

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

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

APPELLANTS'
DOCKETING STATEMENT

Civ. No. 15-146

SECTION A.

TRIAL COURT

1. The circuit court from which the appeal is taken: Sixth Judicial Circuit
2. The county in which the action is venued at the time of appeal: Hughes
3. The name of the trial judge who entered the decision appealed: The Honorable Mark Barnett

PARTIES AND ATTORNEYS

4. Identify each party presently of record and the name, address, and phone number of the attorney for each party. (May be continued on an attached appendix.)

Appellants: 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. (together, the "Black Hills Industrial Intervenors")

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SECTION B.

TIMELINESS OF APPEAL

1. The date the judgment or order appealed from was signed and filed by the trial court: January 8, 2016
2. The date notice of entry of the judgment or order was served on each party: January 8, 2016
3. State whether either of the following motions was made:
 - a. Motion for judgment n.o.v., SDCL 15-6-50(b): ___ Yes X No
 - b. Motion for new trial, SDCL 15-6-59: ___ Yes X No

NATURE AND DISPOSITION OF CLAIMS

4. State the nature of each party's separate claims, counterclaims or cross-claims and the trial court's disposition of each claim (e.g., court trial, jury verdict, summary judgment, default judgment, agency decision, affirmed/reversed, etc.).

Claim: The South Dakota Public Utilities Commission unlawfully approved the Amended Settlement Stipulation with respect to Black Hills Power's application for authority to increase electric rates.

Disposition: The Circuit Court affirmed the South Dakota Public Utilities Commission.

5. Appeals of right may be taken only from final, appealable orders. See SDCL 15-26A-3 and 4.

a. Did the trial court enter a final judgment or order that resolves all of each party's individual claims, counterclaims, or cross-claims? X Yes No

b. If the trial court did not enter a final judgment or order as to each party's individual claims, counterclaims, or cross-claims, did the trial court make a determination and direct entry of judgment pursuant to SDCL 15-6-54(b)? Yes No

6. State each issue intended to be presented for review. (Parties will not be bound by these statements).

1. **Did the Circuit Court err by concluding that the Commission can permit adjustments to the utility's cost of service analysis under South Dakota Administrative Rule ("ARSD") 20:10:13:44 when those adjustments were not supported and were neither known with reasonable certainty nor measureable with reasonable accuracy at the time the utility filed its application to increase rates?**
2. **Did the Circuit Court err by concluding that the Commission did not arbitrarily and capriciously choose to approve the calculation of a five-year average pension expense based on 2010-2014 rather than 2011-2015 without any explanation of its reasoning supporting the decision, despite the Circuit Court's conclusion that the Commission can permit post-filing adjustments based on new information?**
3. **Did the Circuit Court err by concluding that Black Hill's Power met its burden under South Dakota Codified Laws §§ 49-34A-8.4 49-34A-11 and ARSD 20:10:13:44 to prove that its incentive compensation package is prudent, efficient, and economical, is reasonable and necessary to provide service to its customers in South Dakota, and that such incentive compensation is fully supported, via figures unsupported by analysis, means of calculation, or any documentation coupled only with conclusory and self-interested statements of a utility executive?**

Date: February 8, 2016

Signature: Mark A. Moreno

[Attach a copy of any memorandum opinion and findings of fact or conclusions of law supporting the judgment or order appealed from. See SDCL 15-26A-4(2).]