

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE APPLICATION OF ) BLACK HILLS POWER, INC. FOR ) AUTHORITY TO INCREASE ITS ELECTRIC ) RATES )</b>	<b>FINAL DECISION AND ORDER; NOTICE OF ENTRY  EL14-026</b>
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**PROCEDURAL HISTORY**

On March 31, 2014, Black Hills Power, Inc. (BHP) filed with the South Dakota Public Utilities Commission (Commission) an Application for Authority to Increase Electric Rates (Application) and supporting exhibits requesting 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% based on BHP's test year ending September 30, 2013.<sup>1</sup> The Application included an extensive, detailed set of schedules and pre-filed testimony in support of the proposed rates. The Application stated that a typical residential electric customer using 650 kWh per month would see an increase of \$10.91 per month. The proposed changes would affect approximately 65,500 customers in BHP's South Dakota service territory. The Application requested an effective date of October 1, 2014, for the proposed rate increase which was the anticipated start-up date for BHP's Cheyenne Prairie Generating Station, then under construction, and coincides with the 180 day limitation on suspension of a requested rate increase pursuant to SDCL 49-34A-14.

On April 11, 2014, BHP filed revised Exhibits A, B, C, and D. On April 16, 2014, the Commission issued an Order Assessing Filing Fee assessing a filing fee of up to the \$250,000 maximum allowed by SDCL 49-1-8 to reimburse the actual expenses incurred by the Commission in processing this docket. On June 6, 2014, GCC Dacotah, Inc., Pete Lien & Sons, Inc., Rushmore Forest Products, Inc., Spearfish Forest Products, Inc., Rapid City Regional Hospital, Inc., and Wharf Resources (U.S.A.), Inc. (collectively Black Hills Industrial Intervenors or BHII) filed a Petition to Intervene, and Dakota Rural Action, Inc. (DRA) filed a Petition to Intervene. On June 18, 2014, BHP filed Black Hills Power, Inc.'s, Objection to the Intervention Petition of Dakota Rural Action and Black Hills Power, Inc.'s Response to Intervention Petition of Black Hills Industrial Intervenors.

On June 20, 2014, DRA filed Dakota Rural Action's Response to Black Hills Power, Inc.'s Objection to Dakota Rural Action's Petition to Intervene and Dakota Rural Action, Inc.'s Attachment to Paragraph 4 of Response to Black Hills Power, Inc.'s Objection to Dakota Rural Action's Petition to Intervene. On June 26, 2014, the Commission issued an Order Granting Intervention, granting intervention to BHII and DRA, subject to the condition that DRA file an affidavit attesting to the members of DRA who were then current customers of BHP. On June 27, 2014, DRA filed a Supplemental Affidavit to Intervenor Dakota Rural Action, Inc.'s Petition to Intervene and Response to Black Hill Power, Inc.'s Objection.

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<sup>1</sup> The Application, Commission Orders in the case, and all other filings and documents in the record are available on the Commission's web page for Docket EL14-026 at: <http://www.puc.sd.gov/Dockets/Electric/2014/EL14-026.aspx>

On September 3, 2014, BHP filed a Notice of Intent to Implement Interim Rates advising the Commission and the public of BHP's intent to implement its requested rate increase as of October 1, 2014. On September 4, 2014, BHP filed a Motion for Approval of Settlement Agreement and Settlement Agreement to settle outstanding issues between BHP and the South Dakota Science and Technology Authority (SDSTA Settlement Agreement). The SDSTA Settlement Agreement includes a Third Amendment to Electric Power Service Agreement Between Black Hills Power, Inc. and South Dakota Science and Technology Authority (Third Amendment). On September 10, 2014, the Commission's staff (Staff) filed a Staff Memorandum regarding the Third Amendment. On September 12, 2014, BHP filed its responses to Staff's ninth set of data requests. On September 18, 2014, the Commission issued an Order Conditionally Authorizing and Approving Implementation of Contract with Deviations Rates on an Interim Basis, authorizing BHP to implement the rates set forth in the SDSTA Settlement Agreement subject to the conditions set forth in the Staff Memorandum. On September 24, 2014, BHP filed a revised tariff page Section No. 3A, Sheet No. 1.

On December 9, 2014, BHP and Staff jointly filed a Joint Motion for Approval of Settlement Stipulation, Settlement Stipulation, and Exhibits (Settlement Stipulation). On December 12, 2014, the Commission issued a Scheduling Order. On December 30, 2014, the Commission issued an Order for and Notice of Hearing setting this matter for hearing on January 27-29, 2015, at the Matthew Training Center in Pierre. On December 30, 2014, BHII filed the pre-filed testimony of its witnesses Lane Kollen and Stephan J. Baron and associated exhibits. On January 15, 2015, Staff filed the pre-filed testimony of its witness David E. Peterson and a Staff Memorandum Supporting Settlement Stipulation and associated exhibits. On January 15, 2015, BHP filed the pre-filed rebuttal testimony of Kyle D. White, John J. Spanos, Jon Thurber, Christopher Kilpatrick, and Robert J. Hollibaugh. On January 20, 2015, BHP, BHII, and Staff filed exhibit and witness lists.

On January 23, 2015, BHII filed a Motion for Briefing of GCC Dacotah, Inc., Pete Lien & Sons, Inc., Rushmore Forest Products, Inc., Spearfish Forest Products, Inc., Rapid City Regional Hospital, and Wharf Resources (U.S.A.), Inc. (Motion) requesting that the Commission issue an order establishing a post-hearing briefing schedule and recommending a schedule to be established by such order. The hearing was held as scheduled on January 27 and 28, 2015. Following the evidentiary hearing, the Commission considered the Motion and after discussion decided upon a schedule that would permit a decision to be rendered prior to the expiration of the one-year period commencing with the date the Application was filed. On January 29, 2015, the Commission issued a Post-Hearing Scheduling Order requiring all parties' post-hearing briefs to be filed and served on or before February 17, 2015, and setting the matter for Commission action on March 2, 2015.

On February 10, 2015, BHP and Staff filed an Amended Settlement Stipulation between BHP and Staff (Amended Stipulation) reflecting two changes to the factual bases supporting the agreed revenue requirement due to new information contained in pre-filed testimony filed after the Settlement Stipulation was entered into and filed and evidence introduced at the hearing. The first change corrects an error in the South Dakota jurisdictional allocation of transmission load dispatch expense, FERC Account 561, for the Black Hills Utility Holdings (BHUH) intercompany charges adjustment, reducing the revenue requirement by \$286,041. The second change reflected in the Amended Stipulation accepts the \$412,988 Wyodak operations and maintenance (O&M) adjustment as provided by BHP in Exhibit BHP 71. This adjustment updates production O&M costs at the Wyodak power plant from \$3,045,652 incurred during the test year to \$3,458,640 incurred from October 2013 through September 2014. This represents a

known and measurable increase to test year expense. On February 10, 2014, Staff filed a Staff Memorandum Supporting Amended Settlement Stipulation.

