sure because of the
14 EPA rules and what happens this July or August from
15 Ms. McCarthy. Who knows what Gina will do next.

16 But I appreciate a couple of things, the pension
17 change that you've done. I've already talked about that.
18 But I certainly appreciate that you are now protecting
19 ratepayers with your defined contribution, and that
20 really supports everybody.

21 I appreciate what Staff did on incentive pay.
22 They took out performance. And I know the company
23 doesn't like that, but they took out the financial
24 portion of that, and I appreciate that the Staff stood up
25 against what Wyoming does and what Colorado does.

1 Because we don't necessarily believe that that should be
2 funded by ratepayers, and it should be by shareholders.
3 So I certainly appreciate that.

4 There was a lot of questions about historical
5 test year. And when I kept on reading that throughout
6 the last week -- and certainly Black Hills Industrial
7 Interveners brought all sorts of things for us to look
8 at, and I certainly appreciate their hard work.

9 I certainly would have wished that they could
10 have been part of the Settlement in October. But I
11 enjoyed the hearing and enjoyed all of the information.
12 Not that I have went along with a lot of their ideas
13 because I, frankly, haven't.

14 But the fact is the state statute in 49-34A-19,
15 "The Commission may take into consideration the
16 reasonable income and expenses that will be forthcoming
17 in a period of 24 months in advance of the test year." I
18 take that very sacred.

19 I believe the Legislature gave that authority to
20 the Commission to look at expenses that come after the
21 test year that are reasonably known and reasonably
22 measurable.

23 And so I don't believe the State Legislature's
24 intent was to have rate cases every year and that they
25 knew that we wanted to try to get that as accurate as

1 possible. Because it takes, as you know, a whole year to
2 analyze a rate case. So I believe the State Legislature
3 wanted us to get that as accurate as possible to minimize
4 the cost of additional rate expenses in the future.

5 So with that, I certainly appreciate the
6 Interveners. Dakota Rural Action was at the table. They
7 were at the meeting October 28. Everybody was at the
8 table October 28.

9 Sometimes it doesn't look like everybody's at
10 the table, but they were. And I certainly appreciate
11 that, and I appreciate the post briefs that the
12 Industrial class gave us.

13 But today I certainly support what the Staff
14 have done and how hard they have worked throughout the
15 last year on this.

16 Thank you.

17 CHAIRMAN NELSON: Commissioner Hanson, any
18 comments?

19 COMMISSIONER HANSON: No. Thank you.

20 CHAIRMAN NELSON: Thank you. Just a few.

21 Rate cases are never easy for the Commission or
22 for anybody involved. There are a couple of
23 circumstances in this one that Commissioner Fiegen has
24 already mentioned.

25 The fact that we are on number five for rate

1 cases in a relatively short amount of time. That is,
2 obviously, troublesome to your customers and to the
3 Commission.

4 The fact that -- and this hasn't been talked
5 about in this case, but the fact that Black Hills Power
6 rates appear to be the highest of any of the IOUs in
7 South Dakota that's troubling, obviously, to your
8 customers and to the Commission.

9 But I think it's important for the public to
10 understand that neither of those two things can we
11 specifically take into account in coming to a final
12 conclusion in this case. They are issues that affect
13 consumers' pocket books but are not drivers in what we
14 have to take into account in making our decision.

15 As Commissioner Fiegen has laid out, what this
16 Settlement Stipulation does is arrive at 4.4 percent
17 revenue increase, which is less than half of what the
18 company had requested and I think in my mind most
19 significantly does what the company needs to resolve two
20 really big issues that they've been grappling with.

21 And that is, one, the closure of three
22 coal-fired power plants caused by EPA regulations. It
23 wasn't at the company's choice, but the EPA through their
24 regulatory processes forced the closure of those plants.
25 Which in turn has forced the company to build new

1 generation because they want to keep the lights on. They
2 want to keep electricity flowing. And this increase
3 resolves that issue.

4 Secondly, with Storm Atlas. A huge and
5 devastating storm, not just for the electric utility but
6 for a whole lot of my rancher friends and for other folks
7 throughout that West River region. Millions of dollars
8 worth of loss, and this increase resolves that very, very
9 large issue.

10 And since Mr. Thurber's guaranteed us it's a
11 one-in-a-100, I'll take that. And I think that's written
12 into the Settlement someplace. Someplace.

