

EL99-005

BLACK HILLS CORPORATION
P.O. BOX 1400 625 NINTH STREET
RAPID CITY, SOUTH DAKOTA 57709

KYLE D. WHITE
VICE PRESIDENT - MARKETING
AND REGULATORY AFFAIRS

April 22, 1999

TELEPHONE
(605) 348-1700
FAX (605) 348-0749

RECEIVED

APR 24 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Dear Mr. Bullard:

Enclosed is an up-to-date summary list of all contracts with deviations between Black Hills Corporation (BHC), and those customers within the industrial contract service class of BHC's tariff schedule. This submission is made pursuant to ARSD 20:10:13:09.

Also enclosed you will find a separate envelope marked "Confidential Treatment Requested." Within this envelope you will find for the Commission's consideration and approval a Confidential Electric Power Service Contract with Deviations between Black Hills Corporation, d/b/a Black Hills Power and Light Company, and the South Dakota Cement Plant Commission, d/b/a Dacotah Cement. The agreement replaces and supersedes the Electric Power Service Agreement between the parties dated May 1, 1987, as amended by Amendment No. 1 to Industrial Contract Service Agreement dated June 23, 1995.

Under Amendment No. 1, Dacotah Cement was provided the right to extend the agreement at any time subsequent to the initial three years of the five-year term. Last summer Dacotah Cement was provided its first opportunity to extend the agreement. After discussions between the parties, Dacotah Cement determined that contract revisions would be preferable to an extension. Since that time, the parties have been engaged in contract negotiations. The result is the enclosed confidential contract with deviations. We propose a contract effective date of January 1, 1999. As this filing is made more than 30 days after the establishment of the deviation, BHC requests that the Commission waive the 30-day filing requirement of ARSD 20:10:13:10 and asks the Commission's indulgence in considering these matters, despite their tardy filing.

Also included in the within envelope is BHC's request for confidential treatment of this contract with deviations. This request is made pursuant to ARSD 20:10:01:39 through 20:10:01:45, inclusive, and is intended to make this contract and accompanying request for confidentiality confidential and inaccessible to any members of the public unless otherwise made accessible through operation of the Commission's confidentiality regulations and procedures. Additionally, on March 8, 1999, I delivered to you a draft copy of the application and contract.

William Bullard, Jr.

Page 2

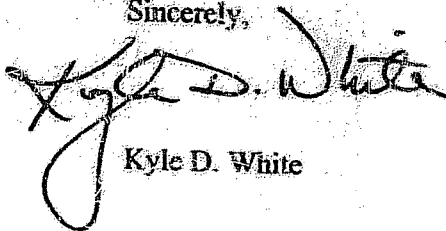
April 22, 1999

BHC specifically incorporates that draft into this request for confidentiality and requests that it too be afforded the same confidential status as requested herein.

BHC is confident that the new contract with our second largest retail electric customer provides benefits for the Company, Dacotah Cement, and our other customers.

If you have any questions regarding this application, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Kyle D. White". The signature is written in a cursive style with a large, looping initial "K".

Kyle D. White

KDW:bjr

Enclosures

NOTICE

The information in this file is designated confidential under chapter 20:10:01 of the rules of the South Dakota Public Utilities Commission. Disclosure of any such confidential information to a person other than commission members, employees, or agents is prohibited unless otherwise permitted by the commission. ARSD 20:10:01:40.

PUBLIC UTILITIES COMMISSION OF SOUTH DAKOTA

BLACK HILLS POWER AND LIGHT COMPANY
RAPID CITY, SOUTH DAKOTA

SECTION NO. 1
FIFTH REVISED SHEET NO. 3
REPLACES FOURTH REVISED SHEET NO. 3

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CONTRACTS WITH DEVIATIONS

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SECTION 5

RULES AND REGULATIONS

DATE FILED: April 23, 1999

EFFECTIVE DATE:

ISSUED BY:


Donald J. Maldinez
Energy Services Engineer

PUBLIC UTILITIES COMMISSION OF SOUTH DAKOTA

BLACK HILLS POWER AND LIGHT COMPANY
RAPID CITY, SOUTH DAKOTA

SECTION NO. 4
SEVENTH REVISED SHEET NO. 1
REPLACES SIXTH REVISED SHEET NO. 1

(RESERVED)

DATE FILED: April 23, 1999

EFFECTIVE DATE:

ISSUED BY: _____

Donald J. Martinez

Donald J. Martinez
Energy Services Engineer

PUBLIC UTILITIES COMMISSION OF SOUTH DAKOTA

BLACK HILLS POWER AND LIGHT COMPANY
RAPID CITY, SOUTH DAKOTA

SECTION NO. 4
ORIGINAL SHEET NO. 5
REPLACES SIXTH REVISED SHEET NO. 1

SUMMARY LIST OF CONTRACTS WITH DEVIATIONS

Contract #2817.8

Homestake Mining Company Industrial Contract Service Agreement. The agreement was effective September 1, 1993 and has a term of nine years and continues thereafter until canceled by the six year written notice of either party. Contract amended effective August 1, 1995 under Docket No. EL95-003. Contract amended, a second time, effective October 1, 1998, under Docket No. EL98-022.