On February 17, 2015, BHP, BHII, and DRA filed Post-Hearing Briefs, and Staff filed a letter concurring with BHP's Post-Hearing Brief. On February 23, 2015, BHP and Staff filed a Joint Motion for Approval of Amended Settlement Stipulation. At its regular meeting on March 2, 2015, after questions by Commissioners of the parties, the Commission voted unanimously to Grant the Joint Motion for approval of Amended Settlement Stipulation between BHP and Staff and approve the terms and conditions stipulated therein as the decision of the Commission on the rate increase requested by BHP with an effective date of April 1, 2015, to approve the Settlement Agreement and contract with deviations between BHP and SDSTA, to approve the interim rate refund plan set forth as Exhibit 3 to the original Settlement Stipulation between BHP and Staff but a with refund period beginning in May 2015, and with carrying charges on refunds of 7% as stipulated between BHP and Staff in the original Settlement Stipulation. On March 5, 2015, BHP filed a Customer Notice, revised tariff sheets, and an Interim Refund Plan conforming to the Commission's action at the March 2, 2015, meeting.

## **FINDINGS OF FACT**

### **Procedural Findings**

1. The Procedural History set forth above is hereby incorporated by reference in its entirety in these Procedural Findings. The procedural findings set forth in the Procedural History are a substantially complete and accurate description of the material documents filed in this docket and the proceedings conducted and decisions rendered by the Commission in this matter.

### **Parties**

2. The Applicant is Black Hills Power, Inc., a corporation organized under the laws of South Dakota. Ex BHP 1, p. 4.<sup>2</sup> BHP is a wholly-owned subsidiary of Black Hills Corporation. Ex BHP 9, pp. 2-3. BHP is an investor owned "public utility" as defined in SDCL 49-34A-1(12) that provides retail electric service in South Dakota. Ex BHP 1, pp. 1 and 5; Ex BHP 9, pp. 2-3.

3. On June 26, 2014, the Commission issued an Order Granting Intervention to GCC Dacotah, Inc., Pete Lien & Sons, Inc., Rushmore Forest Products, Inc., Spearfish Forest Products, Inc., Rapid City Regional Hospital, Inc., and Wharf Resources (U.S.A.), Inc. (collectively, Black Hills Industrial Intervenors or BHII) and Dakota Rural Action (DRA).

4. The BHII companies are a group of General Service, Large and Industrial Contract customers of BHP. Ex BHII 3, p. 4.

5. DRA is a member-based organization with an office located in Rapid City. Dakota Rural Action's Petition to Intervene. A number of DRA's members are customers of BHP.

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<sup>2</sup> References to the January 27-28, 2015, Hearing Transcript are in the format "TR" followed by the Hearing Transcript page number(s) referenced, and references to Hearing Exhibits are in the format Ex followed by "BHP" for BHP exhibits, "BHII" for BHII exhibits, "Staff" for Staff exhibits, and "JT" for BHP/Staff joint exhibits followed by the exhibit number and, where applicable, the page number(s) referenced or other identifying reference and, where applicable, the attachment or sub-exhibit identifier and page number(s) referenced.

Supplemental Affidavit to Intervenor Dakota Rural Action, Inc.'s Petition to Intervene and Response to Black Hill Power, Inc.'s Objection.

6. Staff also participated in the docket as a full party.

**Amended Settlement Stipulation**

7. BHP's Application as filed requested approval from the Commission to increase its rates for retail electric service to customers in its South Dakota service territory by approximately \$14.6 million annually or approximately 9.27%. A typical residential electric customer using 650 kWh per month would see an increase of \$10.91 per month. The proposed changes would affect approximately 65,500 customers in South Dakota. The Application requested an effective date of October 1, 2014, for the proposed rate increase, which was the anticipated start-up date for BHP's Cheyenne Prairie Generating Station (CPGS), then under construction, and coincides with the 180 day limitation on suspension of a requested rate increase pursuant to SDCL 49-34A-14. Ex BHP 1, p. 3; Ex Staff 1, p. 4. The Application included an extensive, detailed set of schedules and pre-filed testimony in support of the proposed rates. Ex BHP 1, pp. 1-2; Exs BHP 4 through 58.

8. BHP's proposed increase was based on a historical test year ended September 30, 2013, adjusted for what BHP believed to be known and measurable changes, a 10.25% return on common equity, and an 8.48% overall rate of return on rate base. Ex BHP 5, Exhibit G, Statement G, p. 1; Ex BHP 23, p. 3; Ex BHP 46, pp. 7-8, 11-12; Ex BHP 48; TR 269.

9. The Application also requested approval of: an accounting order allowing BHP to use deferred accounting for the costs associated with the FutureTrack Workforce Development Program that deviate from the costs included in base rates; an accounting order for the Company's Winter Storm Atlas regulatory asset if the decision in the docket was not issued by December 31, 2014; revisions to the Energy Cost Adjustment tariff; and a modification to the major maintenance account to expense a portion of the plant overhaul cost each year based on a plant's planned maintenance cycle. Ex BHP 1, p. 3; Ex BHP 8, pp. 6-7; Ex BHP 15, pp. 14-15; Ex BHP 24, pp. 5-11, 14-17; Exs BHP 25-28.

10. Beginning immediately following BHP's filing of the Application on March 31, 2014, Staff and its outside consultants conducted an extensive review of the Application and the statements, exhibits, testimony, and working papers filed with the Application. In addition, Staff served at least 330 discovery requests for additional data and information on BHP and conducted a thorough analysis of BHP's responses thereto and also its responses to approximately 60 additional discovery requests served on BHP by BHII. Exhibit Staff 1, p. 5; TR pp. 263, 267-268.

11. Staff based its determination of an appropriate revenue requirement on a comprehensive analysis of the as-filed September 30, 2013, total BHP test year costs, and the additional information obtained through discovery that supported further post-test year adjustments. In particular, Staff first allocated total company amounts to the South Dakota retail jurisdiction. Staff then adjusted the September 30, 2013, test year results for appropriate post-test year changes. The Amended Settlement Stipulation incorporates numerous income adjustments and rate base adjustments. Ex Staff 1; Staff Memorandum Supporting Settlement Stipulation (Staff Memorandum); Staff Memorandum Supporting Amended Settlement Stipulation (Amended Staff Memorandum).

12. Settlement discussions between Staff, BHP, BHII, and DRA commenced in late October, 2014. Thereafter, Staff and BHP held several settlement discussions in an effort to arrive at a mutually acceptable resolution of the issues presented in BHP's filing. According to Staff's expert witness Peterson, substantially all of the issues raised by BHII's witness, Lane Kollen, were identified and discussed in such settlement discussions and were considered by Staff in its analysis and its negotiation of the Settlement Stipulation. Ex Staff 1, p. 8. Ultimately, Staff and BHP reached a comprehensive agreement on BHP's overall revenue deficiency and other issues presented in this case including, but not limited to, class revenue responsibilities, rate design, and tariff concerns. BHII and DRA did not elect to become parties to the Settlement Stipulation reached between BHP and Staff. Ex Staff 1, pp. 5-6. On December 9, 2014, BHP and Staff jointly filed a Joint Motion for Approval of Settlement Stipulation, Settlement Stipulation, and Exhibits. Exs JT 1-6.

