

**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. EL14-026**

**BLACK HILLS POWER, INC.’S POST-HEARING BRIEF**

**I. INTRODUCTION**

Black Hills Power filed its Application for Authority to Increase Its Electric Rates (“Application”) on March 31, 2014. On June 6, 2014, GCC Dacotah, Inc., Pete Lien & Sons, Inc., Rushmore Forest Products, Inc., Spearfish Forest Products, Inc., Rapid City Regional Hospital, and Wharf Resources (U.S.A.), Inc. (collectively "BHII") filed a Petition to Intervene. On the same date, Dakota Rural Action (“DRA”) also filed a Petition to Intervene. The Commission issued its Order Granting Intervention to BHII and DRA on June 26, 2014.

The Staff of the South Dakota Public Utilities Commission (“Staff”) served several hundred discovery requests that were responded to by the Company. The Company also responded to a number of discovery requests that were served by BHII. Ultimately, the Company and Staff resolved all issues and entered into a Settlement Stipulation (“Settlement Stipulation”) (Joint Exh. 2) that was filed with the Commission

on December 9, 2014. BHII chose to not be a party to the Settlement Stipulation and filed testimony in opposition. DRA also chose to not be a party to the Settlement Stipulation but did not file opposition testimony.

A hearing was held on January 27 and 28, 2015 (“Hearing”), to afford the South Dakota Public Utilities Commission (“Commission”) the opportunity to resolve two issues. The first issue was whether the Commission should approve the Settlement Stipulation. The second issue was, if the Commission found that approval was not appropriate, in the alternative, what rates, terms, and conditions are just and reasonable. Upon the motion of BHII, the Commission ordered that post-hearing legal briefs be submitted by the parties.

In an effort to address certain issues that were raised during the Hearing, on February 10, 2015, the Company and Staff filed an Amended Settlement Stipulation (“Amended Settlement Stipulation”). In particular, Black Hills Power and Staff agreed to: (1) correct the transmission allocation oversight; (2) include an adjustment to the revenue requirement that accounts for a portion of the operation and maintenance costs for the Wyodak facility that were presented in the rebuttal testimony of Jon Thurber; and (3) modify the rate case moratorium to provide that the earliest date that rates could go into effect as a result of a subsequent rate case is January 1, 2017. In support of these changes, Staff filed a memorandum and explanatory schedules. As noted in Staff’s memorandum, these modifications did not change the overall revenue deficiency that Staff and the Company agreed to as a term of the Settlement Stipulation.

Black Hills Power respectfully requests that the Commission approve the Amended Settlement Stipulation without condition or modification. Approval is appropriate because the methods Black Hills Power and Staff utilized to arrive at the terms reflected in the Amended Settlement Stipulation are consistent with the applicable statutes, administrative rules, and the long-standing Staff practices and procedures. As a result, the terms of the Amended Settlement Stipulation result in just and reasonable rates.

## **II. EXECUTIVE SUMMARY**

Under SDCL 49-34A-6 and 49-34A-8, the Commission was granted the authority to determine just and reasonable rates for public utilities. South Dakota Codified Law 49-34A-19 and SDAR 20:10:13:44 govern adjustments to the test year that may be properly considered in determining a revenue requirement. In the case of electric utility rate case proceedings, the South Dakota Supreme Court has stated that the Commission need not follow any particular formula to arrive at rates so long as the methods that are employed, when applied to the facts as a whole, do not produce an arbitrary result. *SDPUC v. Otter Tail Power Co.*, 291 N.W.2d 291, 293 (S.D. 1980). In this instance, the Staff and the Company adhered to long standing Staff practices and procedures that are consistent with the aforementioned statutes and the pertinent administrative rules to arrive at the revenue deficiency that is set forth in both the original and Amended Settlement Stipulations.

Under any reasonable interpretation, SDCL 49-34A-19 permits adjustments to the test year that will be forthcoming in the twenty-four months that follow the test year. Consistent therewith, South Dakota Administrative Rule 20:10:13:44 sets forth the standard for post-test year adjustments. It permits adjustments to facilities, operations, or costs, "...which are known with reasonable certainty and measurable with reasonable accuracy at the time of the filing and which will become effective within 24 months of the last month of the test period used for this section and unless expected changes in revenue are also shown for the same period." SDAR 20:10:13:44. Test period is defined under SDAR 20:10:13:01(11), as the period outlined in SDAR 20:10:13:44, "...except that if additional material is filed by the utility, a test period is any 12 consecutive months beginning no later than the proposed effective date of the rate application." When read together, this statute and two administrative rules support the post-test year adjustments that are reflected in the Amended Settlement Stipulation.

