

April 1, 2015

**VIA E-FILING**

Ms. Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
500 E. Capitol Avenue  
Pierre, SD 57501

**Re: In the Matter of the Application of Black Hills Power, Inc. for Authority to  
Increase its Electric Rates  
Docket No. EL 14-026**

Dear Ms. Van Gerpen:

Enclosed for filing in the above mentioned docket is Black Hills Industrial Intervenors' Petition for Rehearing and Reconsideration.

Very truly yours,

Stoel Rives LLP

*/s/ Andrew P. Moratzka*

Andrew P. Moratzka

APM:kap  
Attachments

cc: Service List via email only

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

In the Matter of the Application  
of Black Hills Power, Inc. for  
Authority to Increase its Electric  
Rates

Docket No. EL14-026

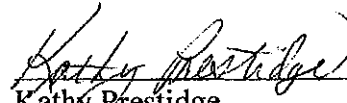
**AFFIDAVIT OF SERVICE**

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )


I, Kathy Prestidge, hereby certify that I have this day served a true and correct copy of the following documents to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same in an envelope with postage paid in the United States Mail at Minneapolis, Minnesota.

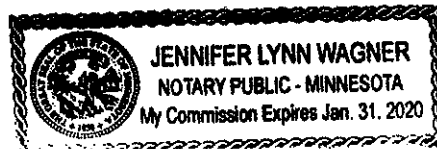
**BLACK HILLS INDUSTRIAL INTERVENORS' PETITION FOR REHEARING  
AND RECONSIDERATION**

Further Your Affiant Sayeth Not.

  
Kathy Prestidge

Subscribed and sworn to before me  
this 1st day of April, 2015.

  
Notary Public



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

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In the Matter of the Application  
of Black Hills Power, Inc. for  
Authority to Increase its Electric  
Rates

Docket No. EL14-026

**BLACK HILLS INDUSTRIAL  
INTERVENORS' PETITION FOR  
REHEARING AND  
RECONSIDERATION**

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**I. INTRODUCTION**

The Black Hills Industrial Intervenors ("BHII"),<sup>1</sup> by and through counsel, and pursuant to South Dakota Administrative Rules ("ARSD") § 20:10:01:30.01, hereby submit this Petition for Rehearing and Reconsideration of the decision of the South Dakota Public Utility Commission (the "Commission") granting the Joint Motion for Approval of Amended Settlement Stipulation filed by Black Hills Power, Inc. ("BHP") and commission staff ("Commission Staff") on February 23, 2015 (the "Amended Motion") and approving the terms and conditions set forth in the Amended Settlement Stipulation filed by BHP and Staff on February 10, 2015, and served on BHII on February 11, 2015 (the "Amended Settlement"), which decision was voted on and approved by the Commission at the Commission's public meeting on March 2, 2015 (the "Decision"). ARSD 20:10:01:30.01 provides that any party to a proceeding may file a written petition for rehearing or reconsideration with the Commission "within 30 days from the issuance of the [C]ommission decision or order." BHII acknowledges that, despite the Commission's best

<sup>1</sup> 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.

efforts, the Commission has not yet issued a written decision or order. Although ARSD 20:10:01:30.01 arguably states that any petition for rehearing or reconsideration is due 30 days after the written decision, BHII submits this Petition out of an abundance of caution, and on a protective basis, to ensure that BHII preserves its right to judicial appeal of the Commission's order when issued. In addition, BHII hereby reserves the right to supplement or amend this Petition to clarify and provide additional specificity with respect to the requests set forth herein after the Commission issues its written decision and order. As noted above, the Commission orally issued the Decision at its public meeting on March 2, 2015. This Petition is therefore timely.<sup>2</sup>

## II. PROCEDURAL BACKGROUND

The following timeline and statement of events is relevant to the requests set forth herein:

- (1) On March 31, 2014, BHP filed an application for authority to increase electric rates (the "Application") with the Commission.
- (2) Between late October and early December 2014, BHII participated in settlement discussions with BHP, Commission Staff, and Dakota Rural Action ("DRA").
- (3) On December 9, 2014, BHP and Commission Staff submitted a Joint Motion for Approval of Settlement Stipulation (the "Initial Motion") and corresponding Settlement Stipulation (the "Initial Settlement").

<sup>2</sup> One reading of ARSD 20:10:01:30.01 would be that, in this case, a petition for rehearing or reconsideration is due 30 days after the March 2, 2015 oral decision, or by April 1, 2015.