13. In the Settlement Stipulation, BHP and Staff agreed that BHP's total revenue deficiency is \$6,890,746 and that BHP's tariffs will be designed to produce an increase in annual base revenue levels of \$6,890,746 or approximately 4.35% over total retail revenues at existing rates based on a South Dakota jurisdictional retail revenue requirement of \$165,122,614. In the Settlement Stipulation, BHP and Staff agreed to a 7.76% rate of return on rate base. Ex JT 2, p. 4. A detailed explanation of the adjustments, data, analyses, and computations underlying the Settlement Stipulation's provisions to resolve the numerous matters at issue in this case between BHP and Staff is set forth in Staff's Memorandum in Support of Settlement Stipulation filed on January 15, 2015, together with the pre-filed testimony of Staff's expert witness, David E. Peterson, set forth in Ex Staff 1.

14. On February 10, 2015, following the filing of BHII's pre-filed testimony, Staff's pre-filed testimony, and BHP's pre-filed rebuttal testimony and the evidentiary hearing held on January 27-28, 2015, BHP and Staff jointly filed an Amended Settlement Stipulation, and Staff filed a Staff Memorandum Supporting Amended Settlement Stipulation. On February 23, 2015, BHP and Staff jointly filed a Joint Motion for Approval of Amended Settlement Stipulation. The Amended Stipulation seeks to correct an error in the South Dakota allocation of transmission load dispatch expense, FERC Account 561, for the Black Hills Corporation/Black Hills Utility Holdings intercompany charges adjustment, reducing the revenue requirement by \$286,041. This error was brought to light in the pre-filed and hearing testimony of BHII witness Kollen and was acknowledged to be correct by Staff witness Peterson in his pre-filed testimony and in his hearing testimony. TR 163-164, 184; Ex BHII 1, p. 39-40; Ex BHP 70, p. 16; Ex Staff 1, p. 19.

15. A second change reflected in the Amended Stipulation involves the acceptance and inclusion of an expense adjustment of \$412,988 for the South Dakota jurisdictional share of Wyodak generating plant O&M expenses as provided by BHP in its pre-filed testimony after the Settlement Stipulation was executed and filed. This adjustment updates production O&M costs at the Wyodak power plant from \$3,045,652 incurred during the test year to \$3,458,640 incurred from October 2013 through September 2014. Ex BHP 70, pp. 17-19; Ex BHP 71. This represents an increase to test year expense that was not known and measurable at the time the Settlement Stipulation was executed and filed but had become known and measurable at the time BHP's pre-filed rebuttal testimony exhibits were filed and became known and measurable prior to twenty-four months after the Application filing date. Ex BHP 70, pp. 17-19.

16. The Amended Stipulation uses the same calculation for cash working capital, net operating loss, interest synchronization, and bad debt adjustments as the Settlement

Stipulation. The revenue requirement value of each adjustment changes, however, based on the resolution of various issues in the case. These adjustments are dependent on the pro forma rate base, expenses, and revenues, and were recalculated as a result of the BHUH allocation correction and the Wyodak O&M expense adjustment. Staff Memorandum in Support of Amended Settlement Stipulation, p. 3.

17. Although the Staff Memorandum in Support of Amended Settlement Stipulation Exhibit\_\_\_(BAM-4) Schedule 1 – Amended Settlement SD Electric Revenue Requirement cost of service calculations show a revenue deficiency of \$7,010,894, the revenue deficiency in the Amended Stipulation, Section III, ¶11 retains the \$6,890,746 level provided in the original Settlement Stipulation. With the inclusion of the Wyodak O&M costs, the amended cost of service in the Amended Stipulation supports a revenue requirement greater than that agreed upon in the Amended Stipulation, and ratepayers will not incur the added rate case expense required to prepare revised rates and tariff sheets. Staff Memorandum in Support of Amended Settlement Stipulation, p. 3.

18. In addition to the inclusion of only a portion of the Wyodak O&M expense adjustment in rates agreed to in the Amended Stipulation and the maintenance of the total rate increase at the same amount as in the Settlement Stipulation, Section III, ¶13 extends the rate case filing moratorium provision an additional three months from what was agreed to in the Settlement Stipulation. Under this provision, BHP will not be allowed to file any rate application for an increase in base rates which would go into effect prior to January 1, 2017.

19. The Commission finds that the agreements, adjustments, and rates proposed in the Amended Stipulation, considered together with the rate case moratorium, are just and reasonable, and the Amended Stipulation is approved by the Commission.

### **SDSTA Settlement Agreement**

20. The Amended Stipulation in Section III, ¶12 accepts and recommends Commission approval of the SDSTA Settlement Agreement and the Third Amendment incorporated therein. The Amended Stipulation and Third Amendment are contracts with deviations, which are agreements between a public utility and one or more customers that provide for the provision of service under rates, terms, and/or conditions that deviate from the utility's rates, terms, and conditions specified in the utility's tariffs filed with, and approved by, the Commission. Contracts with deviations are generally approved for very large loads or other special business development circumstances under the authority of SDCL 49-34A-8.3. On September 18, 2014, the Commission issued an Order Conditionally Authorizing and Approving Implementation of Contract with Deviations Rates on an Interim Basis, authorizing BHP to implement the rates set forth in the SDSTA Settlement Agreement for SDSTA subject to the following conditions:

1. If the contract with deviations is not subsequently approved by the Commission, the rates to be paid by SDSTA for the period on and after October 1, 2014, shall be the rates ultimately approved in the rate case for the applicable class of service, with the difference between the interim rates paid by SDSTA and the rates ultimately approved in the rate case for the applicable class of service to be subject to true-up and refund or repayment, as the case may be, with interest at the rate approved in a refund order of the Commission after final decision in the general rate case; or

2. If the contract with deviations is subsequently approved by the Commission with modification of the settlement rates to be paid by SDSTA, the rates to be paid by SDSTA for the period on and after October 1, 2014, shall be such contract with deviation rates as are ultimately approved by the Commission, with the difference between the conditionally approved interim rates and the contract with deviation rates ultimately approved by the Commission to be subject to true-up and refund or repayment, as the case may be, with interest at the rate approved in the refund provisions of the Commission's order approving the contract with deviations with modified rates or, if refund is not ordered in such order, in the refund order of the Commission at the time of the general rate decision.

3. This approval does not pre-determine a Commission decision in the current or future rate case proceedings regarding rate treatment of revenue requirement shortfalls resulting from rates approved as contracts with deviations.

21. The SDSTA Settlement Agreement and Third Amendment were filed as confidential documents, as is generally, if not always, the case with contracts with deviations. The Commission finds that the SDSTA Settlement is just and reasonable and is approved by the Commission.

#### **Black Hills Industrial Intervenor's Contested Issues**

22. The issues addressed in Findings of Fact 23 through 55 were contested by BHII in its pre-filed and hearing testimony and/or its legal arguments at hearing, in its post-hearing brief, and in argument before the Commission at the Commission's decision hearing on March 2, 2015. Each of these issues is addressed separately below in the above-referenced Findings of Fact.

#### **Allowable Test Year Adjustments under ARSD 20:10:13:44 and Applicable Statutes**

23. A number of BHII's contested issues with the Settlement Stipulation and Amended Settlement Stipulation are primarily based on statutory interpretation and to such extent are issues of law, and the details of the Commission's legal rulings on such issues are set forth below in this decision's Conclusions of Law. The primary issue raised by BHII concerns the scope of what may be presented by an applicant for a rate increase within the twenty-four month cost of service adjustment period set forth in ARSD 20:10:13:44 and what may be considered by the Commission in rendering its decision, including the extent to which the Commission may consider capital cost additions and/or reductions, expense increases and/or reductions, and other relevant cost of service facts which become known and measurable during the pendency and processing of the case prior to the expiration of the twenty-four month period after the application is filed and which will be incurred during the period of 24 months after the filing of the application. ARSD 20:10:13:44 is set forth in Conclusion of Law 8.