Contract #10431

City of Rapid City Large Demand Curtailable Service Agreement. The agreement was effective June 1, 1993 and has a term of three years and continued thereafter until canceled by the one year written notice of either party.

Contract #10432

City of Rapid City Large Demand Curtailable Service Agreement. The agreement was effective June 1, 1993 and has a term of three years and continues thereafter until canceled by the one year written notice of either party.

Contract #7660.3

Wharf Resources Large Demand Curtailable Service Agreement. The agreement was effective August 1, 1995, under Docket No. EL95-003.

Contract #9032

United States Air Force Electric Power Service Agreement for the military family housing and related facilities located in the Dakota Ridge Subdivision in Rapid City. The agreement was effective January 29, 1990 and has a term of ten years.

Contract #11155

Pennington County Energy Storage Service Contract. The agreement was effective June 1, 1995 and has a term of three years and continues thereafter until canceled by the one year written notice of either party.

DATE FILED: April 23, 1999

EFFECTIVE DATE:

ISSUED BY:



Donald J. Martinez
Energy Services Engineer

PUBLIC UTILITIES COMMISSION OF SOUTH DAKOTA

BLACK HILLS POWER AND LIGHT COMPANY
RAPID CITY, SOUTH DAKOTA

SECTION NO. 4
ORIGINAL SHEET NO. 6

SUMMARY LIST OF CONTRACTS WITH DEVIATIONS

Contract #121-9

South Dakota State Cement Plant Commission Electric Power Service Agreement, effective January 1, 1999.

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DATE FILED: April 23, 1999

EFFECTIVE DATE:

ISSUED BY: _____



Donald J. Martinez
Energy Services Engineer

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APR 28 1999

CONFIDENTIAL TREATMENT IS REQUESTED

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

This document is a REQUEST FOR CONFIDENTIAL TREATMENT. Pursuant to ARSD 20:10:01:41, confidential treatment is requested for THIS DOCUMENT and for the attached CONTRACT WITH DEVIATIONS.

- (1) An identification of the document and the general subject matter of the materials or the portions of the document for which confidentiality is being requested.

Black Hills Corporation, doing business as Black Hills Power and Light Company ("BHC"), hereby requests confidential treatment of the Electric Power Service Contract with Deviations between it and the South Dakota State Cement Commission, doing business as Dacotah Cement (attached). BHC requests confidentiality of this contract in its entirety. Generally, the subject matter of this request is a rate contract between BHC and Dacotah Cement, its second largest retail electric customer, wherein both parties have agreed to hold the provisions of the contract in confidence. Confidentiality is also requested for this document, as it contains matters from the contract for which confidentiality is requested.

- (2) The length of time for which confidentiality is being requested and the request for handling at the end of that time.

Confidentiality is requested for the term of the contract, which term is indefinite and made determinable only upon the occurrence of certain events described in the contract. Alternatively, confidentiality is requested for a period of ten years. At the end of the applicable period of confidentiality, as determined by the Commission, BHC requests that the confidential materials be filed and treated as any other nonconfidential filing; unless, prior to the end of the applicable period of confidentiality, BHC or its agents, successors, or assigns has formally requested an extension of the period of confidential treatment pursuant to ARSD 20:10:01:41(2).

- (3) The name, address, and phone number of the person to be contacted regarding the confidentiality request.

Kyle D. White
Black Hills Corporation
2045 Samco Road
P. O. Box 2115
Rapid City, SD 57709
(605) 348-1701

CONFIDENTIAL TREATMENT IS REQUESTED

- (4) The statutory or common law grounds and any administrative rules under which confidentiality is requested.

Confidentiality is requested pursuant to ARSD 20:10:01:39 through 20:10:01:45, inclusive. It is also requested on the following legal basis:

This contract with deviations contains confidential proprietary information which, if disclosed to the public, would result in material damage to BHC's financial and competitive position, and would impair the public interest. In particular, the subject contract provides for electric power rates which deviate downward from the rate filed in BHC's tariff schedule for the industrial contract service class of customers. By contract, these rates are generally lower than those charged to other customers within the same rate class. BHC seeks to keep these rates confidential for the reason that disclosure would significantly impair its ability to negotiate and enter into similar contracts tailored to the needs of BHC and the remaining customers in the same class.

The law generally recognizes and protects confidential business information, such as "trade secrets" or "proprietary information" or "commercial information," which, under certain circumstances, may constitute valuable property, or which may offer a particular strategic or financial advantage in the conduct of business. *See, e.g., Mid-America Marketing Corp. v. Dakota Industries, Inc.*, 281 N.W.2d 419 (S.D. 1979). There are no hard and fast rules regarding what types of information or property are recognized as proprietary in nature, but the description can include such items as customer lists, formulas, patents, processes, accounting methods, etc. *Id.* at 423. Importantly, however, confidential business information can also include concessions in prices. *Id.*; and *Southwestern Bell Telephone Co. v. State Corporation Commission*, 629 P.2d 1174 (Ct. App. Kan. 1981).