- (4) On December 30, 2014, BHII filed direct written testimony and on January 27-28, 2015, BHII provided live testimony at the Commission's hearing, in each case opposing the Application and the Initial Settlement.
- (5) On February 10, 2015, two weeks after the hearing, Commission Staff and BHP submitted the Amended Settlement.
- (6) On February 23, 2015, Commission Staff and BHP submitted the Amended Motion.
- (7) On March 2, 2015, the Commission issued the Decision granting the Amended Motion and approving the terms and conditions of the Amended Settlement.
- (8) At the Commission's hearing on March 2, 2015, counsel for BHII objected to the Decision on the basis that the Amended Settlement was not properly before the Commission for decision.
- (9) On March 30, 2015, the undersigned counsel talked to counsel for Commission Staff and confirmed a written decision and order were forthcoming.
- (10) On March 30 and 31, 2015, the undersigned counsel talked to counsel for Commission Staff and counsel for BHP regarding the timeframe for the written decision and order and the due date for the submission of a petition for rehearing or reconsideration. Although counsel for Commission Staff agreed that any petition for rehearing or reconsideration would be due 30 days after the date the written decision and order were issued, counsel for BHP would not so stipulate.

### **III. PETITION FOR REHEARING**

BHP and Commission Staff submitted the Amended Settlement on February 10, 2015 (two weeks after the Commission's evidentiary hearing in this docket), but did not submit their



Amended Motion until February 23, 2015. BHII petitions for rehearing on two grounds. First, the Commission's approval of the Amended Settlement after the evidentiary hearing violates principles of equity and due process. Second, and more fundamentally, the Commission's approval of the Amended Settlement, over BHII's timeliness objection, contravened Rule 6 of the South Dakota Rules of Civil Procedure (SDCL 15-6-6). If other issues are raised by, or other findings or conclusions are made part of, the written decision and order, BHII reserves the right to supplement or amend this petition for rehearing.

#### **IV. PETITION FOR RECONSIDERATION**

BHII respectfully requests that the Commission reconsider the Decision. Specifically with respect to those issues raised by the Commission at the public meeting on March 2, 2015,<sup>3</sup> BHII requests that the Commission reconsider: (1) its interpretation of ARSD 20:10:13:44, (2) its interpretation of SDCL § 49-34A-19, (3) its interpretation of SDCL § 49-34A-24, (4) its decision to accept BHP and Staff's inclusion of \$666,068 in incentive compensation related to financial goals in BHP's cost of service, and (5) its decision to accept BHP and Staff's proposal to normalize pension expenses using a five-year average but reject using the actual 2015 pension expense testified to by BHP witness Mr. Thurber. If other issues are raised by, or other findings or conclusions are made part of, the written decision and order, BHII reserves the right to supplement or amend this petition for reconsideration.

<sup>3</sup> Based upon BHII's review of the hearing transcript.

## V. CONCLUSION

Until it receives the impending written decision and order, BHII is unable to set forth the specific findings of fact and conclusions of law to support this Petition, as required by ARSD 20:10:01:30:01. BHII understands from counsel to Commission Staff that the Commission's written decision and order will contain language fixing the appropriate due date for any petitions for rehearing and reconsideration. BHII will supplement or amend this Petition, as appropriate, within the timeframe stated in the decision and order.

Dated: April 1, 2015

Respectfully submitted,

/s/ Mark A. Moreno

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**From:** Douglas, Tina (PUC)  
**To:** Prestidge, Kathleen A.  
**Subject:** FW: Existing Docket Filing  
**Date:** Wednesday, April 01, 2015 3:13:13 PM  
**Attachments:** [Service Letter, Affidavit and Service List.pdf](#)  
[Black Hills Industrial Intervenors' Petition for Rehearing and Reconsideration.pdf](#)

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The South Dakota PUC has received your filing on **4/1/15**. There are two attachments. These attachments **do not contain confidential information** and has 10 total pages.

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**From:** PUC Docket Filings [mailto:PUCDocketFilings@state.sd.us]  
**Sent:** Wednesday, April 01, 2015 3:10 PM  
**To:** Douglas, Tina (PUC); Van Gerpen, Patty; Mohr, Leah; Lashley, Joy (PUC); Gustafson, Katlyn  
**Subject:** FW: Existing Docket Filing

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**From:** Prestidge, Kathleen A. [SMTP:KATHY.PRESTIDGE@STOEL.COM]  
**Sent:** Wednesday, April 01, 2015 3:10:08 PM  
**To:** PUC Docket Filings  
**Subject:** Existing Docket Filing  
**Auto forwarded by a Rule**

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Comments: Service Letter, Affidavit of Service, Service List and Black Hills Industrial Intervenors' Petition for Rehearing and Reconsideration