
STAFF MEMORANDUM

TO: COMMISSIONERS AND ADVISORS AND THE INTERESTED PUBLIC
FROM: BRITTANY MEHLHAFF, PATRICK STEFFENSEN, AND KRISTEN EDWARDS
RE: Docket EL21-011 - In the Matter of the Application of Black Hills Power, Inc. dba Black Hills Energy to Amend its Cogeneration and Small Power Production Service Tariff
DATE: April 29, 2021

Commission Staff (Staff) submits this Memorandum to provide some history and context regarding the above captioned matter. Staff hopes the information is helpful to Commissioners and advisors as well as the general public interested in this matter. In addition to general information regarding this request, Staff provides information for the public regarding the docket process, Commission authority, Staff involvement, and public involvement.

Again, the purpose of this Memorandum is solely to provide context and should not be construed as Staff's position on the merits of the filing.

BACKGROUND

Under Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), electric utilities are required to purchase energy offered by Qualifying Facilities (QFs), which are cogeneration facilities¹ and small power production facilities². Utilities are required to purchase energy, capacity, or both from QFs at rates which are just and reasonable, non-discriminatory, in the public interest, and reflect the incremental costs of energy, capacity, or both, that the utility would have incurred to generate or purchase the energy if it was not supplied by the QF. These incremental costs are termed the utility's avoided costs.

Federal Energy Regulatory Commission (FERC) regulations required states to establish standardized rates for QFs with an installed capacity of 100 kW or less. These standardized rates are included in Black Hills Energy's (BHE) tariff. Pursuant to 18 CFR 292.302, at least every two years, each electric utility must provide to its State regulatory authority data from which avoided costs may be derived. The South Dakota Public Utilities Commission (Commission) affirmed this requirement for BHP in an Order Approving Tariff Sheets in Docket F-3365³.

¹ Cogeneration facilities are generating units that produce electricity and steam simultaneously.

² Small power production facilities have a maximum size of 80 MW and have a primary energy source (75 percent or more) of biomass, waste, renewable resources, geothermal resources, or any combination thereof.

³ In the Matter of the Investigation of the Implementation of Certain Requirements of Title II of the Public Utilities Regulatory Policy Act of 1978 Regarding Cogeneration and Small Power Production

FIXED COSTS AND AVOIDED COSTS

The avoided cost is quite literally the cost that BHE *avoids* or does not incur as a result of customers having behind-the-meter generation. Fixed costs, such as power lines, cannot be *avoided* no matter how much or how little electricity a customer uses. It doesn't matter if a customer is generating their own power 99% of the time, BHE still needs the power lines to serve the customer the other 1% of the time and to track and transport any electricity the small QF customer might put on the grid.

Even though BHE only compensates its customers with behind-the-meter generation at the avoided cost rate, these customers' net bills still are not representative of the costs they are causing for BHE. And it is important to point out that when the cost-causer isn't paying for their costs, these unrecovered costs ultimately get paid by the other BHE customers, not BHE shareholders. This problem is further compounded by the fact that BHE and other utilities employ a 15-minute interval for balancing of behind-the-meter generation and usage, so any usage that occurs within the 15-minute interval gets netted against the behind-the-meter generation during that period.

BHE, like every utility, must maintain facilities in order to provide safe and reliable electricity. These facilities include things like generation facilities, the distribution line carrying power to customer homes, and the transmission lines that move electricity throughout BHE's system. Customer service costs such as metering and billing is another example of fixed costs. These facilities are needed whether small QF customers are taking electricity off or putting it on the system. These costs that do not change with energy consumption are the company's fixed costs. Every customer pays for the fixed costs with their electric rates. In this docket, BHE claims that as more electricity is generated behind the meter, those fixed costs are shifted to other customers.

Many utilities make up the difference with a higher customer charge and/or demand charge. BHE's residential rates consist of a customer charge and an energy charge, with no demand charge. Although a residential demand control rate is available, it is optional. Therefore, any fixed costs not recovered through the customer charge must be recovered through the energy charge. A BHE customer who uses less energy due to installing behind the meter generation may not be paying their share of the fixed costs. So, BHE is seeking to change the way those small (under 1MW) QF customers are billed/credited to ensure that the fixed costs are paid.

BHE'S PROPOSAL

Given the continued customer interest in behind-the-meter generation and BHE's growing concern regarding recovery of fixed costs, BHE proposed, and the Commission approved, a Renewable Ready Service tariff in docket EL18-060. This tariff was designed to serve commercial retail customers with an aggregate usage of 300,000 kWh or more per year and governmental accounts desiring renewable energy, but it did not completely resolve the underlying issue of fixed cost recovery concerns with behind-the-meter generation. Thus, BHE agreed in settlement to prepare a proposal for reasonably addressing the under-recovery of fixed costs which occurs when customers elect to install behind-the-meter generation. This docket is the result of BHE's commitment to prepare such a proposal.