The Commission's rules for handling confidential information and determining whether information should be protected as confidential are promulgated under the Administrative Procedure and Rules Act, Ch. 1-26 of South Dakota Codified Laws. SDCL 49-1-11(6). To that end, SDCL 1-26-19(1) specifically provides that "[t]he rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state . . . shall be followed." Thus, confidentiality determinations by the Commission under ARSD 20:10:01:39 through 20:10:01:45 include considerations of the applicable rules of evidence. Rule 507 of the South Dakota Rules of Evidence provides:

CONFIDENTIAL TREATMENT IS REQUESTED

A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice .

SDCL 19-13-20. While BHC has not specifically invoked this privilege, the issue nevertheless is whether the Commission should protect the substance of the contract with deviations from disclosure to the public and is akin to invocation of a privilege. In the civil discovery context, such matters are governed by SDCL § 15-6-26(c)(7), which authorizes a court to order that "a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way." In any event, whether disclosure should be required depends upon a weighing of the competing interests involved against the background of the total situation. For purposes of disclosure, any distinction between "trade secrets" and "proprietary information" and "confidential commercial information" are immaterial. *Southwestern Bell*, 629 P.2d at 1184. The South Dakota courts have established a number of factors to be considered in determining whether given information constitutes confidential business information. *Mid-America*, 281 N.W.2d at 423. The factors to be considered include: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

- (5) The factual basis that qualifies the information for confidentiality under the authority cited.

Obviously some of these factors bear more relevancy to this situation than others, but application of these factors nevertheless weighs in favor of confidential treatment of the contract.

The fourth *Mid-America* factor figures prominently into the inquiry here. In particular, the contract provides a cumulative rate discount to Dacotah Cement over a five-year period beginning on the effective date of the contract. In return for the cumulative discount, Dacotah agrees that in the event of deregulation of the industry, it will remain a customer of BHC for at least five years following deregulation and

CONFIDENTIAL TREATMENT IS REQUESTED

will be charged a price for its electric power not higher than the prevailing market price. Dacotah is BHC's second largest retail electric customer. It is one of four such customers in BHC's industrial contract service class. The primary purpose of the confidential request is to protect BHC's price structure from disclosure to the remaining retail customers in the class. Obviously the agreement between BHC and Dacotah represents a significant deviation from the filed rate, and from the rates charged to other class customers; but this rate agreement and its confidentiality are crucial to BHC's financial and competitive advantage in the event of deregulation. This contract was negotiated and tailored to fit the needs of both BHC and Dacotah Cement. If the substance of the contract is disclosed, then BHC will lose its bargaining power in its negotiations for similar contracts with the remaining class customers. That is, if the price agreement is disclosed, that price then becomes the standard within the class for which the remaining customers will bargain. BHC anticipates that it will ultimately enter into similar agreements with some or all of the remaining class customers in order to maintain strategic and competitive advantage in the event of deregulation. Because of the uncertain status of deregulation, it would not be appropriate to offer each of BHC's large industrial customers a standardized contract rate. Each such customer has unique needs and desires with respect to their electric power needs, and they expect individualized service of those needs. Confidentiality offers flexibility in tailoring an individual customer's contract rates to best fit both BHC and the customer's needs, and it assures efficient use of generation capacity. Disclosure of this contract with deviations would eliminate that flexibility.

With regard to the first, second, and third *Mid-America* factors, all can be summarized together. If the contract in question is made confidential, then presumably none of the information would be known outside of the contracting parties. Only those BHC and Dacotah Cement employees who "need to know" the substance of the contract are privileged to the information. Both parties desire and have agreed in the contract that the terms of the contract are to be held confidential.

The fifth and sixth factors under the *Mid-America* inquiry bear little relevance to this particular situation. Other considerations, however, are important. Confidential treatment and individual service of BHC's large industrial customers would serve to the benefit of all of BHC's customers. By being able to offer individualized service of its large customers' needs, BHC ensures a firm retail price for the sale of electricity to those customers. Furthermore, by addressing the individual concerns of its largest customers, BHC can potentially effect the advent of customer choice, which is

CONFIDENTIAL TREATMENT IS REQUESTED

forecasted to result in increased prices for small commercial and residential consumers in South Dakota.

CONFIDENTIAL

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South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of April 23, 1999 through April 28, 1999

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact
Delaine Kolbo within five business days of this filing.
Phone: 605-773-3705 Fax: 605-773-3809

CONSUMER COMPLAINT

CT99-003 In the Matter of the Complaint filed by Constance Johnson, Sioux Falls, South Dakota, against U S WEST Communications, Inc. Regarding Disputed Billing.