24. In this case, the date 24 months after the end of the test year is September 30, 2015. TR 269.

25. BHII argues that ARSD 20:10:13:44 only allows the consideration of post-test year adjustments which were known and measurable at the time the rate increase application was filed. This position is based upon BHII's interpretation of the phrase "which are known with reasonable certainty and measurable with reasonable accuracy at the time of the filing." Ex BHII 1, p. 8.

26. Staff expert witness Peterson testified that during the four plus decades that he has worked with Staff on rate cases, the consistent interpretation of ARSD 20:10:13:44, read together with SDCL 49-34A-19, has been that because a historic test year is used to set rates for a future period, the analysis and substance of a proposed change in utility rates should include both known expenses during the test year and also adjustments to reflect any changes that occurred after the test year that become known and measurable within the 24-month period provided for in ARSD 20:10:13:44 and SDCL 49-34A-19. Staff has interpreted these provisions to mean that the adjustments have to be sufficiently known and measurable at the time of its review of the hundreds of responses to discovery requests and filings in the case. TR 279. This has been Staff's consistent policy and is therefore what is reflected in the Settlement Stipulation. It is also Staff's responsibility to closely examine the evidence that such changes are known and measurable expenses. This is the standard that Staff has relied on for years, and the Commission has approved numerous rate case settlements based on that standard. TR 275-276.

27. As is set forth in Conclusions of Law 8 through 10, the Commission concluded that adjustments in the Amended Settlement Stipulation are within the allowable adjustment periods set forth in SDCL 49-34A-19 and ARSD 20:10:13:44. The Commission accordingly finds that substantial and sufficient evidence was produced, introduced, and received in evidence in this proceeding to demonstrate that the rates agreed to in the Amended Settlement Agreement are just and reasonable and will adequately meet BHP's need for revenues sufficient to enable it to meet its current cost of furnishing adequate, efficient, economical, and reasonable service.

#### **Inclusion of Revenue Changes for Period Covered by Post-Test Year Adjustments**

28. BHII argues that all post-test year adjustments must be accompanied by changes in revenue during the same period. Ex BHII 1, p. 8.

29. Staff's witness Peterson testified that post-test year adjustments that are revenue producing or income producing must reflect either the additional revenue or the additional income that results from that change in operation before they may be recognized as a known and measurable adjustment. BHP points out that those types of changes are not included in the Settlement Stipulation and Amended Stipulation between BHP and Staff. TR 273; Ex BHP 70, p. 4.

30. Staff and the Commission have previously interpreted this rule to mean that for any post-test year change in expense or investment that has an incremental revenue component (i.e., expenses or investments made to increase sales and/or to serve new customers), a corresponding revenue adjustment must also be recognized. It is for this reason that the Amended Stipulation does not include any costs associated with post-test year plant additions that are designed to improve sales or to serve new customers. Similarly, there is no corresponding revenue offset for any of the post-test year expense adjustments that are reflected in the Amended Stipulation. Therefore, the Amended Stipulation is consistent with prior Commission policy in this regard and with the governing administrative rule. Ex Staff 1, p. 9.

31. Staff's analysis has been that if ARSD 20:10:13:44 intended that all revenues, not just those associated with plant additions, are intended or are supposed to be recognized within the 24-month post-test year period, the rule would require a forecast test year. The Commission has never recognized that to be the intent of the rule, nor has the Commission ever adopted or accepted a forecast test year in an electric utility rate increase filing. Therefore, the



only logical conclusion is that the revenue effect of specific post-test year changes has to be acknowledged or recognized in an adjustment before the adjustment itself can be reflected in the revenue requirement. That is the standard that Staff has relied on since the inception of the rule. TR 275-276.

32. In his pre-hearing testimony, BHII's witness Kollen testified that the Commission should limit any post-test year adjustment to the twelve month period immediately following the historical test year ended September 30, 2013. Ex BHII 1, p. 7. This opinion was also asserted by BHII's witness Baron. TR 252. The Commission finds that this would contravene the express language of ARSD 20:10:13:44 and that the Commission's discretion under SDCL 49-34A-19 has historically employed the full two-year adjustment period set forth in the statute. The Commission concludes that the appropriate test year adjustment period is 24 months.

### **FutureTrack and Associated O&M Costs**

33. In its Application, BHP proposed to increase its expenses for its FutureTrack Workforce Development program. The primary purpose of this program was to recruit talent within critical areas to complete the advanced training necessary to fill highly skilled positions upon the retirement of existing employees. Ex BHP 19, p. 6. The Settlement Stipulation and Amended Stipulation both limit the inclusion of such costs to positions actually hired at the time of settlement negotiations without deferral of subsequently hired employee expenses, and did not include recovery for FutureTrack program additional hirings in the future. Ex Staff 1, p. 10; Staff Memorandum, p. 9. BHII's expert witness Kollen expressed the opinion that no recovery should be allowed at all for FutureTrack hirings because they were not known and measurable at the time the Application was filed. Ex BHII 1, pp. 25-30. The Commission finds that BHII's objection is not warranted.

### **Employee Additions and Eliminations**

34. BHII objected to BHP's request for an adjustment to fund employee additions to those employee positions included in the test year. TR 182-183; Ex BHII 1, pp. 30-33. The Amended Stipulation limits recovery for employee additions to those actually hired and in service as of the date of the Settlement Stipulation. Ex Staff 1, p. 10. As with the previous FutureTrack issue, BHII's primary issues were that such additional hirings were not known and measurable as of the date the Application was filed and were speculative on a forward looking basis. The Amended Stipulation's limitation of this adjustment to actual hirings renders the future hiring issue moot. As to the post-test year filing issue, for the reasons set forth in Findings of Fact 23 through 27 and Conclusions of Law 6 through 10, the Commission finds that BHII's objection is not warranted.

### **NOL ADIT**

35. BHII argued and presented both pre-filed and evidentiary hearing expert witness testimony that the Amended Stipulation's proposed inclusion of a tax-related net operating loss (NOL) accumulated deferred income taxes (ADIT) adjustment to the revenue requirement was inappropriate. Ex BHII 1, pp. 10-15; TR 178 et seq. BHP's expert witness Hollibaugh presented both pre-filed and evidentiary hearing testimony regarding the history leading to, the current status of, and the justification for continued maintenance of BHP's NOL ADIT. TR 148 et seq.; Ex BHP 73. Staff's expert witness Peterson testified that "Failure to provide for the deferred tax asset in rate base, as Mr. Kollen recommends, however, risks a violation of the IRS's normalization requirements." Ex Staff 1, p. 11. Based on its consideration of the testimony and

supporting documentary evidence presented by both BHP and BHII, the Commission finds that the issue of the NOL ADIT is very complex and that measures to address the underlying tax cost consequences for both BHP and ratepayers can be addressed in more than one justifiable manner.