As indicated in both the pre-filed and live testimony of Company witnesses Jon Thurber and Staff witness David Peterson, the end of the historic test year was September 30, 2013. As such, over fifteen months of changes in facilities, operations and costs have occurred and were appropriately adjusted for under the above administrative rules. Furthermore, the vast majority of the adjustments relate to costs that the Company incurred during the twelve months following the historic test year. For the few categories of costs that were not incurred during this time period, those costs are known with reasonable certainty and measurable with reasonable accuracy. Accordingly, the

adjustments were appropriately reflected under SDCL 49-34A-8, 49-34A-19, and SDAR 20:10:13:44 and 20:10:13:01(11).

BHII has asked the Commission to reject the adjustments under an interpretation of SDAR 20:10:13:44 that is wholly inconsistent with decades of Staff practice. In particular, BHII witness Lane Kollen testified at hearing that the Settlement Stipulation “is not supported by South Dakota law because it provides for numerous adjustments . . . that were not known with reasonable certainty or measurable with reasonable accuracy at the time Black Hills Power filed this case . . . and in direct contravention to South Dakota Law, the proposed adjustments were not accompanied by expected changes in revenue.” Hr’g Tr. Kollen Test. 158-159. Mr. Kollen therefore asserts that adjustments should not be allowed for changes in costs that occur after October 1, 2014. BHII Exh. 1, Kollen Test. 23. BHII’s interpretation is misplaced for the following reasons.

First, BHII asks the Commission to find that SDAR 20:10:13:44 limits adjustments to those that were known with reasonable certainty or measurable with reasonable accuracy at the time that the Application was filed. The language of the rule does not support this interpretation. Rather, the rule permits adjustments that, “...are known with reasonable certainty and measurable with reasonable accuracy at the time of the filing....” Both the Company and Staff interpret this language to permit adjustments that are known with reasonable certainty and measurable with reasonable accuracy at the time that the Company filed the information that supported the adjustment. If the Commission took the BHII’s interpretation to its logical conclusion, then the only

adjustments that would be permitted would be those that were known with reasonable certainty and measurable with reasonable accuracy before the Application was filed. An interpretation of this nature is inconsistent with decades of Staff past practice and the aforementioned statute and administrative rules that permit adjustments for costs that will be effective within 24 months of the last month of the test period.

Second, BHII asks the Commission to find that SDAR 20:10:13:44 limits adjustments to those that are accompanied by expected changes in revenue. However, as indicated in both pre-filed and live testimony, it has been a long standing practice of Staff to exclude all revenue producing plant from the plant annualization and post-test year addition adjustments. It would therefore be inappropriate for additional revenues to be reflected in the cost of service because the investment needed to serve the sales growth is not included. Instead, it has been Staff policy to reflect any incremental revenue or cost savings associated with post-test year adjustments in the revenue requirement. As a result, the interpretation advanced by BHII is both inconsistent with past Staff practice and would result in a violation of the matching principle. The Company requests the Commission reject the interpretation of SDAR 20:10:13:44 that has been advanced by BHII.

Despite the fact that the primary justification for the requested rate increase is the addition of the Cheyenne Prairie Generating Station, BHII has asked the Commission to support its recommendation for a \$5.258 million reduction in the Company's current base rates. The vast majority of BHII's challenges are based upon its interpretation of SDAR

20:10:13:44. To the extent that BHII provided the Commission an alternative basis to reject the adjustments, the Company responded to these challenges at the Hearing and has summarized its positions regarding the same in this Post-Hearing Brief.

The settlement between Black Hills Power and Staff is based upon a thorough analysis of all issues that is consistent with long-standing Staff practices and that conform to ratemaking principles that are imposed by the laws of South Dakota. Overall, the terms of the settlement provide due consideration to the public need for adequate, efficient, economical and reasonable service and to the need of the Company for revenues sufficient to enable it to meet its total current cost of furnishing such service. As the resulting rates are just and reasonable, the Company respectfully requests the Commission approve the Amended Settlement Agreement without condition or modification.

