BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF BLACK HILLS POWER, INC, DBA BLACK HILLS ENERGY FOR APPROVAL OF ITS PHASE-IN RATE PLAN TARIFF REVISIONS	* * * * * * * *	**STAFF'S OBJECTION TO BLACK HILLS ENERGY'S NOTICE OF INTENT TO IMPLEMENT INTERIM RATES AND ALTERNATIVE MOTION TO SUSPEND INTERIM RATES** **EL26-024**

The Commission Staff, by and through its attorney of record, hereby files this Objection to Black Hills Energy's Notice of Intent to Implement Interim Rates and Alternative Motion to Suspend Interim Rates in the above-captioned proceeding.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 1-26, SDCL Chapter 49-34A.

I. Background and Facts.

On August 5, 2026, Black Hills Power dba Black Hills Energy (Black Hills) filed an Application for Approval to Amend its Phase In Plan Rate (Application). In the filing, Black Hills requests Commission approval to recover actual and forecasted costs associated with the Lange II Project via a Phase in Plan Rate (Proposed Rate Plan). On September 10, 2026, the Commission issued an Order Granting Intervention to Dakota Panel, Fischer Furniture, Inc., Forest Products Distributors, Inc., GCC Dacotah, Inc., Monument Health Rapid City Hospital, Inc., Pete Lien & Sons, Inc., South Dakota Science and Technology Authority, Spearfish Forest Products Inc., and Wharf Resources (USA), Inc. (South Dakota Large Customer Group or SDLCG). Black Hills' Application was filed on the heels of Docket EL26-003, an application by Black Hills for authority to increase its electric rates, in which Black Hills implemented interim rates on August 18, 2026,

and the Commission issued a final verbal ruling adopting the proposed settlement stipulation setting just and reasonable rates to take effect for services beginning on December 1, 2026, and approving the proposed interim rate refund plan on November 4, 2026. On October 30, 2026, Black Hills filed a Letter regarding Notice of Intent to Implement Interim Rates (Letter) in Docket EL26-024. In this Notice Black Hills expressed its intent to implement interim rates beginning December 1, 2026, which would result in an increase of approximately $17.26 per month for a typical residential customer using about 600 kWh per month.

II. Analysis

1. Black Hills Energy lacks authority to implement interim rates for a proposed Phase in Rate Plan proceeding.

Black Hills' Application attempts to seize the benefits of a phase in rate plan (PIRP) mechanism provided for in SDCL 49-34A-73 through 49-34A-78, inclusive, (PIRP statutes) to recover costs of a generation facility outside of a general rate case while simultaneously seeking to skirt necessary Commission approval before imposing those costs on customers via interim rates provided for in SDCL 49-34A-17. Staff objects to Black Hills's Notice of Interim Rates on the basis that SDCL 49-34A-17 does not apply to phase in rate plans.

Staff recognizes that upon first glance, it may appear a PIRP falls within the definition of "rate" under SDCL 49-34A-1(13) as "any compensation, charge and classification, or any of them demanded, observed, charged, or collected by any public utility for any service and any rules, regulations, practices, or contracts affecting any such compensation, charge, or classification." Applying this definition to 49-34A-17, it would also seem that during a PIRP proceeding, a utility would be permitted to implement interim rates, subject to refund, in the same manner as would

apply in a general tariff of base rate proceeding. However, upon further review of the full chapter, it is clear PIRP proceedings fall under a separate statutory mechanism and procedure than a general base rate or tariff proceeding and therefore 49-34A-17 is not applicable to PIRP proceedings, meaning Black Hills does not have the authority to implement interim rates in a phase in rate plan proceeding.

Statutory interpretation provides that a statute's meaning and the intent "is determined from what the legislature said… words and phrases in a statute must be given their plain meaning and effect"[1] The South Dakota Supreme Court determined "[w]here the legislature prescribes a standard of guidance for the administrative agency to follow," the administrative agency "must lend credence to the guidelines established in the statutes."[2] Further, "a statute . . . provid[ing] that a thing shall be done in a certain way carries with it an implied prohibition against doing that thing in any other way. . . . ."[3] "Where there is a specific enactment, that provision prevails over the terms of the general enactment. *See Clem v. City of Yankton,* 83 S.D. 386, 160 N.W.2d 125 (1968); *Antonen v. Swanson,* 74 S.D. 1, 48 N.W.2d 161 (1951)."[4] "In construing a statute, we presume `that the legislature did not intend an absurd or unreasonable result' from the application of the statute."[5]

The plain language of the first clause of 49-34A-73 includes a clear exclusion that separates the PIRP statutes from the rest of the Chapter, beginning with the explicit statement "[n]otwithstanding anything in this chapter to the contrary." This statement makes it clear that