After a series of attempts to informally resolve billing concerns, the Complainant filed a formal complaint to address unresolved issues. As part of the remedy for relief, the Complainant has asked forgiveness of an unpaid billing in the amount of \$539.

Staff Analyst: Leni Healy
Staff Attorney: Camron Hoseck
Date Filed: 04/07/99
Intervention Deadline: None

ELECTRIC

EL 99-005 In the Matter of the Filing by Black Hills Power and Light Company for Approval of a Contract with Deviations with South Dakota State Cement Plant Commission d/b/a Dacotah Cement.

On April 26, 1999, the Commission received a filing from Black Hills Corporation for approval of an Electric Power Service Contract with Deviations between Black Hills Corporation, d/b/a Black Hills Power and Light Company, and the South Dakota Cement Plant Commission, d/b/a Dacotah Cement.

Staff Analyst: Bob Knadle
Staff Attorney: Camron Hoseck
Date Filed: 04/26/99
Intervention Deadline: 05/14/99

TELECOMMUNICATIONS

TC99-048 In the Matter of the Application of Telecommunications Resources, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Telecommunications Resources, Inc. has filed a request for a Certificate of Authority to operate as a reseller of telecommunications services throughout South Dakota. Telecommunications Resources, Inc. intends to offer travel card services to business and residential customers, as well as pre-paid calling card services.

Staff Analyst: Michele Farris
Staff Attorney: Camron Hoseck
Date Filed: 04/26/99
Intervention deadline: 05/14/99

TC99-049 In the Matter of the Establishment of Switched Access Revenue Requirement for East Plains Telecom, Inc.

East Plains Telecom, Inc. filed a switched access cost study developing a revenue requirement that is included in the revenue requirement used to determine the switched access rates for the Local Exchange Carrier Association.

Staff Analyst: Harlan Best/Keith Senger
Staff Attorney: Karen Cremer
Date Filed: 04/28/99
Intervention Deadline: 05/14/99

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South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

June 11, 1999

Mr. John K. Nooney
Attorney at Law
Morrill, Thomas, Nooney & Braun
P. O. Box 8108
Rapid City, SD 57709

Mr. James S. Nelson
Attorney at Law
Gunderson, Palmer, Goodsell & Nelson
P. O. Box 8045
Rapid City, SD 57709

Re: In the Matter of the Filing by Black Hills Power
and Light Company for Approval of a Contract
with Deviations with South Dakota State Cement
Plant Commission d/b/a Dacotah Cement
Docket EL99-005

Dear Counsel:

Enclosed you will each find a copy of Staff Recommendation in the above captioned matter. This is intended as service upon you by mail. The Settlement Agreement has not been signed by John Nooney. As soon as he returns from vacation and has signed the Settlement Agreement, we will substitute the fully signed signature page with the one that is now attached to the Staff Recommendation.

Very truly yours,

Camron Hoseck
Staff Attorney

CH:dk
Enc.

Capitol Office
Telephone (605)773-3201
FAX (605)773-3889

Transportation/
Warehouse Division
Telephone (605)773-5280
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-877-1113

Internet Website
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Chairman
Pam Nelson
Vice-Chairman
Laska Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

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Camron Hoseck
Lisa Hull
Dave Jacobson
Katie Johnson
Bob Knadle
Delaine Kolbo
Jeffrey P. Lorenson
Charlene Lund
Terry Norum
Gregory A. Rislov
Keith Senger
Rolayne Aults Wiest

CONFIDENTIAL

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TIMOTHY L. THOMAS*
JOHN K. NOONEY*
LONNIE R. BRAUN
HENRY TIBKE PLATNICKI
GREGORY J. BERNARD
*ALSO LICENSED IN WYOMING
*ALSO LICENSED IN MINNESOTA

June 18, 1999

OF COUNSEL
DAVID E. MORRILL

[e-mail: jknooney@mtnlaw.com]

VIA FEDERAL EXPRESS

Camron Hoseck
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

RECEIVED

JUN 21 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Dear Camron:

Enclosed you will find the executed Settlement Stipulation.

I look forward to seeing you on Tuesday.

Sincerely yours,

John K. Nooney

John K. Nooney

JKN/bjr

Enclosure

cc Daniel P. Landguth
Everett E. Hoyt
Kyle D. White

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

JUN 11 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

EL99-005

IN THE MATTER OF THE FILING OF THE)
ELECTRIC POWER SERVICE AGREEMENT)
BETWEEN BLACK HILLS POWER AND)
LIGHT COMPANY AND THE SOUTH)
DAKOTA STATE CEMENT PLANT)
COMMISSION)

SETTLEMENT STIPULATION

On April 26, 1999, Black Hills Power and Light Company ("BHPL") filed with the South Dakota Public Utilities Commission ("Commission") a confidential electric power service contract with deviation between itself and the South Dakota State Cement Plant Commission ("Dacotah Cement"). That contract with deviation was intended to replace and supersede the Electric Power Service Agreement between the parties dated May 1, 1987, as amended by Amendment No. 1 to the Industrial Contract Service Agreement dated June 23, 1995.