BHE is requesting to switch to a "buy all/sell all" method. This means that a QF customer would buy all of the electricity they use from BHE and would sell all of the electricity that they generate to BHE. So, if a customer consumes 500 kWh of electricity and produces 100 kWh of electricity in a given month, they would buy all 500 kWh from BHE at the tariff rate and BHE would purchase from the QF customer all 100

kWh that they produced at the avoided cost rate. This method of billing/crediting would ensure customers with behind-the-meter generation are appropriately paying for their share of the fixed costs of the system.

The changes proposed by BHE, if adopted, would not impact customers with facilities existing at the time of the filing (BHE actually included a specific date of June 2021), if at all, until the year 2041.

By law BHE, or any other utility, has the right to recover their costs. So, at the end of the day, someone needs to pay for the fixed costs. And, BHE is essentially required to incur these costs, because state law mandates that they maintain a safe and reliable system. Other rate design alternatives will be explored, including increasing customer charges and/or adding a demand charge. There may be other options that parties to the docket will explore as well.

DOCKET PROCESS & PUC AUTHORITY

When an investor-owned electric utility, like BHE, wishes to modify its rates, it must seek permission from the Commission to do so. The company begins the process by filing an application with the Commission stating the proposed rate changes and the rationale for the requested change. While certain dockets, such as a general rate increase request, have specific timelines for decision set forth in statute or rule, dockets such as this one do not have a specified timeline. The Commission will take the time necessary to process the docket and issue a reasoned decision based upon its authority and state law to ensure safe and reliable service at fair and reasonable rates. Although BHE requested a June 1, 2021, effective date, rate changes will not take effect until any proposed or modified changes are approved by the Commission. In rendering its decision, the Commission may approve, deny, or approve with modifications the proposed rate change as the Commission finds appropriate and legally within its jurisdiction.

PUC STAFF ROLE

Members of the PUC staff assigned to work on a docket include one attorney and one or more analysts. Staff attorneys have educational and practical experience in administrative law, business management principles, and trial procedure. Staff analysts have expertise in fields such as accounting, economics, research, mathematics, and engineering. The staff conducts a comprehensive analysis of the company's request and gathers additional information from the company, intervenors, and outside experts as necessary. The staff considers the information relative to state laws and rules and presents recommendations to the Commissioners.

PUBLIC INVOLVEMENT

South Dakotans interested in this proceeding have a variety of ways to stay informed and involved:

- **Review the electronic docket.** A docket is the continually updated collection of documents filed with the Commission for a particular case. Dockets are accessible on the PUC website, www.puc.sd.gov. Dockets are labeled to correspond with their type and filing date. This docket

is EL21-011; EL for electric, 21 for 2021, and 011 to indicate it was the 11th electric docket filed with the Commission in 2021.

- **Submit comments.** Members of the public are encouraged to submit written comments about an active docket to the Commission. This is the most efficient way for interested persons to make their opinions known. These *informal* public comments are reviewed and considered by the Commissioners and staff, as well as read by others interested in the docket. Comments should include the docket number or name of the company proposing the rate increase, commenter's full name, mailing address, e-mail address, and phone number. These comments should be emailed to puc@state.sd.us or mailed or hand-delivered to PUC, 500 E. Capitol Ave., Pierre, SD 57501. Comments are posted in the "Comments" section of the docket within a reasonable time after having been received.
- **Become an intervenor.** Individuals who wish to be formal parties in a docket may apply to the Commission for intervenor status. Intervention is appropriate for people who intend to actively participate in the docket through legal motions, discovery (requests for facts or documents), the written preparation and presentation of actual evidence, and in-person participation in a formal hearing. Intervenors are legally obligated to respond to discovery from other parties and to submit to cross-examination at a formal hearing. Individuals seeking only to follow the progress of a docket or to offer comments for the Commission's consideration need not become intervenors.
- **Communicate on record.** Verbal communication between a Commissioner and a person with an interest in a matter before the Commission that does not occur in a public forum or as part of the official record should be avoided. Those who communicate in writing with a Commissioner about an open or imminent docket matter should understand that their comments will become part of the official record and subject to review by all parties and the public. Likewise, comments made at a Commission public proceeding or submitted to the Commission relative to a docket matter become part of the record, open to review by all parties and the public. Because Commissioners have a decision-making role in docket matters, any discussion with a Commissioner about an open or imminent docket must take place in an open forum, such as a public meeting, with notice given to all parties.

SUMMARY

This is a contested case proceeding and is in the early stages. The Commission has no position at this time, and Staff is working hard to process the docket. Staff is engaging in the discovery process and does not have a position on BHE's request yet. All party positions will be fully analyzed and considered. The interested public is encouraged to file comments in the docket either in-support of, or in-opposition to, BHE's proposal.