36. The Commission finds that the NOL ADIT methodology utilized in the past few years and proposed by BHP for approval in this docket has resulted, and will result, in a just and reasonable method of accounting for and reporting BHP's taxable income/loss status and liability/credit, was developed and put into use as a consequence of the unique circumstances presented by the financial challenges and resulting Congressional tax law responses thereto arising from the severe negative economic consequences stemming from the early 2000s and 2008 and ensuing years' recessions, and will result in just and reasonable rate impacts to BHP customers.

### **Incentive Compensation**

37. BHP's proposed revenue requirement included approximately \$3.8 million for incentive compensation, including amounts billed from BHP's affiliates BHUH and BHSC. Ex BHII 6. In the Amended Stipulation, \$666,000 of the Company's test year incentive compensation expenses is excluded. This is the amount that BHP identified as being tied to the Company's financial results. Ex Staff 1, p. 17. The Amended Stipulation did not change and includes this provision.

38. BHP provided evidence that employee incentive compensation plans are widely employed by utilities throughout the country and that it is necessary for BHP to provide employee incentive opportunities that are competitive with other companies in the industry. Another goal of the program is to focus employees on important objectives to improve the performance of utility operations by focusing on improvements to operational excellence, safety, reliability, and customer satisfaction. TR , 300; Ex BHP 22, pp. 8, 10.

39. BHII's expert witness Kollen offered opinion evidence that in addition to the amount excluded in the Settlement Stipulation, \$149,000 in performance plan expenses and \$739,000 in incentive restricted stock expenses should be excluded because these additional amounts represent incentive awards that are similar in nature to those excluded in the Settlement Stipulation. BHII witness Kollen also offered the opinion that by embedding such incentives in rates, BHP itself is not incentivized to manage toward operational performance. TR 184; Ex BHII 1, pp. 35-37; Ex BHII 6, p. 2.

40. In settlement discussions, Staff raised issues with the incentive compensation plan and the payments made under the plan. Staff's expert witness Peterson testified he did not necessarily disagree with Mr. Kollen's characterization of the incentive awards and in fact, had initially pursued the same issues on behalf of the Commission Staff earlier in this proceeding. In the end, however, the Commission Staff conceded this issue and agreed to exclude the \$666,000 related specifically to financial performance, recognizing that the incentive compensation exclusion embodied in the settlement is essentially the same type of exclusion the Commission has approved for BHP in prior base rate case settlements and for other South Dakota utilities. Therefore, Mr. Peterson supported the exclusion that is contained in the Settlement Stipulation and recommended that the Commission reject Mr. Kollen's recommendation to expand the exclusion at this time. TR 285-287; Ex Staff 1, pp. 17-18. The Commission finds that the incentive compensation plan included in the Amended Stipulation does not render the Amended Stipulation unjust and unreasonable.

## **Pension Expense Normalization**

41. As documented in the evidence presented in the case, BHP's pension expense varies significantly year-by-year. Ex Staff 1, p. 16. For example, the Company's test year pension expense was \$2,844,759. For 2014, however, the expense dipped down to \$976,122. To remedy the problem caused by the fluctuating expense for ratemaking purposes, BHP proposed, and the Staff accepted for settlement purposes, a normalization adjustment based on the average annual expense during the five-year period 2010-2014. These years included a year in which the pension expense was high at \$3.25 million (2012) and a year in which the expense was low -- \$976,122 (2014). The five-year average expense used for rate setting purposes was \$2,336,305. As pointed out in Staff witness Peterson's testimony at hearing, the five-year average that was agreed upon by BHP and the Staff represented over a \$500,000 reduction in the test year expense. TR 282.

42. BHII objected to the treatment of the pension expense in the Stipulation characterizing it as "opportunistic" in that it does not reduce the test year expense far enough and it prevents BHP ratepayers from receiving the benefit from the lower pension expense in 2014 that the Company enjoyed. Rather, BHII witness Mr. Kollen recommended that BHP's 2014 pension expense be recognized for ratemaking purposes. Ex BHII 1, pp. 33-34.

43. The Commission finds that it is BHII's position, not that of BHP and the Staff, which is opportunistic in this instance with respect to the pension expense. BHII's recommendation would set rates based on the lowest pension expense experienced in the last five years. BHII's recommendation is particularly egregious in this instance given that BHP's witness Thurber testified that the Company's most recent estimate of its 2015 pension expense is \$2,056,581 -- which is considerably higher than its 2014 expense that Mr. Kollen recommends and similar to the five-year average reflected in the Settlement Agreement. Ex BHP 70, pp. 22-23. The Commission also finds that the normalization treatment of a widely varying expense is consistent with sound regulatory principles and that the Commission has routinely relied on the normalization treatment in prior cases before the Commission, e.g. storm damage expense and uncollectible expenses. The facts and circumstances surrounding the pension expense make it appropriate to apply normalization treatment in this instance. Finally, the Commission further finds that Mr. Kollen's recommended adjustment is internally inconsistent with BHII's position regarding post-test year adjustments in that BHII's witness did not include a revenue adjustment to correspond to its proposed expense adjustment even though BHII incorrectly contends that a revenue adjustment is required for each post-test year adjustment.

## **Retired Steam Plants Decommissioning Expense**

44. In 2014, BHP began to decommission its Neil Simpson 1, Ben French, and Osage coal-fired power plants. The Company expects the decommissioning to be completed by September 2015. BHP proposed to amortize the estimated costs associated with the retirement and decommissioning activities over five years and to include the unamortized balance in rate base. The Settlement Stipulation removes all of the contingency allowances that were included in BHP's original cost estimate. The Settlement Stipulation also revises the amount included for obsolete inventories and reflects a ten-year rather than a five-year amortization period for final retirement and decommissioning costs.

45. BHII objects to the treatment of final retirement and decommission costs associated with these three steam generating stations because it contends "[t]he Company had not yet incurred most of the decommissioning costs that it seeks to include in rate base as of October 1, 2014, twelve months after the end of the historic test year." Ex BHII 1, p. 16.

46. As discussed elsewhere in this Order, the Commission finds no legitimate basis for Mr. Kollen's artificial twelve-month post-test year cut-off. ARSD 20:10:13:44 clearly allows that the Commission look up to 24-months post-test year when evaluating expense adjustments such as this. Therefore, the Commission rejects BHII's recommendation and adopts as just and reasonable the adjusted ten-year amortization expense reflected in the Settlement Stipulation.

### **Affiliate Allocations**

47. The Amended Stipulation includes actual billings by BHP's affiliates – Black Hills Corp. and Black Hills Utility Holdings – to the Company for the twelve months ended August 31, 2014. Thus, the Settlement Stipulation reflects known costs experienced by BHP well within the twenty-four month post-test year period provided for in ARSD 20:10:13:44.

48. BHII objects to any increase in affiliate charges. BHII witness Mr. Kollen contends that there is no justification for the increases in affiliate charges and, further, that the magnitude of the increase is unreasonable on its face. Therefore, Mr. Kollen recommended that the post-test year expense be excluded from BHP's revenue requirement. Ex BHII 1, pp. 37-40.