### **III. LEGAL ANALYSIS**

#### **A. Standard Of Review.**

As indicated above, the Commission has the authority to determine just and reasonable rates. SDCL 49-34A-6 and 49-34A-8. Black Hills Power bears the burden of proof to show that its proposed rates are just and reasonable. SDCL 49-34A-11. In addition, Black Hills Power bears the burden to establish that the underlying costs or charges are prudent, efficient, and economical and are reasonable and necessary to provide service to the public utility's customers in South Dakota. SDCL 49-34A-8.4.

## **B. Test Year Adjustments.**

### 1. Background for post-test year adjustments.

In analyzing the Company's rate case, Staff served and Black Hills Power responded to hundreds of discovery requests. Staff then based its determination of an appropriate revenue requirement on a comprehensive analysis of the as-filed September 30, 2013, total Company test year costs and the additional information obtained through discovery that supported further post-test year adjustments. In particular, Staff first allocated total Company amounts to the South Dakota retail jurisdiction. Staff then adjusted the September 30, 2013, test year results for appropriate post-test year changes. The Amended Settlement Stipulation incorporates approximately forty operating income adjustments and seventeen rate base adjustments.

Black Hills Power and Staff followed the legal standards set forth in SDCL 49-34A-8, 49-34A-19, and SDAR 20:10:13:44 and 20:10:13:01(11), to arrive at the adjustments to the test year that are set forth in the Settlement Stipulation and the Amended Settlement Stipulation. The adjustments that are reflected in the Settlement Stipulations are also consistent with the long-standing Staff practices that have been employed to arrive at the revenue deficiency for utilities in rate making proceedings, including proceedings to which the customers included in BHII have previously been parties.



## 2. BHII challenges to test year adjustments.

BHII, through its witness Lane Kollen, proposed a unique and impermissible interpretation of SDAR 20:10:13:44 to dispute the adjustments agreed to by Staff and the Company. First, Mr. Kollen testified that the presumption is that no changes to the test year are allowed. Hr’g Tr. 173. Mr. Kollen then opined that if such adjustments are to be considered, the utility must first determine that they are known and measurable at the time of the filing of the Application, and not at some later date when actual costs come in. Hr’g Tr. 173. Mr. Kollen further opined that the utility must first demonstrate that the costs are known and measurable at the time of the filing (March 31, 2014), and second, the utility must include any expected changes in revenue. Hr’g Tr. 173. Additionally, Mr. Kollen argued that the Commission should limit any post-test year adjustments to the twelve month period immediately following the historic test year ending September 30, 2013. BHII Exh. 1, Kollen Test. 7:18. In summary, Mr. Kollen suggests that no adjustments should be allowed for changes in costs that become effective after October 1, 2014, and the only changes in costs that may be reflected as adjustments must be known and measurable on March 31, 2014. BHII Exh. 1, Kollen Test. 23:12. As illustrated below, Mr. Kollen’s interpretation was impermissibly performed in isolation and without consideration of other pertinent South Dakota statutes, administrative rules, and the long standing policy of Staff that has been supported by the Commission for over forty years.

### 3. Legal analysis of post-test year adjustments.

The South Dakota Supreme Court has stated, "...[a]dministrative regulations are subject to the same rules of construction as statutes." *Krsnak v. SDDENR*, 2012 SD 89, ¶ 16 (quoting *State v. Guerra*, 2009 SD 74, ¶ 32 (quoting *Sioux Falls Shopping News, Inc. v. Dep't of Revenue & Regulation*, 2008 SD 34, ¶ 24)). "When regulatory language is clean, certain and unambiguous, our function is confined to declaring its meaning as clearly expressed." *Id.* (quoting *Westmed Rehab, Inc. v. Dep't of Soc. Servs.*, 2004 SD 104, ¶ 8 (citing *Schroeder v. Dep't of Soc. Servs.*, 1996 SD 34, ¶ 9)). However, "[A]n agency is usually given a reasonable range of informed discretion in the interpretation and application of its own rules when the language subject to construction is technical in nature or ambiguous, or when the agency interpretation is one of long standing." *Id.* (quoting *Guerra*, 2009 SD 74, ¶ 32 (quoting *Sioux Falls Shopping News, Inc.*, 2008 SD 34, ¶ 24)(quoting *Nelson v. S.D. State Bd. Of Dentistry*, 464 N.W.2d 621, 624 (S.D. 1991)).