The Staff of the Commission ("Staff") and BHPL, collectively referred to as "Parties," upon the execution of this Stipulation, agree that this Stipulation resolves all issues in this docket and otherwise as addressed herein. The Parties stipulate and agree that the Commission may enter an Order consistent with the terms and conditions of this Stipulation, as set forth below:

1. Confidentiality. The terms and conditions of the contract with deviation between BHPL and Dacotah Cement shall receive "confidential treatment," consistent with the provisions of ARSD 20:10:13:09, *et seq.*, and consistent with the terms and conditions of the filing made by BHPL on April 26, 1999, except that as it concerns the Stipulation relative to the extension of the rate freeze identified herein, which may be made public by BHPL, the Staff, or the Commission, as any of them deem it appropriate.

2. Safety Net. In Docket EL99-001, BHPL sought the approval of a new general service large optional combined account billing rate schedule. In that docket, the Staff made significant inquiry relative to BHPL's plan to offer benefits to some of its general service large account customers and the potential impact that these reductions to its general service large customers may potentially have on BHPL's "captive customers" and the resulting need for a safety net for such captive customers; namely BHPL's residential and small business customers. As a part of Docket No. EL99-001, the Order entered by the Commission specifically acknowledged the recommended "cautioned approval" of the Commission Staff relative to providing benefits to large customers and the potential impact on captive customers. In this docket, BHPL has proposed rate changes, this time for a large industrial customer, and the Staff has raised additional questions relative to the potential impact on BHPL's captive customers and

the concern that cost shifting could occur as a result of the changes in rates for industrial customers.

3. Request for Waiver of Class Cost of Service Study Requirement. The Parties acknowledge that the Order approved in EL99-001 provided that BHPL shall, in its next general rate proceeding, provide comparison class cost of service studies for general service large customers, reflecting revenues before and after the implementation of the tariff changes under EL99-001, which study was intended to assure that BHPL was not shifting costs between its respective classes of service for the benefit of general service large class customers. The Parties agree that this may be construed as a general rate proceeding and, therefore, request that the Commission waive the requirement for a comparison class cost of service study.

4. Extension of Rate Freeze and Abeyance of Fuel and Purchased Power Adjustment Tariff. The rate freeze entered by an Order of the Commission in EL95-003 on July 19, 1995, shall be extended from December 31, 1999, subject to the terms and conditions set forth below.

- (a) BHPL shall not file any additional applications with the Commission if this Stipulation is approved, which, if granted, would result in an increase in revenues for the period between January 1, 2000 through December 31, 2004 ("Rate Freeze Period"); provided, however, that this Rate Freeze Period does not prevent BHPL from filing for a rate increase to take effect subsequent to January 1, 2005, or from filing for a rate increase if BHPL's cost of service is expected to increase as a result of an "Extraordinary Event" as defined in paragraph 4(f) below; nor is this Rate Freeze Period intended to prohibit BHPL from filing rate applications that request changes in rates for reasons other than to obtain a general rate increase.
- (b) Staff enters into this Stipulation in the public interest and in the interest of BHPL's South Dakota electric customers in order to provide for the continued protection of rate stability during the Rate Freeze Period, and Staff agrees that BHPL should continue to pursue and realize the benefits of those opportunities available to BHPL and its unregulated affiliates and subsidiaries, to make BHPL more efficient and competitive over the long term, to the benefit of BHPL's South Dakota customers.
- (c) BHPL shall not include a fuel and purchased power adjustment tariff, nor shall BHPL make any application to reinstate a fuel and purchased power adjustment tariff to take effect prior to January 1, 2005; however, in the event an Extraordinary Event arises, this restriction shall not apply, subject to the terms and conditions of the Extraordinary Event.
- (d) In consideration for the commitment to forgo the fuel and purchased power adjustment tariff, except as otherwise provided herein, and consistent with the Order Approving Settlement Agreement and that certain Settlement Stipulation in

EL95-003, BHPL shall continue to retain without adjustment to rates charged to its South Dakota customers all revenues and benefits realized by it from the sale of wholesale capacity and energy, including, without limitation, sales to MDU for its Sheridan, Wyoming load and any and all other sales of wholesale capacity or energy by BHPL. BHPL may effect a transfer and/or assignment of any right which BHPL has in any sale of wholesale capacity and energy, including, without limitation, sales to MDU for its Sheridan, Wyoming load, sales to the City of Gillette, Wyoming, or any other sale of wholesale capacity or energy without a review of the consideration, if any, between BHPL and any affiliate or subsidiary of Black Hills Corporation, subject to the Staff and Commission reviewing the reasonableness and prudence of such actions in any subsequent general rate proceeding which is initiated with the intent to raise or reduce rates when compared to those in effect as a result of this Stipulation. This provision shall continue to apply to BHPL's tariffs until modified by a lawful Order of the Commission.

