

## Black Hills Power Rate Case

Black Hills Power, Inc. (BHP) submitted an application to the South Dakota Public Utilities Commission for approval to increase rates for electric service to customers in its South Dakota service territory. BHP states it proposes to increase rates by approximately \$32 million annually or approximately 26.6 percent based on BHP's test year ending June 30, 2009. The company states a typical residential electric customer using 600 kWh per month would see a net increase of \$17.99 per month. The proposed rates may potentially affect approximately 64,100 South Dakota customers in BHP's service territory.

Docket EL09-018, accessible on the PUC's Web site at: [www.puc.sd.gov](http://www.puc.sd.gov)

Click on Commission Actions in the gray bar near the top of the page, then, Commission Dockets; Electric Dockets; 2009 Electric Dockets; EL09-018

### PUC Authority

The South Dakota Legislature established the Public Utilities Commission and gave it quasi-legislative authority to adopt rules and regulations to regulate public utilities and quasi-judicial authority to sit as a tribunal and make decisions in contested matters. In considering a rate case, the commission weighs the public's need for adequate, efficient and reasonable service and the need for the utility to collect revenues to enable it to meet its total current cost of furnishing such service and the opportunity to earn a fair and reasonable return. The decision of the commission can be appealed to the circuit court and, ultimately, to the South Dakota Supreme Court.

See South Dakota Codified Law 49-34A. Online at [www.legis.state.sd.us/statutes](http://www.legis.state.sd.us/statutes); enter 49-34A to view the chapter. See also South Dakota Administrative Rules 20:10. Online at [www.legis.state.sd.us/rules](http://www.legis.state.sd.us/rules); enter 20:10 to view the article.

### Players

1. PUC Commissioners (judges)
2. Parties (offering evidence, witnesses, etc.)
  - Black Hills Power
  - PUC Staff
  - Interveners
    - Black Hills Industrial Interveners
    - Residential Consumers Coalition
3. Citizens (making comment)

### Process

#### Filing by Black Hills Power

- Submitted to the PUC on Sept. 30, 2009.
- Rate increase request is based on actual costs for a historic test year with "known and measurable" adjustments. BHP test year is July 1, 2008 – June 30, 2009.
- The burden is on BHP to prove the rate the company filed is just and reasonable.

#### Review by PUC staff, others

- Analysis by five PUC staff analysts and one PUC staff attorney.
  - Expertise in accounting, economics, research, engineering, administrative law, business management principles and trial procedure.
  - Conduct diligent analysis, digging deep to get answers to questions.
  - Collectively, more than 75 years of experience at the South Dakota PUC.
  - Specific experience in rate cases ranges from three to more than 50 dockets each.

- Analysis by consulting firms hired by PUC staff (contracts worth around \$100,000)
  - Chesapeake Regulatory Consultants: Participated in more than 30 formal rate cases with the South Dakota PUC since 1976.
  - Slater Consulting: Expertise in analyzing integrated resource plans.
- Discovery, Data Requests: Each party requests documents and information from the other parties.
- Parties develop their opinions on “just and reasonable” expenses, rate of return and rate design.

### **Public Involvement**

- Review the electronic docket
- Submit comments to puc@state.sd.us. These informal written public comments are filed in the docket and reviewed and considered by the PUC commissioners and staff. See “Comments and Responses” link on docket Web page.
- Attend public input meeting, hosted by PUC Nov. 24, 2009, in Rapid City.

### **Commission Hearing and Decision**

- To be scheduled in spring of 2010.
- This is a formal legal hearing with testimony, cross-examination and evidence, followed by legal briefing.
- Commission decisions on expenses, rate of return, revenue requirement and rate design. Unless specifically adjusted, all costs are historic costs, based on what Black Hills Power actually spent money on in the historic test year.
- What is allowable?
  - Executive compensation – generally, some allowed; some allocated away from the regulated business; shareholders and non-utility customers are paying salary.
  - Marketing – largely disallowed; safety and energy-efficiency marketing is okay.
  - Philanthropy as a general rule is disallowed.
  - Recent Black Hills Power merger and acquisition activities are not included in the rate case.
- Entire process is technical and complicated.
- Final decision based upon principles prescribed by statute and exhaustive case law.
- Reasonable adjustments to rates are not tax increases and do not grow the size of government. They allow a private sector company the opportunity to recover their prudently-incurred expenses.
- This is not a political decision. This is a formal legal proceeding and a decision has to be rendered based on the facts in evidence. A decision that denies a utility reasonable recovery of prudent expenses would be considered an “unconstitutional taking” by government.

### **Rate Case Cost**

- State law authorizes the PUC to assess a filing fee to BHP to defray Commission expenses related to analyzing and ruling on the rate case, which includes review of the company’s Integrated Resource Plan. BHP can pay up to \$125,000, the statutory limit, to the PUC’s regulatory assessment fee fund, as billed by the PUC.