Furthermore, where there is ambiguity, a court must give effect to the agency's intention in promulgation of the rule and must look to the object of the rule and the mischief with which it is designed to remedy. *Nelson*, 464 N.W.2d at 624; *Island v. Department of Corrections*, 1996 S.D. 73 at ¶ 8. The purpose of the rule must be determined from the rule as a whole, as well as other rules relating to the same subject. *Id.* When a statute or rule does not define a term, it should be construed according to its accepted usage and a strained, unpractical, or absurd results should be avoided. *Id.*

South Dakota Codified Law 49-34A-19, governs the determination of a utility's revenue requirement. It states,

In determining the revenue requirement the commission shall consider revenue, expenses, cost of capital and any other factors or evidence material and relevant thereto. The commission may take into consideration the reasonable income and expenses that will be forthcoming in a period of twenty-four months in advance of the test year.

SDCL 49-34A-19 (emphasis added). Under this statute, the Commission maintains discretion to take into consideration adjustments for expenses that will be forthcoming for a period of twenty-four months. While the phrase, "...in advance of..." potentially renders the statute ambiguous, it would be illogical to interpret the statute in a manner that only allowed for adjustments for costs that occurred during the two years prior to the test year. Reasonable interpretation of the statute justifies consideration of expenses that will be forthcoming in the twenty-four months following the test year.

This interpretation is also consistent with the post-test year adjustment requirements that are set forth in SDAR 20:10:13:44. This rule states,

**Analysis of system costs for a 12-month historical test year.** The statement of the cost of service shall contain an analysis of system costs as reflected on the filing utility's books for a test period consisting of 12 months of actual experience ending no earlier than 6 months before the date of filing of the data required by §§ 20:10:13:40 and 20:10:13:43 unless good cause for extension is shown. The analysis shall include the return, taxes, depreciation, and operating expenses and an allocation of such costs to the services rendered. The information submitted with the statement shall show the data itemized in this section for the test period, as reflected on the books of the filing public utility. Proposed adjustments to book costs shall be shown separately and shall be fully supported, including schedules showing their derivation, where appropriate. However, no adjustments shall be permitted unless they are based on changes in facilities, operations, or costs which are known with reasonable certainty and measurable with

reasonable accuracy at the time of the filing and which will become effective within 24 months of the last month of the test period used for this section and unless expected changes in revenue are also shown for the same period.

For purposes of this rule, SDAR 20:10:13:01 (11), defines test period as, “the test period outlined in § 20:10:13:44, except that if additional material is filed by the utility, a test period is any 12 consecutive months beginning no later than the proposed effective date of the rate application.

In this case, the test year ended on September 30, 2013. BHP Exh. 70, Thurber Test. 2. Under SDCL 49-34A-19, reasonable expenses that will be forthcoming between October 1, 2013 and September 30, 2015, may be considered as post-test year adjustments. A comparable permissible adjustment time period is permitted under SDAR 20:10:13:44. More specifically, the rule permits adjustments that are, “...known with reasonable certainty and measurable with reasonable accuracy at the time of the filing and which will become effective within 24 months of the last month of the test period...” SDAR 20:10:13:44. Therefore, both SDCL 49-34A-19 and SDAR 20:10:13:44 support adjustments that become effective on or before September 30, 2015.

The adjustments that are reflected in both of the Settlement Stipulations were known with reasonable certainty and measurable with reasonable accuracy at the time that the Company provided the information that supported the adjustment. BHP Exh. 70, Thurber Test. 2-3. Over fifteen months of changes in facilities, operations and costs occurred and were appropriately adjusted for under the above administrative rules. BHP

Exh. 70, Thurber Test. 3. Furthermore, the vast majority of the adjustments relate to costs that the Company incurred during the twelve months following the historic test year. BHP Exh. 70, Thurber Test. 3. For the few categories of costs that were not incurred during this time period, those costs are known with reasonable certainty and measurable with reasonable accuracy. BHP Exh. 70, Thurber Test. 2-5; Staff Exh. 1, Peterson Test., 8:22 – 9:14 . Accordingly, the adjustments were appropriately reflected under SDCL 49-34A-8, 49-34A-19, and SDAR 20:10:13:44 and 20:10:13:01(11).