13 Let me just address the issue that I was
14 questioning the Industrial Interveners on a moment ago.

15 I did spend most of last week wrestling with
16 their brief and the various portions of it and, in
17 particular, that rule. But at the end of the day when
18 you read the rule, the rule is simply that, a directive
19 to the company -- to an Applicant what you must file.

20 Nowhere in that rule does it tell the Commission
21 what they must do with that information or bind the
22 Commission in any way or restrict the Commission in any
23 way.

24 On the flip side, there are statutes that give
25 the Commission authority. Commissioner Fiegen has read

1 one of those statutes, 49-34 A-19.

2 If you go to 49-34A-24, it says "The Commission
3 shall determine the level of rates to be charged or
4 applied by the utility for the services in question and
5 shall fix the same by order." Very broad authority.

6 And that authority has been upheld by our
7 Supreme Court. When they said the Public Utilities
8 Commission is not restricted to any single formula in
9 arriving at rates for public utilities, so long as the
10 method followed and order entered when applied to the
11 facts and viewed as a whole does not produce an unjust or
12 arbitrary result.

13 And, ladies and gentlemen, in my arriving at my
14 support for the Settlement Agreement I believe we have
15 done just that. We've not followed, you know, the
16 singular formula that the Industrial Interveners had
17 asked us to, as they believe that rule required, but,
18 rather, we've taken everything as a whole and at least
19 from my analysis have determined that this is the just
20 result that can come from that.

21 Additional discussion?

22 Commissioner Fiegen.

23 COMMISSIONER FIEGEN: I have one more comment to
24 the Staff.

25 Thank you so much for normalizing Storm Atlas.

1 There were a lot of questions about normalizing in the
2 briefs and if that was proper or not.

3 Well, I know all the consumers and certainly
4 Industrial consumers also appreciate that you normalized
5 that and didn't put that one lump in one year. So thank
6 you for normalizing that. Plus what you did with
7 pension. Appreciate that.

8 CHAIRMAN NELSON: Additional discussion?

9 Hearing none, all those in favor will vote aye.
10 Those opposed, nay.

11 Commissioner Hanson.

12 COMMISSIONER HANSON: Aye.

13 CHAIRMAN NELSON: Commissioner Fiegen.

14 COMMISSIONER FIEGEN: Fiegen votes aye.

15 CHAIRMAN NELSON: Nelson votes aye.

16 Motion carries.

17 (Discussion off the record)

18 MS. KOENIG: There is one outstanding issue for
19 the company, which is the effective date of the rates.

20 CHAIRMAN NELSON: I'm going to turn to Staff. I
21 was assuming we were looking at April 1, but I'm going to
22 turn to Staff and --

23 MS. CREMER: That's fine with Staff and it
24 looked like with Black Hills Power.

25 MS. KOENIG: That's fine with the company as

1 well. We just wanted to make certain that that was the
2 date, since there was some discussion during the
3 hearing.

4 CHAIRMAN NELSON: And I appreciate it. And I
5 want to make sure, Commissioner Fiegen, that was your
6 understanding.

7 COMMISSIONER FIEGEN: Yes. That was my
8 understanding because that's what we talked at hearing.
9 But I did not state that in my Motion. If we need
10 another Motion, I will certainly do that.

11 CHAIRMAN NELSON: Let's do that. Let's get that
12 on the record.

13 COMMISSIONER FIEGEN: Mr. Chairman, I move that
14 the effective date of the Black Hills Power rate case
15 that we voted on today is April 1, 2015.

16 CHAIRMAN NELSON: Discussion on the Motion.
17 Hearing none, all those -- Mr. Moratzka would like to --

18 MR. MORATZKA: Not on that.

19 CHAIRMAN NELSON: Not on that. Okay.

20 All those in favor will vote aye. Those
21 opposed, nay.

22 Commissioner Hanson.

23 COMMISSIONER HANSON: Aye.

24 CHAIRMAN NELSON: Commissioner Fiegen.

25 COMMISSIONER FIEGEN: Fiegen votes aye.

1 CHAIRMAN NELSON: Nelson votes aye.

2 Motion carries.

3 Mr. Moratzka.

4 MR. MORATZKA: Mr. Chairman, Commissioners, I
5 hesitate to bring this before you, but just to make sure
6 that I preserve my objection, I would remind the
7 Commission that the Motion for the Proposed Revised
8 Settlement was filed on February 23.

