

**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. EL09-018

**BLACK HILLS INDUSTRIAL
INTERVENORS' COMMENT TO
BLACK HILLS POWER'S REQUEST
TO IMPLEMENT INTERIM RATES**

Dakota Panel, GCC Dacotah, Inc., Rushmore Forest Products, Inc., Sanford Underground Laboratory, Spearfish Forest Products, Inc., and Rapid City Regional Hospital, Inc. (collectively "Black Hills Industrial Intervenors")¹ submit the following comment to Black Hills Power's Request to Implement an Interim Rate Increase on April 1, 2010 ("Interim Rate Request").

I. INTRODUCTION

South Dakota law requires every rate demanded or received by a public utility to be just and reasonable. The Interim Rate Request fails to specify whether the Wygen III facility will be in service as of April 1, 2010, unfairly targets one class of customers, and does not contain a proposal for accounting for a potential refund. The issue before the Commission in deciding whether to approve the Interim Rate Request is whether Black Hills Power's demand is just and reasonable.

¹ The South Dakota Public Utilities Commission (the "Commission") granted the Black Hills Industrial Intervenors' petition to intervene in this case on December 3, 2009.

II. ANALYSIS

South Dakota law requires every rate demanded or received by a public utility to be just and reasonable.² It is beyond cavil that this requirement is read in conjunction with the statute permitting a utility to impose interim rates. The utility then bears the burden of proof to demonstrate that any rate demanded, including an interim rate, is just and reasonable.³ The Interim Rate Request is not just and reasonable for three reasons.

First, the Interim Rate Request fails to state whether the Wygen III coal fired power plant, the driving factor for Black Hills Power's request to increase rates, will be in service as of April 1, 2010. Although Black Hills Power correctly notes any rate suspension usually does not exceed 180 days,⁴ South Dakota law provides that the effective date of the revised tariff is the date stated in the revised tariff.⁵ Here, Black Hills Power did not specifically state an effective date in its tariff sheets. The revised tariff sheets state the effective date is the Wygen III 2010 in-service date.⁶ Black Hills Power was similarly vague in its direct testimony. In his executive summary of the case, Stuart Wevik stated "The effective date of the proposed changes is to coincide with the in-service date of the Wygen III power plant, which is expected to be April 1, 2010, but no earlier than March 1, 2010."⁷ It would be unreasonable for Black Hills Power to circumvent the law and its own proposal by implementing an increase if the main reason for that increase, Wygen III, is not actually in-service. It is certainly possible that Wygen III will be in-service on or before April 1. But there is no way to tell from the Interim Rate Request. The Black Hills Industrial Intervenors therefore respectfully request the Commission require Black Hills Power submit a sworn statement regarding the Wygen III in-service date and preclude Black Hills Power from imposing an interim rate increase until the later of April 1 or the Wygen III in-service date.

² S.D. CODIFIED LAWS § 49-34A-6.

³ S.D. CODIFIED LAWS § 49-34A-11.

⁴ S.D. CODIFIED LAWS § 49-34A-14.

⁵ S.D. ADMIN. R. 20:10:13:24 ("When a new tariff schedule has been issued and proper notice given to the commission and the public, the tariff schedule will *become effective on the date stated in the tariff*, unless the commission, by order, suspends the operation of the rates and regulations pending investigation concerning the propriety of the proposed rates or regulations." (emphasis added)).

⁶ *Application of Black Hills Power, Inc. for an Increase in Electric Rates*, September 30, 2009 (the "Petition"), Revised South Dakota Electric Rate Book.

⁷ *The Petition*, Direct Testimony of Stuart A. Wevik, p. 8, lns. 14-16.