The Company’s interpretation of the aforementioned statute and administrative rule is not only reasonable, but it is also logical. South Dakota Codified Law 49-34A-8 provides in part that the Commission shall give due consideration “...to the need of the public utility for revenue sufficient to enable it to meet its total current costs of furnishing such service . . .” SDCL 49-34A-8 (emphasis added). Post-test year adjustments that will become effective in the twenty-four months following the test year are necessary to ensure this objective. Furthermore, the historic test year does not represent current costs, but rather it provides a basis for which adjustments may be made to reflect current costs.<sup>1</sup>

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<sup>1</sup> The South Dakota Supreme Court outlined the Commission’s procedure as follows:

The PUC has adopted the “cost of service” method of rate making. This method entails four steps as follows: (1) Properly determine company’s rate base, i. e., investment devoted to public service; (2) determine a fair and reasonable rate of return; (3) multiply the base ((1) above) by the rate ((2) above); and 4 (add to company’s cost of operations referred to above (including taxes and depreciation). To assist in the computation of the steps above, a historical test year is adopted. The data from this year must be adjusted as to the cost of operations and the rate base to reflect changes which will be in effect subsequent to the historical test year. *Application of Northwestern Public Service Co.*, 297 N.W.2d 462, 464 (S.D. 1980) (emphasis added).

Conversely, BHII asks the Commission to find that SDAR 20:10:13:44 limits adjustments to those that were known with reasonable certainty or measurable with reasonable accuracy at the time that the Application was filed. The language of the rule does not support this interpretation. Rather, the rule permits adjustments that, "...are known with reasonable certainty and measurable with reasonable accuracy at the time of the filing...." SDAR 20:10:13:44. Both the Company and Staff interpret this language to permit adjustments that are known with reasonable certainty and measurable with reasonable accuracy at the time that the Company filed the information that supported the adjustment. Hr'g Tr.272-279. If the Commission took the BHII's interpretation to its logical conclusion, then the only adjustments that would be permitted would be those that were known with reasonable certainty and measurable with reasonable accuracy before the Application was filed. An interpretation of this nature is inconsistent with decades of Staff past practice and the aforementioned statutes and administrative rules that permit adjustments for costs that will be effective within 24 months of the last month of the test period. BHP Exh. 70, Thurber Test. 4; Hr'g Tr.278-279. BHII's interpretation is also contrary to the Company's right to recover its current costs of providing service.

BHII also asks the Commission to find that SDAR 20:10:13:44 limits adjustments to those that are accompanied by expected changes in revenue. However, as indicated in both pre-filed and live testimony, it has been a long standing practice of Staff to exclude all revenue producing plant from the plant annualization and post-test year addition adjustments. BHP Exh. 70, Thurber Test. 4; Staff Exh. 1, Peterson Test., 8:22 – 9:14;

Hr’g Tr.272-279. It would therefore be inappropriate for additional revenues to be reflected in the cost of service because the investment needed to serve the sales growth is not included. Instead, it has been Staff policy to reflect any incremental revenue or cost savings associated with post-test year adjustments in the revenue requirement. As a result, the interpretation advanced by BHII is both inconsistent with past Staff practice and would result in a violation of the matching principle. The Company requests the Commission reject the interpretation of SDAR 20:10:13:44 that has been advanced by BHII.

4. Support For The Proffered Interpretations.

Staff has employed long-standing practices that support the adjustments that were made in this case. As illustrated below, those practices have routinely been accepted by the Commission as both appropriate and consistent with South Dakota Law.

a. Testimony of Staff Consultant David Peterson.

