
From: PUC

Sent: Monday, September 29, 2014 2:58 PM

Subject: Black Hills Power, EL14-026

Dear Mr. Lee:

Thank you for your comments regarding the Black Hills Power rate case currently before the South Dakota Public Utilities Commission.

You question why customers must pay for the costs from storm Atlas (the blizzard). State law provides that a utility has the right to recover the cost of insurance or damage to its facilities. If BHP carried insurance sufficient to cover the costs of all damage from storm Atlas, that insurance cost would be borne by you and other customers over a period of years. Therefore, it is important to weigh the cost to carry insurance that is sufficient to cover the expenses of extreme storms, similar to and even more extensive than storm Atlas, against the potential cost of the storm. Such a decision on insurance coverage is much like any individual must contemplate when deciding whether to carry liability-only insurance on a vehicle, or full coverage in case of an accident. As to whether BHP-purchased extensive coverage would have been more prudent or less expensive for you as a consumer is one of the issues being analyzed in this rate case.

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 is in contrast to most other businesses providing us with services.

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. We are hearing and reading reports in the news about this on a daily basis. The most-often-cited reason for the increased rates are new federal mandates, particularly those coming 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 that the state of South Dakota uses at peak demand. EPA mandates was one of the four primary reasons cited by BHP in their filing of this rate increase request. You can read BHP official Vance Crocker's testimony about this in the docket, EL14-026: <http://www.puc.sd.gov/commission/dockets/electric/2014/EL14-026/crocker.pdf>

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 required to investigate it and make a just and reasonable decision. This 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 – also referred to as a docket – separately, along with any intervenors in the case. We will request and review additional data and information from the utility before a decision is rendered.

All discussion involving commissioners on the case must be available to the public. The commission's work is done electronically to be the most time and cost effective, and therefore, anyone can review the majority of the filings in the case online. Consumers can submit comments to the commission electronically and these are made public.

I wish to point out that my fellow commissioners and I are consumers too. 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.

The commission is currently processing an Xcel Energy and two MidAmerican Energy rate cases in addition to the BHP case, as well as numerous other dockets. Investments in plant infrastructure and compliance with federal mandates have been cited as reasons for the other rate cases also. Xcel relayed their need to file another rate case when their last case was processed during calendar years 2012 and 2013.

In 2010 we began receiving numerous rate dockets from natural gas and electric utilities. Mandates from the federal Environmental Protection Agency continue to place greater costs on utilities, such as \$400 million-plus on the Big Stone power plant alone, and in several cases have forced the closure of power plants. We are seeing the effects of legislative requirements and EPA regulations on utility rates throughout the country. Utilities are also replacing aging power plants and infrastructure. These cost-causers affect all of our lives.

You mention that BHP is a profitable company and yet wants to pass along rate increases to customers. The laws governing regulated utilities include what is known as ring-fencing. This separates the accounting and revenue of the regulated entity from the other owned entities within a larger corporate ownership structure. It essentially prevents an investor-owned utility of being stripped of its profits by shareholders. 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. I authored and spearheaded the passage of the utility ring-fencing law in South Dakota.

BHP is a regulated utility and as such, has its rates set by the commission based on an authorized rate of return. Authorized does not mean guaranteed. The utility is not guaranteed to earn that ROR. The rates are set based on a ROR established by utility debt and equity market rates determined by present market conditions. In the past several years, the commission's approved ROR have been the lowest in the nation for the electric sector.

A regulated utility may have a rate that is set based in part on current debt and equity return values, but that process also results in the utility not being able to earn the higher ROR that unregulated businesses can and do charge.

It is also important to understand that a regulated utility cannot raise funds or borrow funds to build and maintain infrastructure and comply with federal mandates unless it can pay some dividends to shareholders and pay off their debts.

The commission is required by law to allow rates based on a reasonable ROR for the regulated utility sector. This is required by the statutes passed by the South Dakota Legislature, and has been upheld by multiple decisions of the South Dakota Supreme Court and the United States Supreme Court. The Supreme Court has ruled that it is unconstitutional according to the takings clause of the Constitution for the commission to set rates based on debt and equity values that are not within the current range of market rates for utility debt and equity securities.

In South Dakota the rates of BHP, Xcel Energy, Montana-Dakota Utilities, Otter Tail Power, NorthWestern Energy and MidAmerican Energy are regulated. These utilities are in a captive rate situation. They are not permitted to charge whatever rates management decides to charge, as other businesses do. Because BHP is a monopoly situation, there is no market to discipline prices as there are in unregulated business sectors. One effect of regulation in South Dakota is that regulated utilities' RORs are almost always significantly lower than for unregulated business corporations.

I hope this helps to address your comments and answer your questions. Your comments and my response will be filed in the open docket, and you can access the complete docket online at <http://www.puc.sd.gov/Dockets/Electric/2014/EL14-026.aspx>

Given your interest, I encourage you to follow along as this docket is processed and new documents are posted. Here is a document which helps explain the commission's processing of rate cases:
<http://www.puc.sd.gov/commission/Publication/electricratecasehandout.pdf>

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