Second, the Interim Rate Request unfairly targets one class of customers. The summary of the Interim Rate Request notes Black Hills Power is seeking a 20% interim rate increase and not the 26.6% it seeks in the Petition. As set forth in its direct testimony, Black Hills Power is proposing to collect the 26.6% increase equally from all classes through an across the board increase.⁸ It would seem reasonable then for Black Hills Power to seek its interim rate increase equally from all classes. But that is not what Black Hills Power is proposing. Instead, Black Hills Power proposes to collect interim rates from each class as follows:⁹

<u>Class</u>	<u>Increase as Set Forth in the Petition</u>	<u>Increase as Set Forth in the Interim Rate Increase</u>	<u>Difference</u>
Residential Service	\$15,064,597	\$10,517,398	\$4,547,199
Small General Service	\$12,737,195	\$9,536,696	\$3,200,499
Lighting Service	\$559,241	\$410,681	\$148,560
Large General Service & Industrial	\$10,423,638	\$10,311,417	\$112,221

In other words, the roughly \$7 million reduction to arrive at a 20% interim rate increase is obtained mostly via a reduction to the rates collected from the Residential Service and Small General Service rate classes. This proposal should be rejected for two reasons. First, it would set bad precedent. Utilities would view the approval as giving them free reign to design interim rates as they see fit, perhaps differently from how final rates are designed. As a result, utilities could use interim rates as a negotiating tool to discourage participation in the rate case and/or coerce settlement prior to implementation of interim rates. Second, any refund resulting from a decision by the Commission that final rates are less than interim rates will be more difficult to track and compute. To avoid these problems, the Black Hills Industrial Intervenors respectfully request the Commission require Black Hills Power to use the rate design proposed for final rates in the Petition (*i.e.*, an across the board increase) to collect interim rates.

The final reason the Interim Rate Request is unreasonable is that Black Hills Power fails to propose a tracking mechanism to ensure any refund will be accurately calculated. Black Hills Power states it “agrees that the granting of an [interim rate] Order will not affect the

⁸ *The Petition*, Direct Testimony of Michael J. McFadden, pg. 15, lns. 5-8.

⁹ *The Interim Rate Increase*, Schedule I-1, pg. 1 of 13.

Commission's authority to order a refund of the Interim Rate Increase pursuant to SDCL 49-34A-17, SDCL 49-34A-22 and SDCL 49-34A-23." The Black Hills Industrial Intervenors read this statement as a concession by Black Hills Power that the Commission must require it to "keep an accurate account in detail of all amounts received by reason of the [interim rate] increase, specifying by whom and in whose behalf the amounts are paid."¹⁰ Doing so ensures any refund awarded is calculated accurately.¹¹ And such an order would be in accordance with applicable administrative rules.¹² Should the Interim Rate Request be granted, the Black Hills Industrial Intervenors respectfully request the Commission enter an order requiring Black Hills Power to track the following information: (i) the total amount received by reason of the interim rate increase, (ii) a break-down specifying by whom and in whose behalf the amounts were paid, (iii) interest calculated at Black Hills Power's cost of capital from the date interim rates take effect until the date of any refund, and (iv) a separate line item on the rate payer's monthly bill as to the amount billed the rate payer that month by reason of the interim rate increase. The Commission should then state in its order that this information will be used to calculate any refund so it is clear each Black Hills Power customer will receive any excess amount Black Hills Power collected through interim rates, plus interest.

III. CONCLUSION

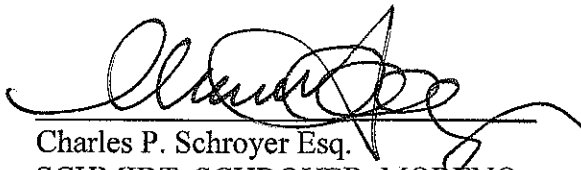
The Interim Rate Request does not contain sufficient information to justify an order in Black Hills Power's favor. Before the Interim Rate Request is granted, the Commission should require Black Hills Power to state under oath when Wygen III will be in-service and amend its rate design for interim rates to be consistent with the Petition. Assuming Black Hills Power complies with these reasonable requests, the Commission should then set forth appropriate terms in the order granting the Interim Rate Request to ensure each Black Hills Power customer understands the increase and receives any excess amount collected through interim rates, plus interest, in the event of a refund.

¹⁰ S.D. CODIFIED LAWS § 49-34A-17.

¹¹ *Id.*

¹² S.D. ADMIN. R. 20:10:13:25 ("If a suspended rate is put into effect...the commission shall make the orders necessary to carry out the provisions of the statute and shall determine the notice to be given to the public.")

Respectfully submitted,



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