Staff witness Mr. David Peterson is a rate consultant with Chesapeak Regulatory Consultant, Inc. Hr’g Tr.265. Mr. Peterson and his colleagues have been associated with the Commission and have assisted in working on rate cases in South Dakota since the inception of regulation in the mid 1970’s. Hr’g Tr.265. Mr. Peterson summarized in his pre-filed testimony the Commission’s long standing policy regarding post-test year adjustments as follows:

It is my understanding that the Commission’s long-standing policy has been to consider post-test year adjustments up to twenty-four months, not twelve months, beyond the end of the test year provided they are known with reasonable certainty and measureable with reasonable accuracy. Indeed

such a treatment is, in effect, mandated to the Commission by South Dakota Administrative Rule 20:10:13:44. In addition to ignoring the twenty-four month look-out provision, Mr. Kollen apparently interprets this administrative rule to require that any costs that are beyond twelve months post-test year must be accompanied by projected changes in revenue for the same period. This is not how the Commission and the Commission Staff have interpreted this rule, however. Rather, it is my understanding that both the Commission Staff and the Commission have previously interpreted this rule to mean that for any post-test year change in expense or investment that has an incremental review component (i.e., expenses or investments made to increase sales and/or to serve new customers) a corresponding revenue adjustment must also be recognized. . . . Therefore, the Settlement Stipulation is consistent with prior Commission policy in this regard and with the governing administrative rule.

Staff Exh. 1, Peterson Test., 8:22 – 9:14 (emphasis added). Mr. Peterson also re-iterated the long standing policy.

b. Decisions of this Commission.

The long standing policy of the Commission to allow adjustments of test year expenses (and revenue related to those expenses, if applicable) goes back to at least 1981. To illustrate, the Commission considered a rate increase application filed by Northern States Power Company on June 15, 1981. *In re Application of N. States Power Co. dba Xcel Energy for Auth. To Increase its Electric Rates*, No. F-3382 (S.D. P.U.C. June 15, 1981). The Commission filed its written decision on December 15, 1981. In that decision, the Commission stated<sup>2</sup>:

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<sup>2</sup> By Memorandum Decision dated 10-28-82, Presiding Circuit Judge Miller of the Sixth Judicial Circuit affirmed the Commission’s decision in Docket No. F-3382. Memorandum of Decision, *In re Application of N. States Power Co. for Auth. to Establish Increased Rates for Elec. Serv. in South Dakota*, PUC Docket No. F-3382, No. 82-6, (S.D. 6th Jud. Cir., Oct. 28, 1982).



Staff Witness Rislov testified that the purpose of a rate increase application is to derive cost/revenue relationships that will be in effect for the forthcoming period. He maintained that historical data reflects actual cost/revenue relationships, and when adjusted, is a better indicator of future relationships than a budget. *Id.* at 2.

Staff Witness Rislov testified that historical test years are not “backward looking” in a rate case context. It is Witness Rislov’s testimony that historical test years adjusted for known and measurable changes are sound for development of appropriate cost/revenue relationship. *Id.* at 3.

Witnesses Rislov and Towers additionally testified that NSP could offer known change adjustments occurring prior to the Commission Order. *Id.* (emphasis added)

The Commission finds, therefore, that the historical test year recommended by Staff, as adjusted by the terms of this Order, is the better method for the development of rates for electric rates rendered by NSP. *Id.* at 35.

As further support, in 1982, the Staff issued a memo in another Northern States Power rate case that included the following statement under its “Update to Staff Position” portion of its memo:

The refined adjustments were included in Company’s rebuttal testimony. Other amounts were included initially in Company’s rebuttal filing. One was presented for the first time during settlement discussions. All of the amounts reflected as updates would have been accepted by Staff had the case gone to hearing.

Staff Memorandum at 7, *In re Application of No. States Power Co.*, No. F-3422, (S.D. P.U.C. April 15, 1983). As affirmed by the testimony of both Jon Thurber and Dave Peterson, Staff continues to follow these practices today and adhered to these practices in arriving at the post-test year adjustments that are reflected in the Amended Settlement Stipulation.

#### IV. SPECIFIC ALLEGATIONS OF BHII

##### A. Introduction.

BHII alleges that certain adjustments set forth in the Settlement Stipulation are not appropriate under South Dakota law or should be disallowed by the Commission. Black Hills Power and Staff refuted these allegations in their testimony or filings. A summary of the Company's position regarding each of the material challenges appears below.

##### B. LIDAR.

At the time that Black Hills Power filed this rate case, it planned to perform Light Detection and Ranging (LIDAR) imaging of certain facilities. BHP Exh. 70, Jon Thurber Test. 11:20. The LIDAR work was completed in the fourth quarter of 2014 pursuant to a fixed price contract. Thurber Test. 13. Staff and the Company included the LIDAR costs as an adjustment to the test year, as it was known and measurable with costs incurred within twenty four months following the historic test year, pursuant to SDCL 49-34A-19 and SDAR 20:10:13:44.