49. The Commission finds that the affiliate expenses included in the Amended Stipulation are, in fact, the actual expenses that were billed to BHP by its affiliates – Black Hills Corp. and Black Hills Utilities Holdings. Therefore, the affiliate expense adjustments reflected in the Amended Stipulation are known and measurable and just and reasonable for inclusion in BHP's revenue requirement. BHII's contention of these costs being unreasonable on their face is without merit and is hereby rejected.

### **Steam and Other Production Plant Net Salvage**

50. The proposed adjustment to net negative salvage reflects an estimated negative increase to the net of estimated salvage income and cost of removal, or an increase in the shortfall from projected salvage income less than the projected cost of removal. BHII Witness Kollen listed several reasons why he rejected BHP's proposed adjustment as well as the revised Settlement adjustment as set forth in Finding 51.

51. First, the basis for the calculation of the terminal net salvage is flawed and unreliable, resulting in an excessive net negative salvage cost and percentage. Second, this may represent an undisclosed proposal to change the Commission's policy for decommissioning cost recovery from recovery *after* the retirement of the plants (as is the case in this proceeding for the three retired coal-fired plants) to recovery *before* the future retirement of the plants. Third, the increase in net negative salvage is not necessary at this time. The Commission is not required to provide recovery of unknown future costs in present rates. The Commission's current policy appears to be to determine the appropriate manner of decommissioning (and associated costs) *after* plants are retired. This policy is prudent for ratepayers and still ensures that the Company recovers its costs. Ex BHII 1, pp. 47-48.

52. Staff Witness Peterson disagreed, stating that "however desirable it might be to have all elements of the revenue requirement based on absolutely known and measurable

costs, depreciation allowances must reflect estimates because neither the service life of the asset nor the cost of the act of retirement are known until the asset has been retired. Depreciation allowances represent allocations of capital costs of an asset to the time periods as the asset provides service to customers over a long period of time. In the absence of making such estimates, ratepayers benefitting from the service provided by the asset will avoid these costs and cost recovery would be shifted to future ratepayers not benefitting from that service. I know of nothing that even suggests an existing Commission policy of refusing to recognize these retirement-related costs until after the plant is retired." Ex Staff 1, p. 20. The Commission finds that the Amended Stipulation reasonably addresses the net salvage cost issue.

### **LIDAR**

53. As with BHP's decommissioning costs, BHP's LIDAR costs are governed and capped by a fixed rate contract. In the opinion of Staff witness Peterson, these costs are sufficiently known and measurable to be appropriately recognized in rates. The five-year amortization period reflected in the Amended Stipulation was determined to be appropriate because five years is the expected frequency for LIDAR surveying activities. It would be inappropriate to employ a ten-year amortization period as BHII witness Kollen recommends because to do so would unjustifiably burden BHP ratepayers, including BHII members, in years six through ten with costs for two different LIDAR surveys. A five-year amortization matches with the planned survey interval and is therefore more appropriate for these costs. Ex Staff 1, p. 15.

### **Class Cost of Service Study**

54. Because BHII accepts the apportionment of the overall approved revenue increase reflected in the Settlement Stipulation, there are no remaining issues to be decided by the Commission regarding the spread of the rate change among the rate classes. Ex. Staff 1, p. 21.

55. Only the spread of the revenue change among the rate classes is being resolved by the Settlement Stipulation, and through Mr. Baron's testimony, BHII is accepting the settlement resolution concerning the spread of the revenue change. Under the Settlement Stipulation, BHP, the Commission Staff and the BHII are free to advocate whatever they choose concerning the CCOSS in BHP's next base rate proceeding. Therefore, it is not necessary for the Commission to rule on any CCOSS issue in this proceeding; nor is it necessary for the Commission to direct BHP to file a CCOSS in any particular manner in the next case. Ex Staff 1, pp. 21-22.

### **Refund of Overcharges**

56. Interim rates were implemented on October 1, 2014. Approval of the Amended Settlement Stipulation will authorize a rate increase less than the interim rate level. BHP will refund to customers the difference between interim rates and new rates established by the settlement for usage during the period October 1, 2014, through the effective date of new rates, plus interest. Ex JT 2, p. 5.

57. Refunds with carrying charges of seven percent (7%) annual interest will occur in May 2015, in accordance with BHP's proposed Interim Refund Plan. March 2<sup>nd</sup> transcript, pp. 29-30.

## Tariff Sheets

58. The revised tariff sheets proposed by BHP are as follows:

### South Dakota Electric Rate Book

#### Section No. 1

Twenty-fifth Revised Sheet No. 3  
3

Replaces Twenty-fourth Revised Sheet No.

#### Section No. 3

Fifteenth Revised Sheet No. 1  
Thirteenth Revised Sheet No. 2  
Fifteenth Revised Sheet No. 3  
Thirteenth Revised Sheet No. 4  
Fifteenth Revised Sheet No. 7  
Fourteenth Revised Sheet No. 8  
Fifteenth Revised Sheet No. 9  
Thirteenth Revised Sheet No. 10  
Fifteenth Revised Sheet No. 11  
Fourteenth Revised Sheet No. 12  
Fourteenth Revised Sheet No. 13  
Fifteenth Revised Sheet No. 14  
Thirteenth Revised Sheet No. 15  
Seventeenth Revised Sheet No. 16  
Eighteenth Revised Sheet No. 17  
17

Replaces Fourteenth Revised Sheet No. 1  
Replaces Twelfth Revised Sheet No. 2  
Replaces Fourteenth Revised Sheet No. 3  
Replaces Twelfth Revised Sheet No. 4  
Replaces Fourteenth Revised Sheet No. 7  
Replaces Thirteenth Revised Sheet No. 8  
Replaces Fourteenth Revised Sheet No. 9  
Replaces Twelfth Revised Sheet No. 10  
Replaces Fourteenth Revised Sheet No. 11  
Replaces Thirteenth Revised Sheet No. 12  
Replaces Thirteenth Revised Sheet No. 13  
Replaces Fourteenth Revised Sheet No. 14  
Replaces Twelfth Revised Sheet No. 15  
Replaces Sixteenth Revised Sheet No. 16  
Replaces Seventeenth Revised Sheet No.

Fourteenth Revised Sheet No. 18  
Fifteenth Revised Sheet No. 19  
Fourteenth Revised Sheet No. 20  
Sixteenth Revised Sheet No. 22  
Fourteenth Revised Sheet No. 23  
Fifteenth Revised Sheet No. 24  
Thirteenth Revised Sheet No. 25  
Fifteenth Revised Sheet No. 26  
Thirteenth Revised Sheet No. 27  
Ninth Revised Sheet No. 31  
Eighth Revised Sheet No. 32  
Original Sheet No. 32A  
Sixth Revised Sheet No. 33  
Fifth Revised Sheet No. 34  
Fourth Revised Sheet No. 35  
Fifth Revised Sheet No. 36  
Fourth Revised Sheet No. 37  
Third Revised Sheet No. 38

Replaces Thirteenth Revised Sheet No. 18  
Replaces Fourteenth Revised Sheet No. 19  
Replaces Thirteenth Revised Sheet No. 20  
Replaces Fifteenth Revised Sheet No. 22  
Replaces Thirteenth Revised Sheet No. 23  
Replaces Fourteenth Revised Sheet No. 24  
Replaces Twelfth Revised Sheet No. 25  
Replaces Fourteenth Revised Sheet No. 26  
Replaces Twelfth Revised Sheet No. 27  
Replaces Eighth Revised Sheet No. 31  
Replaces Seventh Revised Sheet No. 32

