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*South Dakota*

**PUBLIC UTILITIES COMMISSION**

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January 28, 2015

Roger Fischer  


Dear Mr. Fischer:

This is in response to your letter regarding the Black Hills Power rate case increase request application currently being reviewed by the commission.

As noted in BHP's application for this rate increase request, posted in the online docket, EL14-026, the utility requested an average increase of 9.25 percent. The BHP rates which went into effect on Oct. 1, 2014 are interim rates. By law, public utilities are allowed to implement their proposed increased rates once the required 180-day suspension ends. If the commission ultimately approves rates lower than the interim rates, BHP will refund its customers the difference in rates plus interest for the interim period.

When a utility files a rate case, the commission is obligated by law to thoroughly process the case. The utility's filed application which you can access in this online docket provides the utility's offered justification to the commission for the rate increase. The commission's investigation of the docket can take almost a year to complete. Each commissioner, the commission's staff and expert consultants hired by staff will review the entire case separately, along with any intervenors in the case. Each entity involved in the case requests and reviews additional data and information from the utility before a decision is rendered.

You mention excessive BHP rates, overpaid CEOs and board member bonuses. It is important to understand that BHP is one entity owned by Black Hills Corporation's shareholders, along with several other entities. Since BHP is a public utility, federal and state laws govern how it must operate and how the commission must regulate it. However, the commission does not regulate BHC. The laws include what is commonly known as "ring-fencing" and this prevents an investor-owned utility (BHP) of being stripped of its profits by shareholders (BHC). The purpose is to retain sufficient funds to operate the utility and reinvest in the system in order to provide safe, reliable service to the utility's customers.

The cost of electricity is on the rise not only for you and me, but for other investor-owned, rural cooperative and municipal electric systems' customers throughout South Dakota and the U.S. as we are learning in news reports daily. South Dakota has six investor-owned electric utilities, and of these, four currently have open rate case request dockets before the commission: Xcel Energy, NorthWestern Energy, MidAmerican Energy, and BHP. The most-cited reason for these increased rates is new federal mandates, particularly those from the Environmental Protection Agency. American Electric Power reports that 65,000 MW of electric capacity are being retired largely because of EPA regulations. That is nearly 30 times the amount of electricity the state of

South Dakota uses at peak demand. EPA mandates were one of the four reasons cited by BHP in filing this rate increase request as referenced in BHP official Vance Crocker's testimony in the docket.

I agree with your frustration for increased costs. None of us wishes to see our costs increase including my fellow commissioners and me. However, the law requires the commission to allow utility rates that are proven reasonable and justifiable. The commission must allow rates to provide for safe, reliable electric service to a public utility's consumers.

Enclosed is a document which helps explain the commission's process in handling rate cases such as this.

Thank you for contacting the commission with your concerns. All discussion involving commissioners on the case must be available to the public. Therefore, your comments and my response will be filed in the docket.

Sincerely,

A handwritten signature in black ink that reads "Chris Nelson". The signature is written in a cursive, flowing style.

Chris Nelson

# Electric Rate Increase Requests

# South Dakota Public Utilities Commission

This guide is intended to offer a simple overview of the Public Utilities Commission's process in considering a rate increase request from an electric service provider within its jurisdiction. This guide is informational and does not discuss all situations, variations and exceptions of the rate case process and proceedings of the PUC. See South Dakota Codified Law 49-34A for additional information, on the Internet at [legis.sd.gov/statutes/Codified\\_Laws/QuickFind.aspx](http://legis.sd.gov/statutes/Codified_Laws/QuickFind.aspx); enter 49-34A to view the chapter.

## Electric Utilities in South Dakota

There are six investor-owned utility companies that provide electric service to specific geographic areas in South Dakota. These companies are owned by their investors and are managed as private enterprises. The PUC has regulatory authority, including ratemaking authority, over these investor-owned utilities: Black Hills Power, MidAmerican Energy Co., Montana-Dakota Utilities Co., NorthWestern Energy, Otter Tail Power Co. and Xcel Energy.