BHII alleges that the Company's request regarding LIDAR is "premature and overreaching" and that the Company has provided no evidence that it incurred these costs prior to October 1, 2014 or within the 12 months after the end of the historic test year, and that they are not known and measurable. BHII Exh. 1, Kollen Test. 23. Mr. Kollen reiterated those same allegations in his opening statement to the Commission. Hr'g Tr.173. However, the sole basis for Mr. Kollen's challenge to this adjustment is his

impermissible interpretation of SDAR 20:10:13:44. As a result, his challenge to this adjustment lacks merit and is therefore properly rejected by the Commission.

**C. Decommissioning.**

Mr. Kollen utilized the same approach to challenge decommissioning costs. He alleged that the Company's request to include decommissioning costs "is premature and overreaching," and that the Company had not incurred most of the decommissioning costs that it seeks to include in rate base as of October 1, 2014. BHII Exh. 1, Kollen Test. 16.

The Company responded to Mr. Kollen's allegations by demonstrating that the vast majority of the decommissioning costs set forth in the both Settlement Agreements are supported by a fixed price contract, and further demonstrated that such costs are known with reasonable certainty and measurable with reasonable accuracy and fall within the acceptable period for test year adjustments. BHP Exh. 70, Thurber Test. 9. Mr. Thurber further testified that the Commission accepted engineering estimates for decommissioning costs in a recent approved rate case settlement. Thurber Test. 9. In addition, the further support for the treatment of decommissioning costs is found in the Settlement Stipulation for *In re Application of N. States Power Co. dba Xcel Energy for Auth. To Increase its Electric Rates*, No. F-3382 (S.D. P.U.C. June 15, 1981), as affirmed by the Circuit Court. Again, BHII's challenge to the decommissioning cost adjustment is based upon an incorrect interpretation by SDAR 20:10:13:44 and is as a result properly rejected.

**D. Incentive Compensation/Restricted Stock Issue.**

[Begin Confidential]

[REDACTED]

[End Confidential]

**E. Net Operating Losses And Accumulated Deferred Income Taxes.**

Black Hills Power submitted the testimony of Robert Hollibaugh (BHP Exh. 73) to support the adjustments related to net operating losses (NOL) and accumulated deferred income taxes (ADIT). In addition, Staff consultant Mr. David Peterson, provided testimony about the NOL and ADIT. On behalf of BHII, Mr. Kollen testified that it is improper to include the NOL asset in rate base. BHII Exh. 1, Kollen Test. 11.

Mr. Peterson disagreed, as did Mr. Hollibaugh. Peterson Test. 10; Hollibaugh Test. 6. The testimony of Mr. Peterson and Mr. Hollibaugh provide substantial evidence that the adjustments regarding NOL and ADIT are proper and are therefore appropriately adopted by the Commission.

**F. FutureTrack Workforce Development Program.**

The Company proposed in its Application to increase its expenses for its FutureTrack Workforce Development program. The primary purpose of this program was to recruit talent within critical areas to complete the advance training necessary to fill the highly skilled positions upon the retirement of existing employees. BHP Exh. 19, Jennifer Landis Test. 6. The Settlement Stipulation included costs only for positions actually hired at the time of settlement negotiations, and did not include recovery for the FutureTrack program as initially proposed by the Company. Staff Memo 9.

Mr. Kollen alleged that the Company should not recover its proposed FutureTrack Workforce program costs, and alleged that all costs associated with employee additions and eliminations should be removed. BHII Exh. 1, Kollen Test. 27, 30.

As reflected in the Settlement Stipulation, Staff only allowed an adjustment for the recovery for employees that had been hired at the time of settlement negotiations. Mr. Kollen alleged that this was improper because it had to be known and measurable at the time the Company filed its Application. Again, Mr. Kollen's arguments fail as a result of his incorrect interpretation of SDAR 20:10:13:44. Because recovery was allowed only for employees that had been hired, those expenses were known, measurable, reasonable

and necessary. Accordingly, the adjustment was properly made for expenses incurring in the twenty four months following the test year used by the Company in its Application.

