

**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

I. SETTLEMENT STIPULATION

On September 30, 2009, Black Hills Power, Inc. ("BHP") filed with the South Dakota Public Utilities Commission ("Commission") an application for approval to increase rates for electric services in the State of South Dakota ("Application"). BHP proposed an increase in annual revenues of approximately \$32 million or 26.6 percent of total revenues at existing rates.

Countertops, Inc. d/b/a Dakota Panel South Dakota, 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" or "BHII") filed Petitions to Intervene and the Commission granted intervention to BHII.

The Commission received a Petition to Intervene from Liliias Jarding, Bobbie Handley, Carla Kock, and the South Dakota Peace and Justice Center (collectively the "Residential Consumers Coalition" or "RCC"), and the Commission granted intervention to RCC.

BHP and BHII have reached a confidential settlement agreement resolving all issues related to BHII's intervention.

The Staff of the Commission ("Commission Staff") and BHP (jointly the "Parties") have been able to resolve all issues in this proceeding and have entered into this

Settlement Stipulation ("Stipulation"), which, if accepted and ordered by the Commission, will determine the rates to result from BHP's Application.

BHP and RCC are continuing settlement discussions, but as of this date have not been able to resolve all issues related to RCC's intervention. To the extent BHP and RCC are unable to agree to a settlement, this Stipulation shall be presented to the Commission and RCC shall have the opportunity to object to this Stipulation.

II. PURPOSE

This Stipulation has been prepared and executed by the Parties for the sole purpose of resolving Docket No. EL09-018. The Parties acknowledge that they may have differing views that justify the end result, which they deem to be just and reasonable, and, in light of such differences, the Parties agree that the resolution of any single issue, whether express or implied by the Stipulation, should not be viewed as precedent setting. In consideration of the mutual promises hereinafter set forth, the Parties agree as follows:

- 1) Upon execution of the Stipulation, the Parties shall file this Stipulation with the Commission together with a joint motion requesting that the Commission issue an order approving this Stipulation in its entirety without condition or modification.
- 2) This Stipulation includes all terms of settlement and is submitted with the condition that in the event the Commission imposes any material changes in or conditions to this Stipulation which are unacceptable to either Party, this Stipulation may, at the option of either Party, be withdrawn and shall not constitute any part of the record in this proceeding or any other proceeding nor be used for any other purpose.

- 3) This Stipulation shall become binding upon execution by the Parties, provided however, that if this Stipulation does not become effective in accordance with Paragraph 2 above, it shall be null, void and privileged. This Stipulation is intended to relate only to the specific matter referred to herein; neither Party waives any claim or right which it may otherwise have with respect to any matter not expressly provided for herein; neither Party shall be deemed to have approved, accepted, agreed or consented to any rate making principle, or any method of cost of service determination, or any method of cost allocation underlying the provisions of this Stipulation, or be prejudiced or bound thereby in any other current or future rate proceeding before the Commission. Neither Party nor a representative thereof shall directly or indirectly refer to this Stipulation or that part of any order of the Commission relating to this Stipulation as precedent in any other current or future rate proceeding before the Commission.
- 4) The Parties to this proceeding stipulate that all prefiled testimony, exhibits, and workpapers will be made a part of the record in this proceeding. The Parties understand that if this matter had not been settled, the Commission Staff would have filed direct testimony and BHP would have filed rebuttal testimony responding to certain of the positions contained in the testimony of Commission Staff.
- 5) It is understood that the Commission Staff enters into this Stipulation for the benefit of all of BHP's South Dakota customers affected by this docket.

III. ELEMENTS OF THE SETTLEMENT STIPULATION

1. Revenue Requirement

The Parties agree that the total revenue deficiency is \$22,002,926. The parties agree that BHP's tariffs will be designed to produce an increase in annual base rate levels of \$22,002,926 or approximately 12.70 percent of total revenues at existing rates based on a South Dakota jurisdictional revenue requirement of \$135,632,914.

2. Tariffs

The Parties have agreed to revised tariffs and those tariffs shall be attached to this Settlement Stipulation for presentation to the Commission. The Parties agree that the rate design to be set forth in the revisions to BHP's tariffs are just and reasonable and provide for the movement of each customer class toward its associated cost of service. The Parties agree that the increase in rates for electric service will be allocated to the affected rate classes resulting in increases as shown on attached Exhibit 1. The Parties agree that the rates agreed to by the Parties result in just and reasonable rates for all of BHP's South Dakota customers.

3. Wygen III

The Parties agree that Wygen III provides benefits to BHP's customers from its date of commercial operation, which was April 1, 2010, and therefore have included in BHP's rate base the South Dakota jurisdictional portion of the Company's 52 percent ownership interest (approximately \$116,400,000) in the coal-fired power plant. For purposes of determining the revenue requirement, the depreciable life of Wygen III shall be 50 years.