Replaces Fifth Revised Sheet No. 33  
Replaces Fourth Revised Sheet No. 34  
Replaces Third Revised Sheet No. 35  
Replaces Fourth Revised Sheet No. 36  
Replaces Third Revised Sheet No. 37  
Replaces Second Revised Sheet No. 38

#### Section 3A

Ninth Revised Sheet No. 1  
Eighth Revised Sheet No. 2  
Fifth Revised Sheet No. 3  
Eighth Revised Sheet No. 4

Replaces Eighth Revised Sheet No. 1  
Replaces Seventh Revised Sheet No. 2  
Replaces Fourth Revised Sheet No. 3  
Replaces Seventh Revised Sheet No. 4

Sixth Revised Sheet No. 5  
Tenth Revised Sheet No. 6  
Eighth Revised Sheet No. 7  
Eighth Revised Sheet No. 8  
Sixth Revised Sheet No. 9  
Sixth Revised Sheet No. 10  
Eighth Revised Sheet No. 11  
Seventh Revised Sheet No. 12  
Ninth Revised Sheet No. 13  
Sixth Revised Sheet No. 14  
Sixth Revised Sheet No. 15  
Seventh Revised Sheet No. 16  
Third Revised Sheet No. 17  
Sixth Revised Sheet No. 18  
Fourth Revised Sheet No. 19  
Third Revised Sheet No. 20

Replaces Fifth Revised Sheet No. 5  
Replaces Ninth Revised Sheet No. 6  
Replaces Seventh Revised Sheet No. 7  
Replaces Seventh Revised Sheet No. 8  
Replaces Fifth Revised Sheet No. 9  
Replaces Fifth Revised Sheet No. 10  
Replaces Seventh Revised Sheet No. 11  
Replaces Sixth Revised Sheet No. 12  
Replaces Eighth Revised Sheet No. 13  
Replaces Fifth Revised Sheet No. 14  
Replaces Fifth Revised Sheet No. 15  
Replaces Sixth Revised Sheet No. 16  
Replaces Second Revised Sheet No. 17  
Replaces Fifth Revised Sheet No. 18  
Replaces Third Revised Sheet No. 19  
Replaces Second Revised Sheet No. 20

#### Section 3B

Sixth Revised Sheet No. 1  
Fifth Revised Sheet No. 2  
Fifth Revised Sheet No. 3  
Fifth Revised Sheet No. 4  
Sixth Revised Sheet No. 5  
Sixth Revised Sheet No. 8  
Fifth Revised Sheet No. 9  
Fifth Revised Sheet No. 10

Replaces Fifth Revised Sheet No. 1  
Replaces Fourth Revised Sheet No. 2  
Replaces Fourth Revised Sheet No. 3  
Replaces Fourth Revised Sheet No. 4  
Replaces Fifth Revised Sheet No. 5  
Replaces Fifth Revised Sheet No. 8  
Replaces Fourth Revised Sheet No. 9  
Replaces Fourth Revised Sheet No. 10

#### Section 3C

Twelfth Revised Sheet No. 5  
Fourteenth Revised Sheet No. 11  
Sixth Revised Sheet No. 12  
First Revised Sheet No. 13  
Second Revised Sheet No. 14  
Second Revised Sheet No. 15

Replaces Eleventh Revised Sheet No. 5  
Replaces Thirteenth Revised Sheet No. 11  
Replaces Fifth Revised Sheet No. 12  
Replaces Original Sheet No. 13  
Replaces First Revised Sheet No. 14  
Replaces First Revised Sheet No. 15

#### Section 4

Fourth Revised Sheet No. 4  
Eighth Revised Sheet No. 5  
Sixth Revised Sheet No. 6

Replaces Third Revised Sheet No. 4  
Replaces Seventh Revised Sheet No. 5  
Replaces Fifth Revised Sheet No. 6

#### Section 5

Third Revised Sheet No. 4  
Fifth Revised Sheet No. 21  
Fourth Revised Sheet No. 22

Replaces Second Revised Sheet No. 4  
Replaces Fourth Revised Sheet No. 21  
Replaces Third Revised Sheet No. 22

#### Section 6

Third Revised Sheet No. 22

Replaces Second Revised Sheet No. 22

## **General**

59. As stated in the Staff Memorandum, with respect to a Settlement Stipulation, petty criticisms can be levied against individual elements of the Settlement Stipulation. Because it is an agreed resolution of the case, however, a settlement stipulation is more appropriately judged on the basis of its overall resolution of the case because it involves trade-offs between the parties to it. The Commission believes that this is the appropriate way of assessing the justness and reasonableness of this Amended Stipulation as well. BHII focuses on the minute details of the Settlement Stipulation in isolation.

60. Staff witness Peterson testified that Staff believes that the end result of the Settlement Stipulation results in just and reasonable rates, and it reasonably reflects the cost that BHP will incur going forward. There were a number of issues which the Staff and the company disagreed on. The Staff's resolution of those issues is stated in the Staff Memorandum, but BHP had its own basis for settling certain issues which were either advantageous or adverse to the company. Staff does not see the company's analysis of that. But the end result, Staff believes, was just and reasonable rates and reasonably reflects the cost that the company expects to incur going forward. TR 280.

61. The Commission finds that the rates, terms and conditions in the Amended Stipulation demonstrate a thorough, penetrating, and credible analysis by Staff and its expert witnesses of the data and assumptions underlying the Application and the Amended Settlement Stipulation; balance fairly the interests of BHP and its customers; recover no more than BHP's current revenue requirements, including a reasonable return to its stockholders commensurate with its cost of equity capital; are supported by substantial evidence; and meet the just and reasonable standard set forth in SDCL 49-34A-6, as more specifically delineated in SDCL 49-34A-8, the unreasonable preference or advantage and unreasonable prejudice or disadvantage prohibitory standards of SDCL 49-34A-3, the fair and reasonable return standard of SDCL 49-34A-8, and are prudent, efficient, and economical and are reasonable and necessary to provide service to the public utility's customers as provided in SDCL 49-34A-8.4. These settlement rates allow BHP a reasonable opportunity to earn a return that is adequate to enable it to continue providing safe, adequate, and reliable service to its South Dakota retail customers.

62. The Commission finds that neither the SDSTA Settlement Agreement nor the Commission's approval of the SDSTA Settlement Agreement has affected the costs to be recovered from BHP's other customers under the Amended Settlement Stipulation.

63. To the extent that any Conclusion of Law set forth below is more appropriately a finding of fact, that Conclusion of Law is incorporated by reference as a Finding of Fact.

## **CONCLUSIONS OF LAW**

1. The following statutes and rules are applicable to this proceeding and vest the Commission with jurisdiction over this matter: SDCL Chapters 1-26 and 49-34A, including 1-26-20, 49-34A-3, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-8.4, 49-34A-10, 49-34A-11, 49-34A-12, 49-34A-13, 49-34A-13.1, 49-34A-14, 49-34A-19, 49-34A-19.1, 49-34A-19.2, 49-34A-21, and 49-34A-22, and ARSD Chapters 20:10:01 and 20:10:13.