- (c) BHPL has indicated that during the Rate Freeze Period, it may enter into power purchase transactions or power resource transfers with its affiliated exempt wholesale generator ("EWG"), as defined and regulated in Section 32(k) of the Public Utility Holding Company Act ("Act"), and for the purposes of the Act, Staff and BHPL agree that the Commission has sufficient regulatory authority, resources, and access to the books and records of BHPL and its associates, affiliates, and subsidiaries to exercise its duties under the referenced provisions of the Act. Staff and BHPL agree that Staff and Commission may review the reasonableness and prudence of such purchases between BHPL and its affiliated EWG in any general rate proceeding which is initiated with the intent to raise or reduce rates when compared to those in effect as a result of this Stipulation.
- (f) An Extraordinary Event is the occurrence of one of those items enumerated below:
- (1) New federal, state or local governmental requirements or governmental charges, including, but not limited to, income taxes, taxes or charges imposed on energy, emissions, environmental extraneousities or reclamation obligations, imposed after January 1, 2000, upon BHPL or Wyodak Resources Development Corp. that project to cause BHPL's cost of service to its South Dakota customers to increase in a material amount. Increases in the cost of service of less than \$2,000,000 will be presumed not to be material for the purposes of this paragraph.
 - (2) Forced outages, caused by an act of nature or criminal activity or resulting from fire or explosion from any cause, occurring to both

the Wyodak Plant and Neil Simpson Unit #2 which are projected to continue simultaneously over a period exceeding 60 days.

- (3) Forced outage occurring to either the Wyodak Plant or NS #2 which has continued for a period of three months and is projected to be nine months or more.
 - (4) The Consumers Price Index, All Urban, as compiled by the United States Department of Labor increases to a monthly rate for six consecutive months which if continuing for the following six months would result in a 10 percent or more annual inflation rate.
 - (5) The loss of a South Dakota customer or revenue from an existing South Dakota customer that, if projected, would result in a loss of revenue to BHPL of \$2,000,000 or more during any 12-month period.
 - (6) If BHPL's cost of coal to its South Dakota customers increases and is projected to increase by more than \$2,000,000 over the cost for the most recent calendar year.
 - (7) Electric deregulation as a result of either federal or state mandate which allows any customer of BHPL to choose its provider of electricity at any time during the Rate Freeze Period.
- (g) BHPL represents that during the Rate Freeze Period it will not purchase fuel and electric power which will be intentionally priced artificially low during the Rate Freeze Period and artificially high following the Rate Freeze Period, with the result that customers following the Rate Freeze Period would be subsidizing power costs of customers during the Rate Freeze Period.

5. Reduction in Taxes During Rate Freeze Period.

If any material reduction in federal, state, or local taxes occurs which is projected to materially reduce BHPL's cost of service for its South Dakota customers, the Commission shall have the right in its discretion to modify the stipulation to adjust the rates to reflect the tax changes. Decreases in the cost of service of less than \$1,000,000 would be presumed not to be material for purposes of this paragraph.

6. General Conditions.

- (a) Except for ratemaking principles set forth herein, this Stipulation shall not be deemed to constitute any precedential value after the Rate Freeze

Period, including, but not limited to, treatment of off-system energy and capacity sales revenues and transactions.

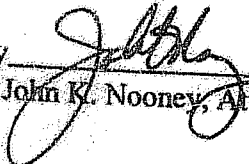
- (b) The approval of this Stipulation by the Commission shall not in any respect constitute a determination by the Commission as to the merits of any allegations or contentions made in this proceeding.
- (c) The Stipulation is expressly conditioned upon the Commission's acceptance of all the provisions hereof, without change or a condition which is unacceptable to any Party.
- (d) Discussions among BHPL and Staff which produced this Stipulation have been conducted with the customary understanding that all offers of settlement and discussions relating thereto are privileged and shall not be used in any manner in connection with this proceeding or otherwise, except as required by law.
- (e) This Stipulation includes all terms of Settlement and is submitted on the condition that in the event the Commission imposes any change in or condition to this Stipulation which is unacceptable to any Party, this Stipulation shall be deemed withdrawn and shall not constitute any part of the record in this proceeding or any other proceeding nor be used for any other purpose.
- (f) This Stipulation shall be binding upon the parties hereto and upon their respective successors, assigns, agents and representatives.
- (g) It is understood that Staff enters into this Stipulation for the benefit of BHPL's South Dakota customers affected hereby and in the public interest.

7. Statement R. For informational purposes, BHPL shall continue to make annual filings with the Commission of the Statement R computation as presented in Docket EL95-003 to monitor earnings derived from affiliated coal sales to BHPL.


8. Commission Approval. Each of the Parties request the Commission to enter its order approving this Stipulation and grant the waiver requested in paragraph 3. Failure of the Commission to enter such order shall cause this Stipulation to become null and void.

Dated June 1st, 1999.