9 The South Dakota rules require a certain period
10 of notice. That is 10 days. Under South Dakota rules
11 any period of time that is less than 11 days -- you don't
12 count weekends or holidays. So the first date upon which
13 the Revised Proposed Settlement could be heard, as I read
14 the applicable law, would have been March 9.

15 And so I suppose we could bring that up if our
16 group so decides on a Petition for Reconsideration, but
17 wanted to make that comment for the record and ask that
18 it be considered timely.

19 CHAIRMAN NELSON: I appreciate your bringing
20 that to our attention. I'm going to turn to Staff for a
21 response to that since they filed the Settlement.

22 Any response?

23 And then I'm also going to turn to General
24 Counsel.

25 MS. CREMER: And you might want to hear from

1 Black Hills also, as it was a Joint Motion.

2 But I would just state that the Amended
3 Settlement Stipulation was actually filed on February 10.
4 And because we had an outstanding Motion that hadn't been
5 addressed, frankly, it just -- I thought it was covered
6 with that.

7 But then to avoid an argument, which we didn't
8 now, we just made it a Joint Motion for the Amended
9 Settlement Stipulation.

10 So I believe there was adequate notice. I don't
11 see the prejudice here. Certainly had adequate
12 opportunity to respond to it. We made sure we got it
13 filed a week before briefs were due so that it could be
14 addressed in the briefs. We did it as quickly as we
15 could.

16 So I don't see the prejudice. I don't see the
17 due process argument here. And the only other thing I
18 would say is under your Notice of Hearing I believe any
19 action that you take would be covered -- or the action
20 you took today would be covered under those questions.

21 Thank you.

22 CHAIRMAN NELSON: Anything else to add,
23 Mr. Smith?

24 MR. SMITH: Not really, no. I don't.

25 You know, again, the Amended Settlement

1 Stipulation really grew out of the hearing. At least the
2 way I look at it. It appears to have come about -- the
3 changes that were made were strictly from evidence that
4 was -- I mean, we've heard it.

5 We heard it. And I don't know what else there
6 would be to hear because we've already heard that.
7 That's what the Amended Settlement Stipulation did is
8 make changes based on what we did hear at hearing.

9 CHAIRMAN NELSON: Thank you. And I do
10 appreciate your bringing that point forward.

11 Thank you.

12 Anything -- Ms. Koenig.

13 MS. KOENIG: My apologies. Mr. Thurber just
14 reminded me that there's one other topic that I failed to
15 bring up.

16 The date for the interim refund as well. I
17 believe that should be mid-May, but we just wanted to be
18 sure that that was clear.

19 CHAIRMAN NELSON: I'm going to turn to Staff.

20 MS. CREMER: Yes. We believe that that would be
21 the appropriate date.

22 CHAIRMAN NELSON: That certainly appears
23 reasonable to me.

24 Commissioner Fiegen, any objections?

25 Commissioner Hanson?

1 I'm not hearing any objections. That works.

2 COMMISSIONER HANSON: No objection.

3 MS. KOENIG: Thank you.

4 CHAIRMAN NELSON: Thank you.

5 Any other issues?

6 COMMISSIONER FIEGEN: So do we need to put that
7 in a Motion, or are we okay?

8 MR. SMITH: Maybe it might be safer to put it in
9 a Motion. And there's a carrying charge on that too;
10 right, Ms. Koenig?

11 MS. KOENIG: Yes.

12 MR. SMITH: Okay. Thank you.

13 COMMISSIONER FIEGEN: Mr. Chairman, in EL --
14 what is this, EL14-026, move that the Commission approve
15 the effective date of the interim refund to be May of
16 2015 with the carrying charge that Staff approved.

17 CHAIRMAN NELSON: Discussion on the Motion.

18 Hearing none, all those in favor will vote aye,
19 those opposed, nay.

20 Commissioner Hanson.

21 COMMISSIONER HANSON: Aye.

22 CHAIRMAN NELSON: Commissioner Fiegen.

23 COMMISSIONER FIEGEN: Fiegen votes aye.

24 CHAIRMAN NELSON: Nelson votes aye.

25 Motion carries.

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Next issue?

I don't see any other issues approaching.

(The meeting is concluded at 2:45 p.m.)

1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF SULLY)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the 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 2nd day of
11 March, 2015, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 9th day of
14 March, 2015.

15

16

17

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

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