



Gary Hanson, Chair  
Dustin Johnson, Vice Chair  
Steve Kolbeck, Commissioner

## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue  
Pierre, South Dakota 57501-5070  
[www.puc.sd.gov](http://www.puc.sd.gov)

Capitol Office  
(605) 773-3201  
1-866-757-6031 fax

Warehouse  
(605) 773-5280  
(605) 773-3225 fax

Consumer Hotline  
1-800-332-1782

May 24, 2010

Executive Director Van Gerpen:

On May 14, Black Hills Power, Inc. ("BHP") and the Staff of the Public Utilities Commission ("Commission Staff") filed a settlement stipulation stating they had been able to resolve all issues in this proceeding. The two parties asked for the Commission to approve the settlement, thereby increasing annual base rate levels by \$22,002,926 or approximately 12.70 percent of total revenues.

On May 19, the Residential Consumers Coalition ("RCC") asked the Commission to deny the settlement stipulation and proceed to a full hearing on the merits of the case. Having a settlement agreed to by some, but not all, of the parties has put the Commission in an unusual situation, and it must now decide how to proceed. I am asking you to schedule an ad hoc commission meeting for sometime in the next week to allow the parties and commissioners an opportunity to discuss. An appropriate agenda question would be, "How shall the Commission proceed?" but I have identified four specific questions I would like the parties to be prepared to address:

- 1. When should the Commission schedule a decision on the settlement stipulation?**
- 2. Should RCC be given an opportunity to proceed to a hearing on the merits of this case? If so, when?**
- 3. What should the nature of that hearing (if it is scheduled) be?**
- 4. What issues should be heard at that hearing (if it is scheduled)?**

Although I will withhold judgment until hearing from all parties, it initially seems to me that ruling on the stipulation would be premature, and that prior to any such decision, RCC should be given an opportunity to present its side of the case. We do have hearing dates set aside beginning on June 28, which could be used for that purpose.

This situation is not without precedent. Both the Federal Power Commission and the Federal Energy Regulatory Commission have held hearings following a settlement agreed to by some, but not all, parties that focused on the justness and reasonableness of the settlement, rather than on

the original filing by the applicant. Such treatment has been upheld by the federal courts, including the U.S. Supreme Court. Here in South Dakota, there has been a stipulation agreed to by both the applicant and commission staff, and it seems an important question before the Commission is whether or not that stipulation is reasonable and would result in fair and reasonable rates.

As such, I think the hearing should deal explicitly with the settlement stipulation. Parties could be given an opportunity to augment any existing pre-filed testimony with new pre-filed testimony discussing whether the settlement stipulation would result in fair and reasonable rates.

There can be thousands of issues at question in a rate case proceeding. Judging by pre-filed testimony filed by RCC, there are at least a few substantial issues that RCC would like examined at hearing. Rather than invest significant time and resources into addressing settlement topics around which no controversy exists, I suggest each party identify those specific issues they want examined at hearing. The Commission can then structure a hearing that efficiently and effectively addresses those issues.

I am asking for an ad hoc meeting, rather than having the Commission take this up at its bimonthly Commission meeting scheduled for Tuesday, June 1. That will allow commissioners to take what is presented at the ad hoc meeting under advisement, with a decision on how the Commission should proceed scheduled for the June 1 meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Dustin M. Johnson", written in a cursive style.

Dustin M. Johnson  
Commissioner