
STAFF MEMORANDUM SUPPORTING AMENDMENT TO SETTLEMENT STIPULATION

TO: COMMISSIONERS AND ADVISORS

FROM: BRITTANY MEHLHAFF, JON THURBER, PATRICK STEFFENSEN, AND KRISTEN EDWARDS

RE: DOCKET EL17-006 – IN THE MATTER OF THE APPLICATION OF BLACK HILLS POWER, INC. DBA BLACK HILLS ENERGY FOR APPROVAL OF 2017 TRANSMISSION FACILITY ADJUSTMENT
DOCKET EL17-008 – IN THE MATTER OF THE APPLICATION OF BLACK HILLS POWER, INC. DBA BLACK HILLS ENERGY FOR APPROVAL OF ITS 2017 ENVIRONMENTAL IMPROVEMENT ADJUSTMENT

DATE: May 1, 2018

Commission Staff (Staff) submits this Memorandum in support of the April 30, 2018 Amendment (Amendment) to the Settlement Stipulation of June 9, 2017 (Stipulation), between Staff and Black Hills Power, Inc. dba Black Hills Energy (BHE or Company) in the above-captioned matters.

BACKGROUND

On February 15, 2017, BHE filed an application for approval of its 2017 Transmission Facility Adjustment (TFA) and an application for approval of its 2017 Environmental Improvement Adjustment (EIA). The Commission assigned these filings as Docket EL17-006 and Docket EL17-008, respectively. On February 15, 2017, BHE also provided Staff its 2016 Annual Report of South Dakota Jurisdictional Financial Condition (Annual Report), as required pursuant to the Settlement Stipulation in Docket EL15-008 and the Amendment to Settlement Stipulation in Docket EL14-013.

Staff conducted a comprehensive review of BHE's filings in these dockets and obtained additional information through discovery. Staff's analysis identified several adjustments that should be made to the Annual Report. **[Begin Confidential] [End Confidential]** Following numerous settlement conferences, the Company and Staff (jointly, the Parties) arrived at a mutually acceptable resolution of all issues and on June 9, 2017, the Parties filed a Joint Motion for Approval of Settlement Stipulation. The Commission issued an Order Granting Joint Motion for Approval of Settlement Stipulation on June 20, 2017.

A review of the terms of the Stipulation is provided below. For a more thorough analysis, refer to Staff's Memorandum Supporting Settlement Stipulation filed on June 9, 2017 (Staff Memo).

REVIEW OF THE STIPULATION

Staff worked with the Company to design a settlement incorporating alternative performance-based regulation. The Stipulation includes several aspects designed to protect ratepayer interests and provide ongoing benefits to customers over the next several years.

The settlement results in significant savings to customers throughout the six-year moratorium period (July 1, 2017 through June 30, 2023). **[Begin Confidential] [End Confidential]**

The items of the Stipulation were designed to reduce the Company's earned return on equity, on average over the next five years, to approximately the level approved by the Commission in Docket EL14-026.

STAFF'S ANALYSIS OF THE AMENDMENT TO THE STIPULATION

[Begin Confidential] [End Confidential]

The Parties' positions were discussed thoroughly at numerous settlement conferences. Staff believes the Amendment is based on sound regulatory principles and avoids costly litigation.

PERFORMANCE BASED RATES

The Parties agree that customers shall receive a credit at the end of the moratorium period, if the Company achieves an average ROE over the 6-year period 2017-2022 above an agreed upon benchmark. The specific calculations of this customer credit are described in detail in the Amendment. While the Stipulation was designed to explore alternative performance-based regulation to address future earnings, more certainty is needed for customers. The performance based rates agreed to in this Amendment converts a forecasted earnings approach to an actual earnings approach. This modified approach eliminates Staff's concerns with relying on the accuracy of budgets and allows the Company flexibility by averaging the ROEs over the 6-year period, recognizing that ROEs will fluctuate from year-to-year.

TAX CUTS AND JOBS ACT

The Commission's December 29, 2017 Order in Docket GE17-003 requires utilities, including BHE, to file specific proposals addressing the impacts of the Tax Cuts and Jobs Act (TCJA). BHE agrees to file such a comprehensive proposal prior to July 1, 2018, addressing these customer rate impacts. The Company's proposal will be based on the information used to develop current base rates approved in the Company's last rate case, Docket EL14-026. The Company currently estimates the impact of the change in corporate tax rate from 35 percent to 21 percent is approximately **[Begin Confidential] [End Confidential]**. The Company's proposal will also address the amortization of excess accumulated deferred income taxes.

TARIFF CHANGES

Pursuant to the terms of the Stipulation, BHE will not file for an increase in base rates or an increase in rates for the EIA, TFA, or phase in rate plans during the six-year moratorium period. However, per the Amendment, BHE may make applications to revise its tariffs for changes in rate design, tariff applicability, and to implement entirely new rate schedules. Staff does retain its right to review and oppose any applications filed.

VMRA AND CPGS CREDITS

The Company's determination of the Vegetation Management Regulatory Asset (VMRA) balance addressed in the Stipulation did not include a credit for the revenue received from the other users of the joint 69KV system. BHE will refund this difference of \$661,632 to customers. In addition, BHE

inadvertently charged customers interest on retainage¹ related to construction contracts through the Cheyenne Prairie Generating Station (CPGS) Phase in Plan Rate (PIPR) rider. Customers should not be required to pay interest on funds before the Company invested the funds. In addition, the PIPR rider was in lieu of accumulating AFUDC, and the Company does not calculate AFUDC on the part of the bill held for retainage. The Company currently estimates the credit due to customers is \$828,950. Once final audit results are known, the Company will propose a final true-up number to be either credited or debited to a subsequent ECA filing.

For administrative efficiency, the VMRA and CPGS PIPR credits will be included in the Company's May 2018 ECA filing, for rates effective June 1, 2018. In the event Commission approval of this Amendment is not received prior to June 1, 2018, the Company will include the credits in next year's ECA filing.

RECOMMENDATION

Staff recommends the Commission grant the Joint Motion for Approval of Amendment to Settlement Stipulation and adopt the Amendment without modification.

¹ Retainage is the portion of a bill the Company withholds payment on until the work is substantially and satisfactorily completed, ensuring the contractor will satisfy its obligations.