

**Docket No. EL17-008**

**Docket No. EL17-006**

## I. INTRODUCTION

On February 16, 2017, the Commission electronically transmitted notice of the filing and the intervention deadline of March 3, 2017 on the Commission's PUC Weekly Filings electronic listserv. No petitions to intervene were filed.

On March 29, 2017, the Commission entered an order suspending the proposed EIA and TFA rate schedules for a period of not to exceed 180 days, pursuant to SDCL § 49-34A-14.

The Parties were able to resolve all issues in these proceedings and the Commission approved the Stipulation by decision and Orders Granting Joint Motion for Approval of Settlement Stipulation in the above-captioned matters, both dated June 20, 2017.

As the Parties worked together to implement the terms of the Stipulation, the Parties identified clarifying provisions that would improve the implementation of the Stipulation over the Moratorium Period. Therefore, the Parties entered into the First Amendment on April 30, 2018. The Commission voted unanimously to grant the Joint Motion for Approval of Amendment to Settlement Stipulation at its regularly scheduled meeting on May 15, 2018.

As the Parties jointly reviewed current outcomes of the Stipulation and its First Amendment, the Parties identified additional provisions that would provide greater rate stability for customers. Therefore, the Parties entered into this Second Amendment.

Upon execution of the Second Amendment, the Parties shall file this Second Amendment with the Commission together with a joint motion requesting that the Commission issue an order approving this Second Amendment in its entirety without condition or modification.

## **II. GENERAL PROVISIONS**

1. This Second Amendment is submitted with the condition that in the event the Commission imposes any material changes in or conditions to this Second Amendment that are unacceptable to either Party, this Second Amendment may, at the option of any Party, be withdrawn and shall not constitute any part of the record in this proceeding or any other proceeding, nor be used for any other purpose.

2. This Second Amendment shall become binding upon execution by the Parties, provided however, that if this Second Amendment does not become effective in accordance with Paragraph 1 above, it shall be null, void, and privileged. This Second Amendment is intended to relate only to the specific matter referred herein; no Party waives any claim or right, which it may otherwise have, with respect to any matter not expressly provided for herein; neither Party shall be deemed to have approved, accepted, agreed, or consented to any ratemaking principle, or any method of cost of service determination, or any method of cost allocation underlying the provisions of this Second Amendment, or be advantaged or prejudiced or bound thereby in any other current or future rate proceeding before the Commission. Neither Party nor a representative thereof shall directly or indirectly refer to this Second Amendment or that part of any order of the Commission relating to this Second Amendment as precedent in any other current or future rate proceeding or any other proceeding before the Commission.

3. It is understood that Staff enters into this Second Amendment for the benefit of all Black Hills Power's South Dakota customers affected by these dockets.

### **III. ELEMENTS OF THE SETTLEMENT STIPULATION**

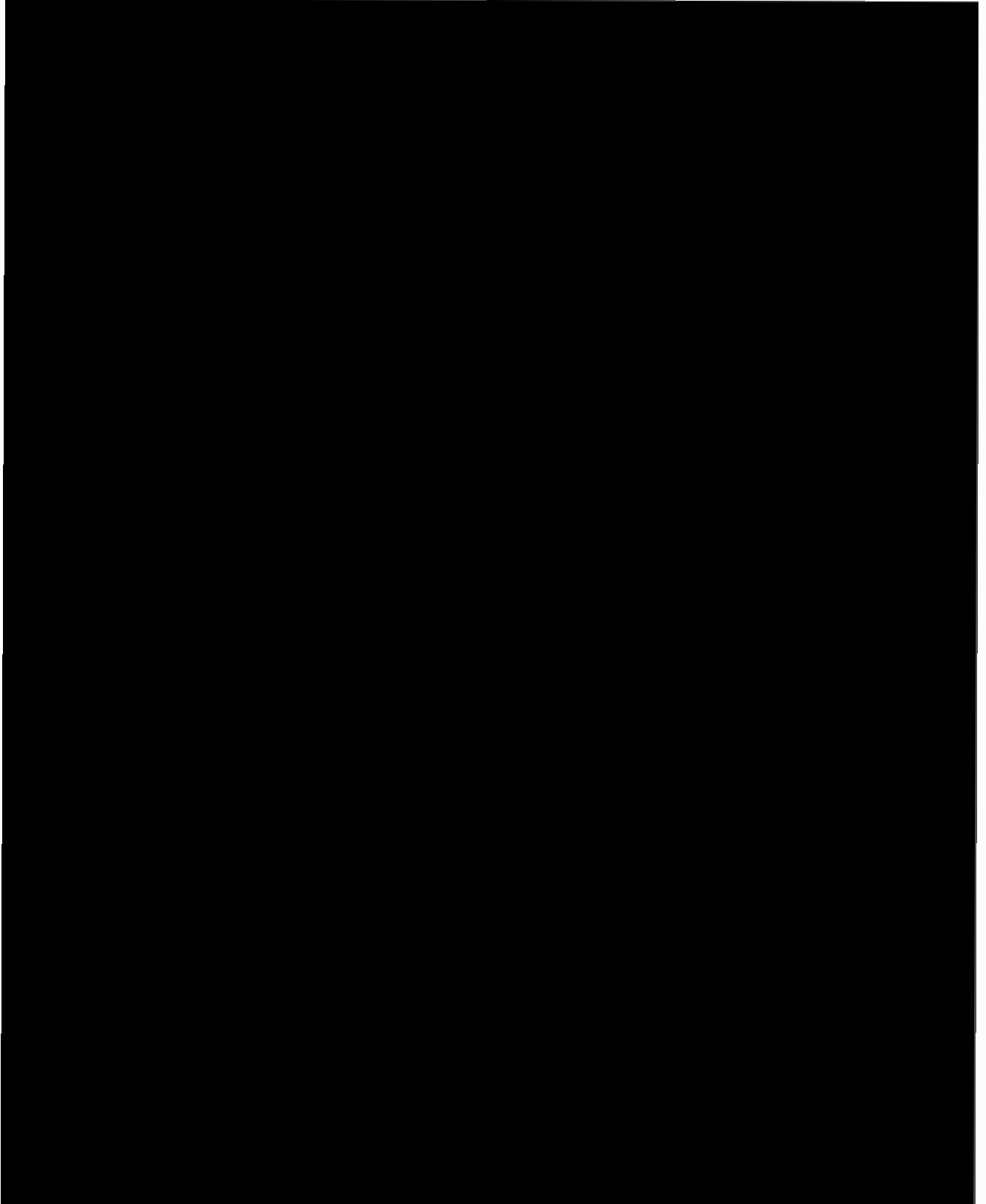
1. Element 2 of the First Amendment to the Settlement Stipulation is deleted in its entirety and replaced with the following:

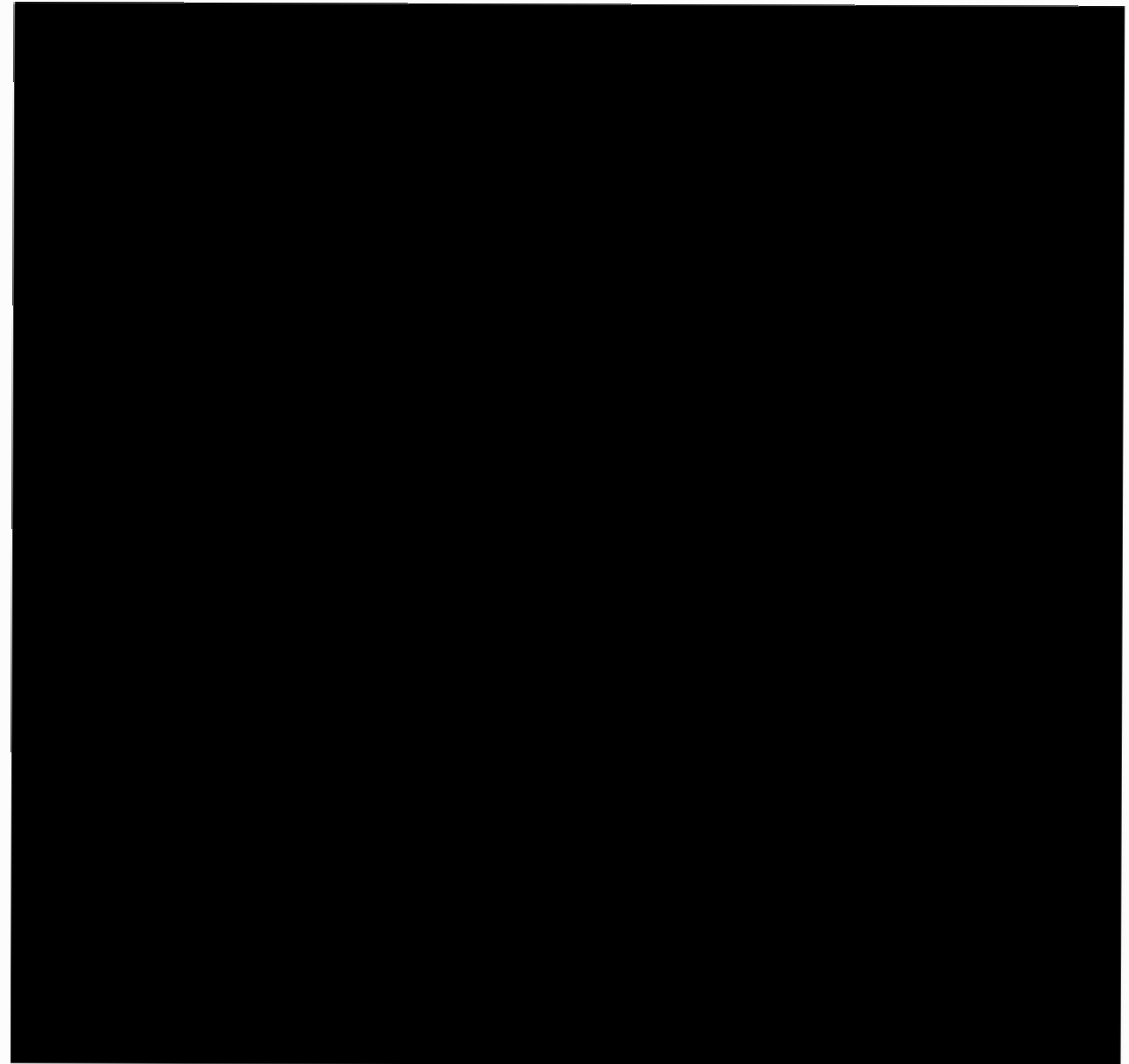
#### **Performance Based Rates**

At the end of the Amended Moratorium Period, the Parties agree that customers shall be entitled to receive a customer credit (the "Customer Credit") as a means in sharing positive performance of the Company's South Dakota utility operations, to the extent the Company achieves an average return on equity over the period above an agreed upon benchmark

(described below). The particulars of the Performance Based Rates provision and Customer Credit mechanism are set forth below:

**(Begin Confidential)**





**(End Confidential)**

- The parties intend that any Customer Credit resulting from this Amendment will be included in the Energy Cost Adjustment (“ECA”) Commodity Balancing Account for the Company’s May 2026 ECA filing and will be subject to Commodity Balancing Account interest as part of that ECA filings’ over or under payment balance. This will be the approach used for any calculated refund, depending on the amount of the Customer Credit or other factors that are not known at the time of this Amendment,

however, the Parties may mutually agree to an alternate method for addressing the Customer Credit, including but not limited to either utilizing the Customer Credit to support an extension of the Amended Moratorium Period, or agreeing to a refund mechanism not related to the ECA.

2. Element 7 a) i) of the Stipulation dated June 9, 2017 is deleted in its entirety and replaced with the following:

i) Beginning on January 1, 2020, Black Hills Power will begin weather normalizing, based on the Company's internal weather normalization calculation, each month of each calendar year for all remaining normalized jurisdictional reports.

3. Element 11 of the Stipulation dated June 9, 2017 is deleted in its entirety and replaced with the following:

Amended Moratorium Period

The Parties agree that Black Hills Power shall not file any rate application for an increase in base rates which would go into effect prior to July 1, 2026 (the "Amended Moratorium Period"); absent an Extraordinary Event. The Parties agree that the Amended Moratorium Period will apply to the EIA, TFA, and phase in rate plans pursuant to South Dakota Codified Law § 49-34A-73. The Parties agree that this rate moratorium does not apply to the Energy Cost Adjustments and the Energy Efficiency Solutions Adjustment. The moratorium agreed to hereunder shall remain in full force and effect unless and until the Commission enters a final non-appealable order declaring that the Company is entitled to relief from the moratorium as a result of an Extraordinary Event. The Company shall have the burden of proof in any proceeding to establish that it is entitled to relief from the moratorium due to an Extraordinary Event, and Staff fully retains all rights to challenge any evidence presented by the Company through audit,