4. Major Maintenance Account

The Parties agree that BHP may establish a major maintenance account and, consistent with the rules of FASB 71, establish a regulatory liability for steam plant maintenance.

5. Adjustment Clauses

The Parties agree that pursuant to SDCL §49-34A-25, BHP may utilize rate schedules containing provisions for automatic adjustment clauses for public utility service for the recovery of costs related to fuel, purchased power and transmission. The Parties agree to BHP's use of two adjustment clauses, as follows:

- A. Transmission Cost Adjustment (TCA), which is set forth in the attached Exhibit 2.
- B. Fuel and Purchased Power Adjustment (FPPA), which is set forth in the attached Exhibit 3.

6) Commitments

A. Vegetation Management

Commission Staff concurs with BHP's requested recovery of expenses for vegetation management with the provision that expenses remain at or above the South Dakota per books amount of \$1,064,963, on average, for the period rates are in effect. If the average is below the South Dakota test year amount at the time that BHP files its next application for an increase in rates, BHP will make an adjustment to reflect this commitment.

B. Resource Planning

Commission Staff and BHP agree that in conjunction with its next integrated resource plan ("IRP"), BHP shall make the following considerations:

- 1) The following resource options will be considered in conjunction with the IRP process:
 - a) Additional Demand Side Management programs, including conservation programs.
 - b) New purchased power contracts gathered through a formal solicitation process, or other specific market information identifying the market price for purchased power.
 - c) Small combined cycle generating units.
 - d) Nuclear power.
- 2) BHP will consider only the loads and resources of BHP in preparing the IRP;
- 3) To the extent the results of the IRP suggests potential retirement of any existing resource within the first five (5) years of the planning horizon, a cost/benefit analysis of the proposed retirement of any existing resource will be performed in conjunction with the IRP process;
- 4) BHP will compare modeling results from the IRP process (in the early years) to actual historical results;
- 5) As part of the IRP planning process BHP will provide opportunities for public participation and the participation of the PUC prior to finalization of the IRP and;
- 6) BHP will consider cost estimates for CO2 taxes developed by independent third-parties typically relied upon in the context of utility resource planning in conjunction with the IRP process.

7. Moratorium

- A. The Parties agree that BHP shall not file any rate application for an increase in base rates which would go into effect prior to April 1, 2013; provided, this restriction would not prevent BHP from filing for a rate increase to take effect prior to April 1, 2013, if BHP's cost of service is expected to increase due to an "Extraordinary Event." This restriction does not prevent BHP from utilizing the automatic adjustment mechanisms included in its tariffs or from filing rate applications that request changes in rates for reasons other than to obtain a general rate increase. Additionally, this restriction does not apply to the increases specified in the Confidential Settlement Agreement with the Black Hills Industrial Intervenors.
- B. As used in this Stipulation "Extraordinary Event" is any one of the following occurrences:
- 1) *Governmental Impositions* - Changes in federal, state or local governmental requirements or governmental charges including, but not limited to, income taxes, taxes, charges or regulations imposed on energy, emissions, environmental externalities, or reclamation requirements imposed after April 1, 2010, upon BHP that are projected to cause BHP's South Dakota's cost of service to increase by \$1,000,000 or greater. Increases in South Dakota's cost of service less than \$1,000,000 will be presumed not to be material for the purposes of this paragraph.
 - 2) *Major Capital Additions* - New capital projects with individual budgets greater than \$10,000,000.

- 3) *Inflation* - The Consumer Price Index, All Urban, as compiled by the United States Department of Labor increases to a monthly rate for six (6) consecutive months which if continuing for the following six months would result in a 10 percent or more annual inflation rate.
- 4) *Loss of a Major Customer* - BHP is expected to lose \$2,000,000 or more of annual revenue from a single customer's accounts.
- 5) *Loss of Power Supply* - BHP loses power available from its power generation or purchased power contracts in an amount of 10 megawatts or more for a period forecasted to be at least six (6) months in duration.

8. Implementation of Rates

The Parties agree that the revised rate schedules shall be implemented for service rendered on and after April 1, 2010, with bills prorated so that usage prior to April 1, 2010, is billed at the previous rates, and usage on and after April 1, 2010, is billed at the new rates subject to refund, with interest, pursuant to the Commission Order Granting Request for Authority to Implement an Interim Rate Increase on April 1, 2010, Pursuant to SDCL 49-34A-17, dated March 23, 2010.

This Stipulation is entered into effective this 14th day of May, 2010.

BLACK HILLS POWER, INC.

SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION STAFF

By: Kyle D. White
 Its: V.P. of Regulatory
 and Governmental Affairs

By: Karen E. Bremer
 Its: Staff Attorney