
From: PUC

Sent: Wednesday, October 29, 2014 10:52 AM

To: [REDACTED]

Subject: BHP Rate Case, Net Metering

Mr. Kelley:

This communication is in response to your message regarding the Black Hills Power rate case currently before the South Dakota Public Utilities Commission.

You mention that the commission sees its role as preserving the profitability of utilities as well as serving the public's interest, 'assuring reliable service at a reasonable cost'.

You are correct that the commission sees its role as assuring reliable service at a reasonable cost when it comes to the state's electric providers. Here is state law governing the commission on determining utility rates: *49-34A-8. Criteria for determination of rates by commission. The commission, in the exercise of its power under this chapter to determine just and reasonable rates for public utilities, shall give due consideration to the public need for adequate, efficient, economical, and reasonable service and to the need of the public utility for revenues sufficient to enable it to meet its total current cost of furnishing such service, including taxes and interest, and including adequate provision for depreciation of its utility property used and necessary in rendering service to the public, and to earn a fair and reasonable return upon the value of its property.*

Source: *SL 1975, ch 283, § 16; SL 1976, ch 296, § 9; SL 2007, ch 269, § 1.*

You state, 'Some regional and state regulatory agencies, municipalities, and forward-thinking utilities around the nation have recognized their public responsibility to address this very serious situation. They have done this through programs incentivizing the adoption of cleaner and less centralized generation of electricity, and greater efficiency in its transmission and end-use.'

In national energy forums it is not questioned that there is a cost shift created by net metering. There is actually a national organization, the Critical Consumer Issues Forum (CCIF), comprised of consumer advocates, utility commissioners, distributed energy advocates, and utility companies that held several roundtable conferences across the country examining how to deal with the cost shift that is created by net metering laws. This was organized by consumer advocates because of the unfairness poised by net metering against consumers who do not own distributed generation. Many states are struggling with how to correct the inequities which were created by their net metering laws. North Carolina, Colorado, New York, Arizona, California, Idaho, and Louisiana are some of the states working on correcting the inequalities created by net metering. South Dakota uses a different rate, the avoided cost rate, to determine compensation to distributed generators and avoids the unfair hidden tax on consumers caused by net metering. The avoided cost rate rewards a distributed generator

for the generation they send to the grid but it does not punish the other consumers by increasing rates as net metering does.

You also wrote, ‘Allowing utility rate increases which are designed to perpetuate the highly centralized and fossil-fuel dependent generation of electricity in our state is not in the best interests of the South Dakota public, including their economic interests as utility customers. Discounting the fact that significant increases in utility rates haven’t occurred as a result of policies encouraging distributed generation prevailing in most of the US, the Chairman of our PUC has repeatedly advocated for the utilities’ anti-DG position in legislative testimony. This is despite ample evidence from other states’ experience indicating economic benefits to all rate-paying electricity customers when utilities have modified their business models, even to the extent of offering subsidies for the installation of private solar generation systems.’

The commission is not opposed to distributed generation, so long as it provides net benefits to all ratepayers. In fact, during my term in office we have often promoted wind and solar in South Dakota. In **docket EL11-006**, the commission ruled in favor of family-owned Oak Tree Energy’s 19.5 MW wind farm and ordered NorthWestern Energy to enter into a purchase power agreement consistent with findings of fact and conclusions of law by the commission. The premier wind organization advocate in the United States, the American Wind Energy Association (AWEA), has recognized South Dakota several times for the high percentage of wind generation in our state. In the most recent year’s statistics, 2013, South Dakota was second in the nation for the percentage of electricity generated from wind.

I have testified against net metering legislation because the retail rate of electricity has no bearing in determining what excess value exists for ratepayers through distributed generation. In fact, using the retail rate from net metering results in increased costs to the utility and to all the ratepayers. Those persons who cannot own a distributed generation system, whether it is because they cannot afford to build one or do not have a property where distributed generation can be built, end up paying more for their electricity and subsidizing the more affluent persons who own distributed generation. Net metering is a subsidy for affluent persons who own distributed generation and it is paid for by the less affluent consumers.

Net metering requires utilities to purchase electricity at a higher cost. Facts support this and it is counter-intuitive to think otherwise. Net metering laws give government the authority to force utilities to pay more to a customer who owns generation than the utility would otherwise pay for generation from another source. Additionally, net metering laws require utilities to purchase generation from distributed generators even when the utility does not need the generation. The utility then charges all the other customers to replace those dollars.

If government forces a business to purchase more expensive generation, then the business must raise its rates. If the government forces a business to purchase generation that the business cannot sell, the business must raise its rates. When a business’s costs increase, it does not reduce its rates, it raises rates. And that means consumers will pay more. I do not support arbitrary government regulation that increases consumers’ utility costs. South Dakota’s present avoided cost rate that requires utilities to reimburse distributed generators at the utilities’ avoided cost is a fair rate to not only the utility and the customer generator but also to all of the other ratepayers. South Dakota’s electric rates are among the lowest in the nation.

Many states that have net metering laws, but have little or no net metered generation, have been used as examples of how net metering does not increase costs to consumers. However, the real test is to compare the actual cost of a kwh of electricity in South Dakota with those states that have forced their utilities to purchase significant amounts of distributed generation or compare the avoided cost rate in South Dakota with the avoided cost rate from those other states.

You state, ‘For these reasons, it is essential that BHP not be granted the requested rate increase without agreeing to make long overdue changes in its generation plan. At a minimum, this should begin with a requirement for an

independent study of the best options for rapidly transforming base-load and peak-load capacity by means of greater incorporation of distributed and renewable generation. This study should be financed by BHP, with a stipulated timeline not exceeding one year. Planned upgrades of BHP's remaining coal-fired generation components should be put on hold until completion of the study.'

BHP is a public utility and as such, extensive laws at the federal and state levels govern it and also govern the commission as to regulatory oversight of the utility. The utility is allowed to pass along to its consumers most of the costs it incurs in providing you and all customers with electric service. This government oversight differs significantly from that affecting most other businesses providing us with services.

When a utility files a rate case with the commission, the commission is obligated by law to thoroughly process the case. We cannot simply say no and reject it outright since we are legally required to investigate it and make a just and reasonable decision. Neither are we allowed to include personal positions in the ruling that are not supported by evidence or allowed by statute. The process can take almost a year to complete. Each commissioner, the commission's staff and expert consultants hired by staff will review the entire case or docket separately, along with interveners in the case. Commissioners and staff request and review additional data and information from the utility before a decision is rendered.

My fellow commissioners and I are consumers as well. We have family of several generations affected by utility costs and we understand how rate increases affect all of us. We have a strong desire to keep rates down and to protect citizens against increases. None of us want to raise rates. In fact, we hate to agree to any rate increase.

Your comments and my response will be filed in the open docket so my fellow commissioners and others can read them. You can access the complete EL14-026 docket at <http://www.puc.sd.gov/Dockets/Electric/2014/EL14-026.aspx> Given your interest, I encourage you to read the filings in this docket.

This document helps explain the commission's processing of rate cases:
<http://www.puc.sd.gov/commission/Publication/electricratecasehandout.pdf>

Gary Hanson, Chairperson
South Dakota Public Utilities Commission
www.puc.sd.gov