discovery, cross examination, presentation of independent evidence, and/or legal argument. Notwithstanding anything in this agreement to the contrary, an Extraordinary Event shall be deemed to have occurred to the extent the Commission enters an Order to show cause regarding the reasonableness of Company's rates.

As used in this Stipulation an "Extraordinary Event" is an event beyond the control of the Company that has a significant and material impact on the Company's operations and/or financial condition. Examples of such events may include, but are limited to, failure of facilities, flood, earthquake, storm, or other severe weather conditions, fire, explosion, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, terrorist act, loss of a major customer or customer load, or actions taken by a government authority (including, but not limited to, changes in tax laws or environmental laws/regulations). The Parties acknowledge and agree that the definition of an "Extraordinary Event" in any prior agreement between the Parties was premised on an explicit understanding that such definition created no precedential value whatsoever outside of the specific proceeding to which it related. As such the Parties agree that any prior definition of the term has no bearing upon the determination of what may or may not be considered a "significant and material impact" with respect to this stipulation in any future proceeding to determine whether an Extraordinary Event exists.

4. Docket No. EL19-028: Upon receiving Commission approval of the Second Amendment, Black Hills Power agrees to file a Notice of Withdrawal of its Application for Approval of Deferred Accounting Treatment for SD Sun Project Transaction and Development Costs (Docket No. EL19-028). Such notice will have the effect of withdrawing the application without prejudice. If SD Sun Project economics become favorable and Black Hills Power

includes SD Sun Project Transaction and Development Costs in any future filings, Black Hills Power has the burden of proof to demonstrate customer benefit.


5. All other provisions of the Settlement Stipulation and First Amendment of the Settlement Stipulation not addressed in this Second Amendment remain in full force and effect.

This Second Amendment to Settlement Stipulation is entered into effective this 31<sup>st</sup> day of December, 2019.

**BLACK HILLS POWER, INC. d/b/a BLACK HILLS ENERGY**

By:   
Its: Vice President – Regulatory & Finance

**SOUTH DAKOTA PUBLIC UTILITIES COMMISSION STAFF**

By:   
Its: Staff Attorney