BLACK HILLS POWER AND
LIGHT COMPANY

By 
John K. Nooney, Attorney

STAFF OF THE PUBLIC UTILITIES
COMMISSION

By 
Camron Hoseck, Attorney

6/11/99

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

IN THE MATTER OF THE FILING BY BLACK HILLS POWER AND LIGHT COMPANY FOR APPROVAL OF A CONTRACT WITH DEVIATIONS WITH THE SOUTH DAKOTA STATE CEMENT PLANT COMMISSION D/B/A DACOTAH CEMENT)	ORDER APPROVING CONTRACT WITH DEVIATIONS, WAIVING A CLASS COST OF SERVICE STUDY AND APPROVING A CONDITIONAL RATE FREEZE
)	EL99-005

On April 26, 1999, the Public Utilities Commission (Commission) received a filing by Black Hills Power and Light Company (BHPL) for approval of a contract with deviations with the South Dakota State Cement Plant Commission d/b/a Dacotah Cement (Dacotah). The Contract set rates for electrical service for an approximate five year period subject to several conditions. BHPL filed the following tariff sheets for Commission approval:

- Section No. 1, Sixth Revised Sheet No. 3, Replacing Fifth Revised Sheet No. 3
- Section No. 4, Eighth Revised Sheet No. 1, Replacing Seventh Revised Sheet No. 1
- Section No. 4, Original Sheet No. 5, Replacing Seventh Revised Sheet No. 1
- Section No. 4, Original Sheet No. 6

BHPL approached Commission Staff with a proposal subsequent to the filing of the above contract. The proposal was for a conditional rate freeze which was a continuation of the rate freeze ordered in Docket EL95-003 subject to certain conditions.

Because the Commission Order in Docket EL99-001 provided for a comparison class cost of service study for general service large customers reflecting revenues before and after the implementation of the tariff changes under Docket EL99-001 in BHPL's next general rate proceeding, Commission Staff and BHPL entered into a stipulation to request the waiver of that requirement as the stipulation and accompanying rate freeze could be construed as a general rate proceeding.

Secondly, Commission Staff and BHPL stipulated to an extension of the rate freeze ordered in Docket EL95-003 for a period between January 1, 2000, through December 31, 2004, subject to certain conditions.

On June 22, 1999, at its regularly scheduled meeting, the Commission considered the request for approval of the Contract with Deviations, the request for waiver of the requirement for a comparison class cost service study for general service large customers, and for approval of the stipulation extending the conditional rate freeze as described above. Commission Staff filed a Staff recommendation which recommended approval of the Contract with Deviations, the waiver and the stipulation described above. BHPL appeared as a proponent of these items.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL 49-34A, specifically, 49-34A-6, 49-34A-8, 49-34A-10, and 49-34A-11. Further, the Commission finds that BHPL's request for approval of a Contract with Deviations is just and reasonable and shall be approved. The requested waiver of the class cost of service study shall be approved. The Stipulation between Commission Staff and BHPL is just and reasonable and shall be approved. As the Commission's final decision in this matter, it is therefore

ORDERED, that the request seeking approval of a Contract with Deviations is in the public interest and is hereby granted. It is further

ORDERED, that the above-referenced tariff sheets are effective for service rendered on and after the date of this Order. It is further

ORDERED, that the request for waiver of the requirement for a comparison class cost of service study for general service large customers, reflecting revenues before and after the implementation of the tariff changes under Docket EL99-001, which study was intended to assure that BHPL was not shifting costs between its respective classes of service for the benefit of general service large class customers is granted. It is further

ORDERED, that the Stipulation between Commission Staff and BHPL setting forth the conditions of a rate freeze is approved and is incorporated by reference the same as if it was fully recited herein. It is further

ORDERED, that this Order shall be effective on the date of issuance.

Dated at Pierre, South Dakota, this 25th day of June, 1999.

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, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Delaine Kalbs</u>
Date:	<u>6/25/99</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

Black Hills Power and Light Company

P.O. Box 1400, 409 Deadwood Avenue Rapid City, South Dakota 57709
<http://www.blackhillspower.com>

Don Martinez
Energy Services
Engineer

Telephone
(605) 342-3200
Fax: (605) 342-0945

August 10, 1999

Mr. Dave Jacobson
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Ave.
Pierre, SD 57501

RECEIVED

AUG 11 1999

SOUTH DAKOTA PUBLIC
UTILITY COMMISSION

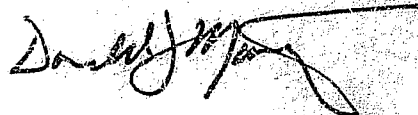
Subject: Tariff Sheets

Dear Dave:

Enclosed are the tariff sheets for BHP's Filing for Approval of a Contract with Deviations with the South Dakota State Cement Plant. This completes the requirements as approved in the South Dakota Public Commission's Order No. EL99-005.

If there are any questions regarding this filing, feel free to contact me. Thank you for your support in this filing.

