

**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

Residential Consumers' Response to  
Black Hills Power's Request to  
Implement an Interim Rate Increase

---

Lilias Jarding, Bobbie Handley, Carla Kock, and the South Dakota Peace and Justice Center (collectively the Residential Consumers Coalition) submit the following response to Black Hills Power's Request to Implement an Interim Rate Increase on April 1, 2010.

1. On September 30, 2009, Black Hills Power (BHP) filed an application with the Commission for authority to increase electric rates for its South Dakota customers. Pursuant to that application and the provisions SDCL 49-34A-14, the Commission suspended the implementation of BHP's proposed rate increase for 180 days.
2. On March 1, 2010, BHP filed an application with the Commission for authority to implement an interim rate increase effective April 1, 2010, pending a final decision from the Commission in this docket.
3. On March 5, 2010, Dakota Panel, GCC Dacotah, Inc., Rushmore Forest Products, Inc., Sanford Underground Laboratory, Spearfish Forest Products, Inc., and Rapid City Regional Hospital, Inc. (collectively the Black Hills Industrial Intervenors) filed comments with the Commission in response to BHP's interim rate increase request.
4. In support of its interim rate increase request, BHP cites SDCL 49-34A-17, which allows a utility to implement a proposed rate, once the proposed rate is no longer subject to suspension, pending hearings and a final decision by the Commission on the merits of the

proposed rate. However, BHP's interim rate increase does not seek to implement the rate schedule proposed in the September 30, 2009 application, but rather sets forth an entirely different interim rate schedule. BHP's application does not provide statutory authority or an underlying rationale for the differences between the original proposed rate increase and the interim rate increase request.

5. Because BHP has not provided the other parties a rationale or supporting documentation for the specific rate schedule proposed in the interim rate increase request, the Residential Consumers Coalition cannot take a meaningful position on the relative merits of the request. Although the interim rate increase request proposes a lesser rate increase for BHP's residential customers when compared with the original proposed rate increase, it is not clear whether the proposed interim rate would be any more reasonable than the original proposed rate. Without any supporting information or justification, BHP's interim rate increase request seems arbitrary and capricious, and the other parties and the Commission have no basis on which to decide whether the request is reasonable or not. To the extent that BHP's interim rate increase request differs significantly from the original proposed rate increase due to a material change in the utility's revenue requirements, then BHP should file an amendment to its original rate increase application, with full supporting documentation, to allow the other parties and the Commission to have a full and fair hearing on the merits of the proposal.
6. The Interim Rate Increase Request does not establish whether and to what extent BHP has actual need of additional revenue prior to a final decision by the Commission in this docket. By filing an interim rate increase request that reflects a significantly lower revenue increase than the original proposed rate increase, BHP seems to imply that the original proposal for a

26.6 percent revenue increase is unnecessarily high, at least for the interim period prior to a final decision from the Commission in this docket. However, it is not clear, nor has BHP established in its filings that any revenue increase is necessary during this interim period. If BHP can operate during this interim period with a 20 percent revenue increase, it is possible that BHP could operate just as easily with a 15 percent interim revenue increase, or 10 percent, or 5 percent, or none. In the absence of a detailed justification for the 20 percent revenue increase proposed in the interim rate increase request, the other parties and the Commission cannot judge whether the interim increase requested by BHP is reasonable or needed at this time.

7. The position taken by the Black Hills Industrial Intervenors that the interim rate increase request “unfairly targets one class of customers” is as arbitrary as the request itself. BHP has not offered a detailed explanation of the specific adjustments made to the original proposed rate schedule. While it is true that the proposed interim rate schedule imposes a higher percentage increase for some rate categories than for others, this difference is no more or less justified than any of the other differences between the original rate increase proposal and the proposed interim rate increase. The Residential Consumers Coalition contests the proposition made by the Black Hills Industrial Intervenors that an across the board rate hike is inherently fair. Without more supporting information, there is no legitimate basis on which to form an opinion on the merits of any part of BHP’s interim rate increase request, including the differential treatment of customer classes.
8. Pursuant to SDCL 49-34A-17, the Commission may order BHP to keep an accurate and detailed accounting of all amounts received by reason of an interim rate increase, specifying by whom and in whose behalf the amounts are paid. The Commission also may order BHP,

upon completion of hearings and final Commission decision, to refund to customers, with interest, the portion of the increased rates found to be unjust, unreasonable, or discriminatory, with such refund to be carried out pursuant to SDCL 49-34A-22 and 49-34A-23. This issue was raised by the Black Hills Industrial Intervenors in their comments regarding the interim rate increase request. The Residential Consumers agree that BHP should be required to fully and accurately account for all amounts received as a result of any interim rate increase, as provided for by statute, to ensure that any future refunds to BHP customers are provided accurately and in full.

In conclusion, the Residential Consumers Coalition requests that BHP be required to fully document and support any rate increase – interim or permanent – that the parties and the Commission are asked to evaluate on the merits. If the revenue requirements for BHP have changed materially since the September 2009 filing of the original proposed rate increase, then BHP should be required to amend its application and provide full supporting documentation for the changes to allow for a full and fair hearing on the merits. Finally, any interim rate increase imposed by BHP should be conditioned on the accounting and tracking requirements of SDCL 49-34A-17, and whatever additional conditions the Commission deems necessary and appropriate to ensure a full and fair refund to BHP customers pursuant to SDCL 49-34A-22 and 49-34A-23.

Dated this 8<sup>th</sup> day of March, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S.E. Khorroosi', written over a horizontal line.

Sam E. Khorroosi  
KHOROOSI LAW OFFICE  
300 N. Dakota Avenue, Suite 204  
Sioux Falls, SD 57104  
Tel: 605-332-7030  
Fax: 605-332-7034  
sam@khorroosilaw.com

and

Jana M. Linderman  
PLAINS JUSTICE  
100 1<sup>st</sup> Street SW, Suite 201  
Cedar Rapids, IA 52404  
Tel: 319-362-2120  
Fax: 844-484-2373  
jlinderman@plainsjustice.org

ATTORNEYS FOR RESIDENTIAL  
CONSUMERS COALITION