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THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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

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Transcript of Proceedings  
May 26, 2015

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

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

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, 500 East Capitol Avenue, Pierre, South Dakota,  
4 on the 26th day of May, 2015, commencing at 9:30 a.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           And the questions that we have today are shall  
5 the Commission reconsider its Final Decision and Order  
6 issued on April 17, 2015, as to the issues set forth in  
7 the Order for and Notice of Hearing on Petition for  
8 reconsideration issued by the Commission on May 11, 2015?

9           And, if so, how shall the Commission rule on  
10 each of such issues on reconsideration?

11           And, with that, I am going to turn to the  
12 Black Hills Industrial Intervenors who have filed that  
13 motion.

14           Go ahead, Mr. Moratzka.

15           MR. MORATZKA: Good morning, Commissioners.  
16 Andrew Moratzka on behalf of the Intervenors. And I  
17 believe that Mark Moreno is also in the hearing room.

18           CHAIRMAN NELSON: He is, yes.

19           MR. MORATZKA: Very briefly, Commissioners. We  
20 stand by the Petition -- the position we set forth in our  
21 initial Posthearing Brief that the -- and the position  
22 that we stated at the hearing that the Commission's  
23 approval of the Amended Settlement Agreement was in  
24 violation of South Dakota Statute as well as traditional  
25 notions of due process.

1           And we also believe that as set forth in detail  
2 in our Petition for Reconsideration as well as our  
3 Posthearing Brief that Black Hills Power failed to meet  
4 its burden of proof and that the Commission failed to  
5 properly apply South Dakota Administrative Rule  
6 20:10:13:44.

7           We believe that Black Hills Power failed to meet  
8 their burden of proof because they, one, didn't submit  
9 their own Cost of Service Analysis; two, didn't provide  
10 sufficient support for the adjustment to their test year  
11 books; and, third, did not include expected changes in  
12 revenue.

13           We believe that the Commission, in turn, failed  
14 to meet its obligations to reject the Cost of Service  
15 Analysis proffered by Black Hills Power for failing to  
16 meet 20:10:13:44. And also just generally that the  
17 Commission's failure on this point is a misinterpretation  
18 of the matching principle.

19           But also from a high level and something that  
20 hits on some of the conversations that we had during the  
21 hearing on March 2 were that there seemed to be some  
22 indication that the Commission has unlimited discretion  
23 in setting the revenue requirement. And we made, we  
24 believe, very clear in our Petition for Reconsideration  
25 the Commission's setting of the revenue requirement is

1 largely done by formula.

2 So while the Commission may have some additional  
3 leeway when it sets rates, that is how the utility is  
4 allowed to recover the revenue requirement from its  
5 customers, that it does not have such leeway when setting  
6 the revenue requirement.

7 And so for all of those reasons, we believe that  
8 the Commission's Order approving the Amended Stipulation  
9 is in error and urge it to reconsider, consistent with  
10 the Petition for Rehearing and Reconsideration that we  
11 filed.

12 CHAIRMAN NELSON: Thank you, Drew.

13 We'll turn to Black Hills.

14 MS. KOENIG: Thank you, Chairman Nelson,  
15 Commissioners, Staff.

16 My name is Amy Koenig. I'm corporate counsel  
17 for Black Hills Power, and I'm appearing today on its  
18 behalf in support of the request that the Commission deny  
19 the Black Hills Industrial Intervenors' Petition for  
20 Rehearing and Reconsideration.

21 As Black Hills Power set forth in its Answer,  
22 South Dakota Administrative Rule 20:10:01:29 and  
23 20:10:01:30:01 require that the Commission make a finding  
24 of sufficient reason for rehearing or reconsideration.

25 It's Black Hills Power's position that in this

1 particular docket there is no basis for a finding of  
2 sufficient reason for rehearing or consideration.

3 First, there is no new evidence that is before  
4 the Commission that was not considered or set forth in  
5 the posthearing filings or during the hearing. Secondly,  
6 there's been no new arguments or authority presented to  
7 the Commission that it did not have an opportunity to  
8 consider prior to issuing the Order in this docket.

9 With respect to the Black Hills Industrial  
10 Intervenors regarding equity and due process violations,  
11 under South Dakota Law due process requires that the  
12 notice for the hearing afford the parties adequate time  
13 to prepare for the issues that will be considered.