The PUC does not have ratemaking authority over electric cooperatives or municipal electric organizations. Each electric co-op is governed by a board of directors, elected by its membership. Municipal electric organizations are managed by the local government entity. The leadership of each of these groups is responsible for setting rates paid by its electric customers.

## Rate Case Process

When an investor-owned electric utility wishes to modify its rates, it must seek permission from the PUC to do so. The company begins the process by filing an application with the PUC that states the proposed rate of increase for each of its customer classes – residential, commercial and industrial, for example – and the rationale for the requested increase. The PUC has six months to investigate and make a decision about a rate request before the utility may put interim rates into effect, subject to refund depending on the PUC's decision.

## PUC Authority

The South Dakota Legislature gave the PUC authority to ensure utility companies in South Dakota provide safe and reliable service at fair and reasonable rates. 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 commission determines these factors based on definitions, standards and references specified in South Dakota Codified Law. In rendering its decision, the commission may approve, deny or approve with modifications the proposed rate increase as the commission finds appropriate and legally within its jurisdiction. The decision of the commission can be appealed to the circuit court and, ultimately, to the South Dakota Supreme Court.

The commission strives to issue a reasoned decision and modifications, where appropriate, that uphold the law and discourage a potentially expensive and lengthy appeal process.

## PUC Staff Role

Members of the PUC staff assigned to work on a rate case typically include one attorney and several analysts. Staff attorneys have educational and practical experience in administrative law, business management principles and trial procedure. Staff analysts have expertise in accounting, economics, research and engineering. The staff conducts a comprehensive analysis of the company's request and gathers additional information from the company, intervenors and outside experts as necessary. Company operating expenses, employee benefits, executive compensation, corporate advertising, and the cost of generation and transmission facilities are among the many facets of the rate case the staff examines. In addition to reviewing the data and evidence submitted by the applicant and intervenors, PUC staff request and analyze opinions from experts and question the parties. The staff considers the information relative to state laws and rules and presents recommendations to the Public Utilities Commissioners.

**See page 2 for information about public involvement.**

## Public Involvement

South Dakotans with an interest in a rate case have a variety of ways to stay informed and involved.

- **Review the electronic docket.** A docket is the continually updated collection of documents filed with the commission for a particular case. Dockets are accessible under the Commission Actions tab on the PUC Web site, [www.puc.sd.gov](http://www.puc.sd.gov). Dockets are labeled to correspond with their type and filing date. For example, Black Hills Power's rate case docket is EL14-026; EL for electric, 14 for 2014 and 026 to indicate it was the 26<sup>th</sup> electric docket filed with the commission in 2014. Xcel Energy's rate case docket is EL14-058. MidAmerican Energy's is EL14-072. NorthWestern Energy's is EL14-106.
- **Submit comments.** Members of the public are encouraged to relay written comments or questions about a rate case to the PUC. These informal public comments are filed in the docket and reviewed and considered by the PUC commissioners and staff. Public comments must include the commenter's full name and address and should include the docket number or name of the company proposing the rate increase as well as the commenter's e-mail address and phone number, if available. These comments should be sent to [puc@state.sd.us](mailto:puc@state.sd.us) or PUC, 500 E. Capitol Ave., Pierre, SD 57501.
- **Become an intervenor.** Individuals who wish to be formal parties in a rate case may apply to the commission for intervenor status. Intervention deadline is clearly indicated within the docket. Intervention is appropriate for people who intend to actively participate in the case through legal motions, discovery (requests for facts or documents), the written preparation and presentation of actual evidence, and in-person participation in a formal hearing. Intervenors are legally obligated to respond to discovery from other parties and to submit to cross-examination at a formal hearing. Individuals seeking only to follow the progress of a rate case or to offer comments for the PUC's consideration need not become intervenors.

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