
STAFF MEMORANDUM

TO: COMMISSIONERS AND ADVISORS
FROM: BRITTANY MEHLHAFF AND KAREN CREMER
RE: EL12-061 and EL12-062: Amendment to Electric Power Service Agreements between Black Hills Power and South Dakota Science and Technology Authority and Black Hills Power and Menard, Inc. dba Midwest Manufacturing dba Dakota Panel
DATE: June 13, 2013

Commission Staff (Staff) submits this Memorandum in regard to the contracts with deviations filed by Black Hills Power (BHP or Company) in Dockets EL12-061 and EL12-062.

BACKGROUND

On December 17, 2012, the Commission received an application by Black Hills Power, Inc. for approval to increase rates for electric service to customers in its South Dakota service territory by approximately \$13.7 million annually or approximately 9.94%. On December 17, 2012, the Commission also received an application by Black Hills Power, Inc. pursuant to SDCL 49-34A-73 for authority to implement a phase in rate increase for its South Dakota customers relating to the construction financing costs of Cheyenne Prairie Generating Station.

On May 23, 2013, BHP filed a Joint Motion for Approval of Settlement Agreement Between Black Hills Power and South Dakota Science and Technology Authority, Settlement Agreement Between Black Hills Power and South Dakota Science and Technology Authority, Supplemental Motion for Approval of Settlement Agreement (SDSTA), Joint Motion for Approval of Settlement Agreement Between Black Hills Power and Menard, Inc. dba Midwest Manufacturing dba Dakota Panel, Settlement Agreement Between Black Hills Power and Menard, Inc. dba Midwest Manufacturing dba Dakota Panel, and Supplemental Motion for Approval of Settlement Agreement (Dakota Panel).

STAFF'S REVIEW OF THE CONTRACTS WITH DEVIATIONS

Staff reviewed the contracts with deviations and submitted data requests to the Company to address whether the rates established in these contracts with deviations are just and reasonable and in the public interest. BHP filed its responses to Staff's Data Request 11 in Docket EL11-061 and Staff's Data Request 2 in Docket EL11-062 on June 13, 2013. Staff asked follow-up questions to these responses for which responses have not yet been received.

Staff believes in order for a customer to be on a contract with deviations the Company must fully demonstrate the unique circumstances that warrant a customer deviating from the tariff rates. Further, the rates should not be discriminatory or adversely affect other customers. Staff's data requests aimed

to address these concerns. The Company's response to Staff's data requests 11-1 in EL12-061 and 2-1 in EL12-062 states that any revenue shortfall will be absorbed by the Company. This alleviates Staff's concern that costs determined to be the responsibility of these customers would be shifted to other customers.

However, there is not enough data at this time to determine whether these rates are just and reasonable and whether these rates are based on the customers' true cost of service. Until Staff has completed its analysis in Docket EL12-061, including the revenue requirement and class cost of service study, any data currently available is subject to change.

Therefore, Staff recommends the Commission conditionally approve the contracts with deviations on an interim basis until such time as the Commission has additional information available upon which to base its decision.

SDSTA and Dakota Panel did not file for intervention in dockets EL12-061 and EL12-062. Since these customers are not parties in the dockets, Staff recommends the Commission deny the Joint Motions for Approval of Settlement Agreement with SDSTA and Dakota Panel.

BHP also filed a Supplemental Motion for Approval of Settlement Agreement with both SDSTA and Dakota Panel. The Supplemental Motions state: "if said Joint Motion is not subsequently approved by the Commission, the rates to be paid by [SDSTA and Dakota Panel] on and after June 16, 2013, shall be those rates in effect on June 15, 2013, with the difference between the applicable rates and the implemented rates subject to true-up and refund or repayment as the case may be." This means that if the Commission were to conditionally approve the contracts with deviations on an interim basis, the Company is requesting that the rates paid by SDSTA and Dakota Panel between June 16 and the effective date of final rates would be the rates paid under the previous contracts with deviations and therefore SDSTA and Dakota Panel would only be subject to the final rates as of the Commission decision date rather than June 16, 2013. As all other customers will be subject to interim rates on June 16, 2013, subject to refund, Staff feels the contracts with deviations should be treated the same. In other words, any rate approved by the Commission that differs from the interim contracts with deviations rates should be paid back to June 16, 2013. Staff also believes the refund or repayment should be with interest.

RECOMMENDATIONS

In summary, Staff's recommendations are as follows:

1. Deny the Joint Motions;
2. Take no action on the contracts with deviations until such time as Staff has further information regarding the contracts with deviations; and
3. Conditionally authorize on an interim basis the implementation of the rates set forth in the contracts with deviations commencing on June 1, 2013, subject to the conditions that:
 - a. this conditional approval does not pre-determine a Commission decision in the current or future rate case proceedings regarding rate treatment concerning

possible cost recovery shortfalls resulting from rates approved as contracts with deviations; and

- b. if the contracts with deviations are not subsequently approved by the Commission, the rates to be paid by SDSTA and Dakota Panel shall be the rates in effect on June 16, 2013, with the difference between the applicable rates and the implemented rates subject to true up and refund or repayment, with interest; and
- c. if the contracts with deviations are subsequently approved by the Commission with some modification of the implemented rates to be paid by SDSTA and Dakota Panel, that the rates to be paid by SDSTA and Dakota Panel on and after June 16, 2013, shall be such rates as approved by the Commission, with the difference between the implemented rates and the final rates (as approved by the Commission) subject to true up and refund or repayment, with interest.