14 In this instance the Commission's Notice  
15 expressly afforded the parties an indication that it  
16 would either grant the Motion for Approval of the  
17 Settlement Stipulation or that it would determine the  
18 rates that were just and reasonable. In this instance  
19 the Commission's Order set forth the rates that it  
20 determined were just and reasonable, and, therefore, the  
21 parties had more than adequate time to prepare for the  
22 issues that were considered by the Commission and,  
23 therefore, there is no basis for a due process or equity  
24 argument in this particular instance.

25 Likewise, Black Hills Power disagrees with

1 Black Hills Industrial Intervenors' position regarding  
2 SDCL 15-6-6B. In particular, the Commission had timely  
3 filed Motions for Approval of the Settlement Stipulation  
4 as well as an Amended Motion that were both filed within  
5 the statutory requirements for notice.

6 In this instance whether you consider the  
7 Amended Settlement to be an amendment to the pending  
8 Motion or a stand-alone filing, there was adequate time  
9 and adequate notice in this case. Furthermore, the  
10 parties addressed that Motion in their Posthearing  
11 Briefs, and so the arguments were before the Commission.

12 Turning to the Industrial Intervenors' reason  
13 for rehearing, as I articulated earlier in my comments,  
14 there are no new arguments before the Commission that  
15 weren't previously considered. The Black Hills  
16 Industrial Intervenors have argued that Black Hills Power  
17 failed to satisfy its burden of proof. But as the  
18 Commission set forth in its Order, there was adequate  
19 evidence before the Commission in the form of the  
20 Application, the Exhibits to the Application, the  
21 Prefiled Testimony, and the Posthearing Briefs, as well  
22 as the testimony at hearing for the Commission to  
23 determine that Black Hills Power had satisfied its burden  
24 of proof.

25 The Commission also noted that the primary issue

1 that Black Hills Industrial Intervenors raised during the  
2 hearing and its pre and posthearing filings dealt with  
3 the proper construction of South Dakota Administrative  
4 Rule 20:10:13:14.

5 Those same arguments regarding the proper  
6 interpretation of this Administrative Rule have been set  
7 forth again by the Black Hills Industrial Intervenors in  
8 its Petition for Reconsideration and Rehearing.

9 Based upon the fact that there are no new  
10 arguments that the Commission hadn't previously  
11 considered and no new evidence, Black Hills Power  
12 requests that the Commission find that the Black Hills  
13 Industrial Intervenors have failed to set forth  
14 sufficient reason to justify rehearing or  
15 reconsideration.

16 Thank you.

17 CHAIRMAN NELSON: Staff.

18 MS. CREMER: Thank you. This is Karen Cremer of  
19 Staff. And I'm just going to explain briefly.

20 Staff did not file anything. We're kind of in  
21 an odd position of once the Commission issues its Final  
22 Decision and Order, for all practical purposes Staff  
23 ceases to exist as a party.

24 And we don't appeal the decision. If someone  
25 does appeal it, the Commission defends its own Order.



1 Staff does not do that in Circuit Court. And so rather  
2 than create an unnecessary controversy, it just seemed  
3 smoother for Staff to just simply not respond to anything  
4 at this time.

5 Thank you.

6 CHAIRMAN NELSON: Thank you.

7 Mr. Moratzka, any rebuttal?

8 MR. MORATZKA: Excuse me. Thank you,  
9 Commissioners. Just a couple of points, I guess.

10 The notion that the Black Hills Industrial  
11 Intervenors were afforded with sufficient notice of the  
12 Amended Stipulation and Settlement Agreement we strongly  
13 disagree with.

14 There is a distinct difference between doing  
15 what the Commission set forth as what may occur in its  
16 December 30, 2014, Notice of Hearing, which was either  
17 approve the Settlement or modify the Settlement, and  
18 approving a Modified Settlement that was only agreed to  
19 by two parties that did not have notice as required by  
20 15-6-6.

21 So there is a distinct difference between the  
22 Commission taking it upon itself to modify a prior  
23 Settlement Agreement that was subject to a full contested  
24 case agreement and approving a Modified Settlement that  
25 was only agreed to by two parties and for all we could

1 tell subject to some of the same background dealing that  
2 we opposed at the hearing itself.

3 And, secondly, Commissioners, to be absolutely  
4 clear, South Dakota Law 49-34A-8.4 makes it very clear  
5 that the burden is on the public utility to demonstrate  
6 the reasonableness of its rates and that the costs of --  
7 that it's seeking to recover are prudent, efficient, and  
8 economical.

9 That burden cannot be met via a citation to a  
10 general record or a party. This is a burden to  
11 demonstrate the reasonableness of its rate is exclusively  
12 on the public utility. No other party bears that burden.  
13 And certainly, you know, going to Black Hills Power's  
14 characterization that somehow BHII chose not to be a  
15 party to the Settlement Agreement, any implication here  
16 that whatever the Commission Staff and the utility agreed  
17 to somehow creates an increased burden of proof on other  
18 parties to question the Settlement, Black Hills  
19 Industrial Intervenors absolutely disagrees with.

