

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE COMPLAINT FILED ) ORDER GRANTING MOTION  
BY JOHN REINTS, RAPID CITY, SOUTH ) TO DISMISS COMPLAINT  
DAKOTA, AGAINST BLACK HILLS POWER ) AND CLOSING DOCKET  
REGARDING ITS FLAT MONTHLY CHARGE ) CE03-003**

On October 21, 2003, the Public Utilities Commission (Commission) received a complaint filed by John Reints, Rapid City, South Dakota (Complainant), against Black Hills Power (BHP) regarding its flat monthly charge.

On October 21, 2003, the complaint was faxed to BHP. Pursuant to ARSD 20:10:01:09, BHP was notified that it must satisfy the complaint or file an answer in writing with the Commission by November 10, 2003. On October 23, 2003, the Commission received a Petition to Amend Complaint of 19 October 2003 to Add Claim for Putative [sic] Damages (Petition). On October 29, 2003, the Commission received a Motion to Dismiss from BHP and Black Hills Corporation. On November 3, 2003, the Commission received a Request to Deny from BHP and Black Hills Corporation.

On November 4, 2003, at a regularly scheduled meeting, the Commission considered the Petition. The Commission unanimously voted to deny the Petition on the basis that the Commission does not have authority to grant punitive damages as requested by petitioner.

On November 12, 2003, the Commission received a Response to Respondents' Requests to Dismiss; Complainant's Petition to further Amend, or Supplement, Complaint from Complainant. On November 18, 2003, the Commission received an Objection to Inadequate Notice; Request for Re-Hearing from Complainant. On November 24, 2003, the Commission received a Response to Complainant's Petition to Further Amend, or Supplement, Complaint and Response to Complainant's Objection to Inadequate Notice and Request for Rehearing from BHP and Black Hills Corporation. On December 1, 2003, the Commission received a Request to Postpone Hearing to Allow Adequate Time for Discovery; Conditional Request for Sanction of Counsel and Complainant's Response to Respondent's Request to Dismiss of 21 November from Complainant.

On December 2, 2003, at a regularly scheduled meeting, the Commission considered this matter. The Commission voted unanimously to grant the motion to dismiss and to dismiss the complaint and close the docket. Having considered BHP's Motion to Dismiss, the pleadings of the parties and the oral arguments of the parties, the Commission makes the following Findings of Fact, Conclusions of Law and Final Decision and Order:

**FINDINGS OF FACT**

1. The Complaint does not allege that the minimum monthly customer charge included by BHP on Complainant's monthly bills is inconsistent with BHP's Electric Tariff filed with the Commission on June 20, 1995, approved by the Commission in Docket EL95-003 and currently in effect.
2. The Commission takes judicial notice that BHP's filed Electric Tariff, Section No. 3, Ninth Revised Sheet No. 1, "Residential Service," filed on June 20, 1995, with an effective date of August 1, 1995, states that residential customers' net monthly bills will include a customer charge in the amount of \$7.50 and that the minimum monthly charge will be the "Customer Charge."

3. The Commission takes judicial notice that BHP's filed and Commission-approved electric tariffs have continuously included a minimum monthly customer charge since the 1970s.

4. The Commission takes judicial notice that all of the Commission-approved electric and gas residential rate tariffs on file for all utilities in South Dakota include minimum monthly customer charges. The Commission accordingly finds that it has considered and resolved the competing policy factors of allowing such charges on many occasions.

5. The Commission finds that there is nothing alleged in the Complaint that advises the Commission of rate-making policy facts of which the Commission was not aware at the times it has considered the issue of minimum monthly customer charges on the numerous instances they have been before the Commission and accordingly finds that the Complaint fails to make a sufficient showing to justify the Commission's initiation of an investigation and a rate proceeding as to BHP's tariffed electric rates.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 15-6, 49-1 and 49-34A, including 1-26-18, 49-1-11(4), 49-34A-3, 49-34A-6 and 49-34A-26 and ARSD 20:10:01:11.01.

2. The Commission has no jurisdiction under SDCL Chapter 49-34A to award punitive or putative damages.

3. The Commission, BHP and Complainant are bound by the BHP Electric Tariff currently on file and in effect.

4. The minimum monthly charge of which the Complaint complains does not violate the filed BHP Electric Tariff and is accordingly not unlawful. As a properly approved and tariffed rate, the minimum customer charge is not subject to challenge by complaint other than through a complaint pursuant to SDCL 49-34A-26 seeking an investigation by the Commission and, if deemed warranted by the Commission, the initiation by the Commission of a rate proceeding.

5. Administrative rate setting is a quasi-legislative, not a quasi-judicial function. SDCL 49-34A-26 affords the Commission broad discretion as to whether to initiate an investigation and initiate a rate proceeding upon the filing of a complaint.

6. The Commission concludes that the Complaint does not state facts that are different from the general policy factor considered by the Commission in the numerous instances, including Docket EL95-003, in which the Commission has had to balance the competing economic and social interests involved in fairly apportioning directly assignable fixed customer service costs between fixed charges and usage-based charges.

7. The Commission concludes that the Complaint does not state a sufficient basis for initiating an investigation under SDCL 49-34A-26, that BHP's motion to dismiss should therefore be granted and that the Complaint should be dismissed and the docket closed.

It is therefore

ORDERED, that BHP and Black Hills Corporation's motion to dismiss is granted, the complaint is dismissed and the docket is closed.

PLEASE TAKE NOTICE that this Final Decision and Order was duly entered on the 22<sup>nd</sup> day of December, 2003. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition therefor and ten copies with the Commission within 30 days from the date of issuance of this Final Decision and Order. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Final Decision and Order to the appropriate Circuit Court by serving notice of appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 22<sup>nd</sup> day of December, 2003.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u><i>William Kolbo</i></u>
Date: <u>12/23/03</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

*Robert K. Sahr*  
ROBERT K. SAHR, Chairman

*Gary Hanson*  
GARY HANSON, Commissioner

*James A. Burg*  
JAMES A. BURG, Commissioner