Sincerely,



Don Martinez

enclosure

PUBLIC UTILITIES COMMISSION OF SOUTH DAKOTA

BLACK HILLS POWER AND LIGHT COMPANY
RAPID CITY, SOUTH DAKOTA

SECTION NO. 1
SIXTH REVISED SHEET NO. 3
REPLACES FIFTH REVISED SHEET NO. 3

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(continued)

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Second Revised Sheet 5	Schedule 1- Cogeneration and Small Power Production Service--Simultaneous Net Billing
Second Revised Sheet 6	Schedule 2- Cogeneration and Small Power Production Service--Simultaneous Purchase and Sale
Second Revised Sheet 7	Schedule 2- Cogeneration and Small Power Production Service--Simultaneous Purchase and Sale
Second Revised Sheet 8	Schedule 2- Cogeneration and Small Power Production Service--Simultaneous Purchase and Sale
Second Revised Sheet 9	Schedule 3- Cogeneration and Small Power Production Service--Simultaneous Rider
Second Revised Sheet 10	Schedule 3- Cogeneration and Small Power Production Service--Simultaneous Rider

SECTION 4 CONTRACTS WITH DEVIATIONS

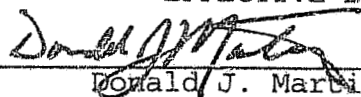
Seventh Revised Sheet 1	Reserved	C
Original Sheet 2	Business Development Service	
Original Sheet 3	Business Development Service	
Original Sheet 4	Business Development Service	
Original Sheet 5	Summary List of Contracts With Deviations	N
Original Sheet 6	Summary List of Contracts With Deviations	

SECTION 5 RULES AND REGULATIONS

DATE FILED: April 23, 1999

EFFECTIVE DATE: June 25, 1999

ISSUED BY:


Donald J. Martinez
Energy Services Engineer

PUBLIC UTILITIES COMMISSION OF SOUTH DAKOTA

BLACK HILLS POWER AND LIGHT COMPANY
RAPID CITY, SOUTH DAKOTA

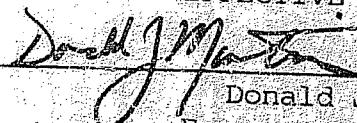
SECTION NO.	<u>4</u>
EIGHTH REVISED SHEET NO.	<u>1</u>
REPLACES SEVENTH REVISED SHEET NO.	<u>1</u>

(RESERVED)

DATE FILED: April 23, 1999

EFFECTIVE DATE: June 25, 1999

ISSUED BY:



Donald J. Martinez
Energy Services Engineer

PUBLIC UTILITIES COMMISSION OF SOUTH DAKOTA

BLACK HILLS POWER AND LIGHT COMPANY
RAPID CITY, SOUTH DAKOTA

SECTION NO. 4
ORIGINAL SHEET NO. 5
REPLACES SEVENTH REVISED SHEET NO. 1

SUMMARY LIST OF CONTRACTS WITH DEVIATIONS

Contract #2817.8

Homestake Mining Company Industrial Contract Service Agreement. The agreement was effective September 1, 1993 and has a term of nine years and continues thereafter until canceled by the six year written notice of either party. Contract amended effective August 1, 1995 under Docket No. EL95-003. Contract Amendment No. 2 effective January 1, 1999.

Contract #10431

City of Rapid City Large Demand Curtailable Service Agreement. The agreement was effective June 1, 1993 and has a term of three years and continued thereafter until canceled by the one year written notice of either party.

Contract #10432

City of Rapid City Large Demand Curtailable Service Agreement. The agreement was effective June 1, 1993 and has a term of three years and continues thereafter until canceled by the one year written notice of either party.

Contract #7660.3

Wharf Resources Large Demand Curtailable Service Agreement. The agreement was effective August 1, 1995, under Docket No. EL95-003.

Contract #9032

United States Air Force Electric Power Service Agreement for the military family housing and related facilities located in the Dakota Ridge Subdivision in Rapid City. The agreement was effective January 29, 1990 and has a term of ten years.

Contract #11155

Pennington County Energy Storage Service Contract. The agreement was effective June 1, 1995 and has a term of three years and continues thereafter until canceled by the one year written notice of either party.

DATE FILED: April 23, 1999

EFFECTIVE DATE: June 25, 1999

ISSUED BY:



Donald J. Martinez
Energy Services Engineer

PUBLIC UTILITIES COMMISSION OF SOUTH DAKOTA

BLACK HILLS POWER AND LIGHT COMPANY
RAPID CITY, SOUTH DAKOTA

SECTION NO. 4
ORIGINAL SHEET NO. 6

SUMMARY LIST OF CONTRACTS WITH DEVIATIONS

Contract #121-9

N

South Dakota State Cement Plant Commission Electric Power Service Agreement, effective January 1, 1999.

DATE FILED: April 23, 1999

EFFECTIVE DATE: June 25, 1999

ISSUED BY: _____



Donald J. Martinez
Energy Services Engineer