2. The primary issue raised by BHII concerns the scope of what adjustments may be presented by an applicant for a rate increase within the twenty-four month cost of service



adjustment period set forth in ARSD 20:10:13:44 and what may be considered by the Commission in rendering its decision, including the extent to which the Commission may consider capital cost additions and/or reductions, expense increases and/or reductions, and other relevant cost of service facts which become known and measurable during the pendency and processing of the case prior to the expiration of the twenty-four month period after the application is filed and which will be incurred during the period of 24 months after the filing of the application.

3. SDCL 49-34A-6 provides:

Every rate made, demanded or received by any public utility shall be just and reasonable. Every unjust or unreasonable rate shall be prohibited. The Public Utilities Commission is hereby authorized, empowered and directed to regulate all rates, fees and charges for the public utility service of all public utilities, including penalty for late payments, to the end that the public shall pay only just and reasonable rates for service rendered.

4. SDCL 49-34A-8 provides:

The commission, in the exercise of its power under this chapter to determine just and reasonable rates for public utilities, shall give due consideration to the public need for adequate, efficient, economical, and reasonable service and to the need of the public utility for revenues sufficient to enable it to meet its total current cost of furnishing such service, including taxes and interest, and including adequate provision for depreciation of its utility property used and necessary in rendering service to the public, and to earn a fair and reasonable return upon the value of its property.

5. SDCL 49-34A-8.4 provides:

The burden is on the public utility to establish that the underlying costs of any rates, charges, or automatic adjustment charges filed under this chapter are prudent, efficient, and economical and are reasonable and necessary to provide service to the public utility's customers in this state.

6. SDCL 49-34A-19 provides in relevant part:

In determining the revenue requirement the commission shall consider revenue, expenses, cost of capital and any other factors or evidence material and relevant thereto. The commission may take into consideration the reasonable income and expenses that will be forthcoming in a period of twenty-four months in advance of the test year.

7. ARSD 20:10:13:01(11) provides as follows:

"Test period," the test period outlined in § 20:10:13:44, except that if additional material is filed by the utility, a test period is any 12 consecutive months beginning no later than the proposed effective date of the rate application.

8. ARSD 20:10:13:44 provides as follows:

The statement of the cost of service shall contain an analysis of system costs as reflected on the filing utility's books for a test period consisting of 12 months of actual experience ending no earlier than 6 months before the date of filing of the data required by §§ 20:10:13:40 and 20:10:13:43 unless good cause for extension is shown. The analysis shall include the return, taxes, depreciation, and operating expenses and an allocation of such costs to the services rendered. The information submitted with the statement shall show the data itemized in this section for the test period, as reflected on the books of the filing public utility. Proposed adjustments to book costs shall be shown separately and shall be fully supported, including schedules showing their derivation, where appropriate. However, no adjustments shall be permitted unless they are based on changes in facilities, operations, or costs which are known with reasonable certainty and measurable with reasonable accuracy at the time of the filing and which will become effective within 24 months of the last month of the test period used for this section and unless expected changes in revenue are also shown for the same period.

9. As set forth in Findings of Fact 24, these provisions have for decades been interpreted together as providing for a historic test year as the cost of service basis period, but also, in part because such cost of service data are used to set rates for a future period, the analysis and substance of a proposed change in utility rates should include both known and measurable expenses during the test year and adjustments to reflect any changes that occurred after the test year that become known and measurable within the 24-month period for case processing provided for in ARSD 20:10:13:44 and SDCL 49-34A-19. Staff has interpreted these provisions to mean that the adjustments have to be sufficiently known and measurable at the time of their submission for Staff review of the responses to hundreds of discovery requests and filings in the case. Although the phrase "in advance of" is anomalous when read together with the word "forthcoming," the Commission concludes that the intent of SDCL 49-34A-19 is to permit the consideration of cost of service evidence that becomes known and measurable during the twenty-four month period following the end of the test year, that such interpretation is not inconsistent with the phrase "at the time of the filing" due to the voluminous "filings" in a rate case over a two year period in most rate cases, and that such interpretation results in the most accurate real-time basis for the utility's rates, thus minimizing the need for an immediate or near term filing by the utility of a follow-on rate case to recover such costs.

10. As to the issue of revenue during the twenty-four month rate case processing period, BHII argues that BHP and Staff neglected to provide and/or consider evidence of BHP's revenue during such period. BHII argues that this violates the matching principle and also runs contrary to SDCL 49-34A-19. BHP and Staff in contrast argue that the matching principle is not violated because the only adjustments accepted by Staff are adjustments that have no revenue generating component to them. The Commission concludes that none of the cost adjustments included in the Amended Settlement Stipulation result in additional revenue for BHP, and, in the context of a settlement stipulation that very significantly reduces the revenue requirement from what was requested by BHP in its Application and supported by its experts in its pre-filed and hearing testimony, such adjustments are just and reasonable.

11. With respect to BHII's argument at the March 2, 2015, decision hearing that BHII was not afforded due process to contest the Amended Settlement Stipulation's correction of the error in the BHUH allocation, the Commission concludes that this substantive amendment to the original Settlement Stipulation occurred precisely as a result of evidence introduced and

considered at the evidentiary hearing and the pre-filed testimony filed prior to the hearing and received in evidence at the hearing. The error in the calculation of the BHUH allocation was pointed out in BHII's expert witness Kollen's pre-filed testimony and acknowledged by BHP witness Thurber and Staff witness Peterson to be accurate in their pre-filed testimony and at hearing. The Commission has already heard the evidence and arguments regarding this amendment to the Settlement Stipulation, and nothing would be gained by another hearing on a matter that has already been heard.

12. No statute or rule precludes the inclusion of employee incentive compensation in the utility's cost of service and revenue requirement. The Commission's decision whether to allow incentive compensation and, if so, subject to what limitations are judgment calls concerning what meets the just and reasonable standard.

It is therefore

ORDERED, that the Amended Settlement Stipulation between Black Hills Power, Inc. and Staff is approved as the substance of the decision of the Commission in this docket with an effective date of April 1, 2015, and with refunds of interim rate billings in excess of the approved rates plus carrying charges of seven percent (7%) annual interest to occur in May, 2015, in accordance with BHP's proposed Interim Refund Plan. It is further

ORDERED, that the Settlement Agreement between Black Hills Power, Inc. and the South Dakota Science and Technology Authority and the Third Amendment to Electric Power Service Agreement between Black Hills Power, Inc. and South Dakota Science and Technology Authority are approved and refunds to SDSTA shall not therefore be necessary.

**NOTICE OF ENTRY AND OF RIGHT TO APPEAL**

PLEASE TAKE NOTICE that this Final Decision and Order; Notice of Entry was duly issued and entered on the 17<sup>th</sup> day of April, 2015. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition with the Commission within 30 days after the date of issuance of this Final Decision and Order; Notice of Entry. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Final Decision and Order to the appropriate Circuit Court by serving notice of appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 17<sup>th</sup> day of April, 2015.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.

By: [Signature]

Date: 4/17/15

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

[Signature]  
CHRIS NELSON, Chairman

[Signature]  
KRISTIE FIEGEN, Commissioner

[Signature]  
GARY HANSON, Commissioner

**Appendix A – Confidential**