20 CHAIRMAN NELSON: Thank you.

21 Questions from the Commission.

22 I have one. And I'm going to go to Ms. Cremer  
23 with Staff.

24 Were the Intervenors, both Black Hills and DRA,  
25 invited to participate in settlement negotiations?

1 MS. CREMER: Yes, they were.

2 CHAIRMAN NELSON: So would it be correct that  
3 when Mr. Moratzka says there was "back room dealing" he  
4 really chose not to be in the room for those  
5 negotiations? Is that correct?

6 MS. CREMER: And that would be my memory of  
7 that, that we -- you know, any time we met or were going  
8 to meet -- you know, there were e-mails exchanged. And I  
9 believe they were always on those e-mails and after the  
10 hearing, in particular, chose not to participate.

11 CHAIRMAN NELSON: Thank you.

12 Additional questions?

13 MR. MORATZKA: Commissioner, this is  
14 Drew Moratzka, if I could interject briefly.

15 CHAIRMAN NELSON: I think that's probably fair.  
16 Go ahead.

17 MR. MORATZKA: Just to be clear, Commissioners,  
18 we did participate in some -- the Black Hills Industrial  
19 Intervenors did participate in some of the settlement  
20 discussions that occurred in person in Pierre.

21 There were -- based on what we saw as record  
22 support for the ultimate Settlement Agreement that was  
23 reached between Commission Staff and Black Hills Power,  
24 there were citations to e-mails that I do not believe  
25 that either DRA or BHII were a party to, and I recall

1 obtaining some of those e-mails via discovery.

2 So to say that all of the settlement discussions  
3 occurred in the light of day I think would be somewhat of  
4 a mischaracterization.

5 CHAIRMAN NELSON: Thank you.

6 Additional Commissioner questions.

7 Motions.

8 Commissioner Hanson.

9 COMMISSIONER HANSON: Mr. Chairman, I move in  
10 Docket EL14-026 that the Commission deny Black Hills  
11 Industrial Intervenors' Amended Petition for Rehearing  
12 and Reconsideration and that the Commission shall not  
13 reconsider its Final Decision and Order issued on  
14 April 17, 2015, regarding issues set forth in the Order  
15 for and Notice of Hearing on Petition for Reconsideration  
16 issued by the Commission on May 11, 2015.

17 CHAIRMAN NELSON: Discussion on the Motion.

18 COMMISSIONER HANSON: Well, I wasn't going to  
19 comment, but I think that the case is well proven. The  
20 information that we have is suffice to show that there's  
21 no reason for reconsideration.

22 CHAIRMAN NELSON: Thank you.

23 Additional discussion.

24 I'm going to weigh in on this. And I'm going to  
25 support Commissioner Hanson's Motion. And I want to say

1 this: A Motion to reconsider I take very, very  
2 seriously. I think it's a serious motion.

3 And I will admit there are times in the heat of  
4 a moment when we're trying to pull together a thousand  
5 details and come up with a very coherent motion on  
6 certain issues.

7 And I can think of a case just recently in the  
8 Keystone Docket where a Motion for Reconsideration was  
9 filed very appropriately so because we didn't pull things  
10 together properly for a Protective Order. And it was  
11 very appropriate that we took another look at that,  
12 having a little bit of space and time in order to do that  
13 in order to get it exactly right.

14 And so I, again, emphasize I look at this very  
15 seriously. But I've gone through Mr. Moratzka's Brief.  
16 I've looked at each and every allegation that he's made.  
17 I've evaluated it with what I think is a fresh light.  
18 And in each case I fail to find that he makes his case.

19 And so I would agree with Commissioner Hanson  
20 that I think we have done our job properly, and we've  
21 done all that we can do in this particular docket.

22 Additional discussion.

23 Hearing none, all those in favor of the Motion  
24 to deny will vote aye. Those opposed, nay.

25 Commissioner Hanson.

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COMMISSIONER HANSON: Aye.  
CHAIRMAN NELSON: Commissioner Fiegen.  
COMMISSIONER FIEGEN: Fiegen votes aye.  
CHAIRMAN NELSON: Nelson votes aye.  
The Motion carries. The Motion is denied.

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 26th day of  
11 May, 2015, and that the attached is a true and correct  
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 3rd day of  
14 July, 2015.

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17

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

21

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