

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

<b>IN THE MATTER OF THE IN THE MATTER )</b>	
<b>OF THE PETITION FOR DECLARATORY )</b>	<b>ORDER GRANTING MOTION TO</b>
<b>RULING OF BLACK HILLS POWER, INC., )</b>	<b>DISMISS; NOTICE OF ENTRY</b>
<b>REGARDING THE PROPOSED BLACK )</b>	
<b>HILLS POWER WIND PROJECT )</b>	<b>EL11-007</b>

On April 28, 2011, Black Hills Power, Inc. (BHP) filed a Petition for Declaratory Ruling (Petition), Supplement to Petition for Declaratory Ruling and supporting testimony and exhibits with the Public Utilities Commission (Commission). The Petition requests that the Commission issue an order finding that: (i) BHP properly evaluated and determined under SDCL 49-34A-101 and 49-34A-104 that the proposed BHP Wind Project is reasonable and cost effective considering other electricity alternatives; and ii) the BHP Wind Project is an appropriate resource addition to meet BHP's resource or customer needs. On May 5, 2011, the Commission electronically transmitted notice of the filing and the intervention deadline of May 20, 2011, to interested individuals and entities. No parties sought intervention. On May 18, 2011, Commission Staff filed a Motion to Dismiss BHP's Petition for failure to state a claim on which relief may be granted and lack of subject matter jurisdiction (Motion). On May 25, 2011, BHP filed an Opposition to Staff's Motion to Dismiss (BHP Opposition) and a Consent to Extend Time. The Commission received eleven public comments on the Petition, most from local government officials and associations in the general area of the proposed BHP Wind Project. Of the public comments, all except one were supportive of the BHP Wind Project and the Petition.

The Motion was noticed for consideration at the Commission's regular meeting on May 31, 2011, at 1:30 p.m., and the matter was duly heard at the scheduled time and place. After considering the Petition, supporting documents, the Motion, and BHP Opposition, and after hearing oral argument from Staff and BHP and the parties' answers and discussion in response to extensive questioning from Commissioners, the Commission voted unanimously to grant Staff's Motion and dismiss the Petition.

In making this decision, the Commission concluded that the statutory scheme enacted by the Legislature, in particular SDCL 49-34A-101 through 49-34A-104, read in conjunction with SDCL 49-34A-8 and 49-34A-8.4 and the other ratemaking statutes and rules, does not provide the Commission with the authority to issue a declaratory ruling on the questions requested by BHP. Under South Dakota law, the Commission's decisions on reasonableness, prudence, and cost-effectiveness are made in connection with a rate filing as provided in SDCL 49-34A-8 and 49-34A-8.4. SDCL 49-34A-104 provides authority to the retail provider, in this case BHP, to make specific evaluations regarding whether a particular renewable project is "reasonable and cost effective considering other electricity alternatives" and to "use the electricity alternative that best meets the provider's resource or customer needs." The statutes do not provide the Commission with the authority to make these determinations. The legislative history of the renewable energy objective legislation supports this construction.

It is therefore

**ORDERED**, that Staff's Motion to Dismiss is granted and BHP's Petition for Declaratory Ruling is dismissed.

**NOTICE OF ENTRY AND OF RIGHT TO APPEAL**

PLEASE TAKE NOTICE that this Final Decision and Order Granting Motion to Dismiss was duly issued and entered on the 8<sup>th</sup> day of June, 2011. 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 with the Commission within 30 days from the date of issuance of this Final Decision and Order Granting Summary Judgment. 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 8<sup>th</sup> day of June, 2011.

<p align="center"><b>CERTIFICATE OF SERVICE</b></p> <p>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, electronically.</p> <p>By: <u><i>J. Ardahl</i></u></p> <p>Date: <u>6-8-2011</u></p> <p align="center">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

*Steve Kolbeck*  
STEVE KOLBECK, Chairman

*Gary Hanson*  
GARY HANSON, Commissioner

*Chris Nelson*  
CHRIS NELSON, Commissioner