**G. Response To BHII’s Unsupported Allegations.**

BHII witnesses sprinkled their testimony in this case with descriptions of the Company using such words as “overreaching,” “opportunistic,” and “premature.”

For example, BHII characterized the Company’s pension expense adjustment as “opportunistic.” BHII Exh. 1, Kollen Test.33. But as Jon Thurber testified, “if the company in fact was being opportunistic, Black Hills Power would have proposed no adjustment to the test year... [as] the Company’s proposed adjustment reduced costs by approximately \$508,000.” BHP Exh. 70, Thurber Test. 22. Thurber further testified that “This condition in the Settlement Stipulation displays a commitment to normalization rather than an opportunistic objective.” Thurber Test. 22.

[Begin Confidential]

[REDACTED]

[End Confidential]

[Begin Confidential]

[REDACTED]

[End Confidential]

As noted above, Mr. Kollen described certain test year adjustments as “premature and overreaching,” but of course, such references were based on his incorrect interpretation of South Dakota law.

Mr. Kollen stated that the Settlement Stipulation is “woefully inadequate.” Staff witness David Peterson responded to this allegation as follows:

Mr. Kollen’s disparaging characterization of the settlement marginalizes the hundreds of hours that were devoted to the rate investigation by the Commission Staff in analyzing BHP’s rate request and in crafting a resolution of all issues through a negotiated settlement. As is evident by the Staff Memorandum, the Commission Staff arrived at its settlement position based on a thorough analysis of all issues while relying on long-standing Commission practices and requirements imposed by the South Dakota Administrative Rules governing ratemaking practices in the State. Obviously, there was give-and-take between the Commission Staff and BHP in settlement negotiations. Staff did not receive all that it hoped for; neither did BHP. In fact, BHP agreed to accept less than one-half (47 percent) of its original requested revenue increase. . . . [the] moratorium has real value to BHP customers, including the members of BHII. Staff Exh. 1, Peterson Test. 29.

Ultimately, BHII’s unsubstantiated allegations fail to provide a basis to justify rejection of the Amended Settlement Agreement.

## **V. AMENDMENTS TO THE SETTLEMENT AGREEMENT**

In an effort to address certain issues that were raised during the Hearing, on February 10, 2015, the Company and Staff filed an Amended Settlement Stipulation. In particular, Black Hills Power and Staff agreed to: (1) correct the transmission allocation oversight; (2) include an adjustment to the revenue requirement that accounts for a portion of the operation and maintenance costs for the Wyodak facility that were

presented in the rebuttal testimony of Jon Thurber; and (3) modify the rate case moratorium to provide that the earliest date that rates could go into effect as a result of a subsequent rate case is January 1, 2017. The correction of the transmission allocation oversight and the adjustment for the operation and maintenance costs associated with the WYodak production facility were accepted under the same Staff practices and procedures that are addressed above and throughout the testimony of both the Company and Staff.

In particular, these modifications represent costs that were known with reasonable certainty and measurable with reasonable accuracy during the 24 month time period that followed the last month of the test period. BHP Exh. 70, Thurber Test. 16-19. In addition, these two modifications do not change the revenue deficiency that the Company and Staff agreed to under the Settlement Stipulation. As these modifications are consistent with Staff practices, SDCL 49-34A-8, 49-34A-19, and SDAR 20:10:13:44 and 20:10:13:01(11), approval of the Amended Settlement Stipulation is appropriate.

## **VI. CONCLUSION**

Black Hills Power, in conjunction with Staff as a co-settling party, produced evidence sufficient to satisfy the Company's burden of proof pursuant to SDCL 49-34A-8.4. In particular, the parties to the Amended Settlement Stipulation established that the underlying costs of the rates and charges pursuant that result under the Amended Settlement Stipulation are prudent, efficient, economical and are reasonable and necessary to provide service to the public utility's customers in South Dakota. The



resulting rates are just and reasonable and the Company is entitled to approval of the rates as filed in the Amended Settlement Stipulation.

Black Hills Power respectfully requests that the Commission approve the Amended Settlement Stipulation without condition or modification.

Dated this 17<sup>th</sup> day of February, 2015.

BLACK HILLS POWER, INC.

By

  
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