[1] Martinmaas v. Engelman, 2000 S.D. 85, ¶ 49, 612 N.W.2d 600, 611
[2] Matter of Nw. Pub. Serv. Co., 1997 SD 35, ¶¶23, 29, 560 N.W.2d at 929–30.
[3] In re Estate of Flaws, 2012 SD 3, ¶ 19, 811 N.W.2d 749, 753–54.
[4] Hartpence v. Youth Forestry Camp, 325 N.W. 2d 292, 295 (1982 S.D).
[5] State v. Wilson, 2004 SD 33, ¶ 9, 678 N.W.2d 176, 180 (quoting State v. I-90 Truck Haven Service, Inc., 2003 SD 51, ¶ 3, 662 N.W.2d 288, 290) (citing Martinmaas, 2000 SD 85, ¶ 49, 612 N.W.2d at 611)).

phase in rate plan proceedings fall outside of the general or contrary provisions of Chapter 49-34A. Because all words within a statute should be given meaning, we must recognize this language was intentionally included to exclude PIRP proceedings from some provisions in Chapter 49-34A that would have otherwise been applicable, including 49-34A-17 and the authority to implement interim rates provided therein.

The PIRP statutes were first enacted in 1992 via HB 1121 and operate entirely outside of the general provisions of the Chapter, save for one general reference to the notice and hearing provisions " as required for any rate increase."[6] The PIRP statutes define plant additions, limit the PIRP to particular defined costs and investments[7], require certain information be filed in conjunction with the proposed PIRP, including a full "cost of service analysis as required for general rate cases[8], and provide for an "opportunity for a hearing with notice given as required for any rate increase."[9] Moreover, the PIRP statutes establish a unique standard of review for a PIRP application in that the Commission "may" approve a PIRP with a finding it "is likely to enhance adequate utility service, rate stability, the financial stability of the electric utility, reasonable capital costs, just and reasonable rates, a fair rate of return, and other considerations that benefit the public interest."[10] If a PIRP is approved, the statutes establish a specific annual review with the utility required to make specific cost of service and updated cost projection filings throughout the duration of the plan,[11] and the utility is further required to file a general rate case within twelve months after the end of the phase in rate plan, unless the Commission determines that a general

[6] See SDCL 49-34A-74.
[7] See SDCL 49-34A-73.1.
[8] See SDCL 49-34A-74(2).
[9] See SDCL 49-34A-74(3).
[10] See SDCL 49-34A-74(4).
[11] See SDCL 49-34A-75

rate case would not likely result in a material change to the PIRP rates.[12] Further, if a PIRP is not approved, the PIRP statutes expressly provide that a company can seek other recovery via other methods.[13] Given the PIRP statutes are entirely self-contained, it is clear the Legislature intended this mechanism to operate outside of the general provisions of Chapter 49-34A.

Beyond the distinct and separate procedures in place for PIRP filings and general rate provisions, applying certain provisions to a PIRP filing particularly 49-34A-17, would be contrary to the PIRP mechanism. SDCL 49-34A-17 permits a utility to implement interim rates after 30 days notice, if they have not been suspended by the Commission. The statute further provides that if the Commission does not issue a decision within twelve months of the filing, rates charged after are not subject to refund. This timeline and implementation of interim rates aligns with 49-34A-21, which provides if the Commission fails to find the rates to be just and reasonable, the Commission "shall determine" the level of rates to be charged[14]. It further aligns with similar mandatory "shall" language used in conjunction with the Transmission Cost Rider (TCR) statutes that require approval of a TCR rate adjustment if "the costs included for recovery through the tariff were or are expected to be prudently incurred and achieve transmission system improvements at the lowest reasonable cost to ratepayers."[15] However, the PIRP statutes are differentiated from these general rate and tariff provisions in Chapter 49-34A with the permissive "may" language being used in conjunction with a different review process and standard for which the Commission "may" approve a phase in rate plan, and we must recognize that Legislature made these distinctions intentionally.

[12] See SDCL 49-34A-76.
[13] See SDCL 49-34A-78.
[14] See SDCL 49-34A-21.
[15] See SDCL 49-34A-25.1 to 25.4, inclusive.

Because the PIRP statutes use permissive language, the Commission is not required to approve a phase in rate plan, nor an adjusted plan in the same manner that applies to a general rate case. For this reason, applying 49-34A-17 to a PIRP filing would create a requirement for the Commission to take action on a PIRP filing within twelve months. This appears contrary to the plain language and clear language included in the PIRP statutes that the Commission has permissive discretion in determining whether to approve a PIRP application, or not. Therefore, SDCL 49-34A-17 is not applicable to PIRP applications, and Black Hills is not eligible to implement interim rates in this proceeding.

2. Even if the Commission determines Black Hills can implement interim rates in a phase in rate plan proceeding, the interim rates noticed on October 30, 2026, do not comply with the provisions in SDCL 49-34A-17, and cannot be implemented.

Even if the Commission determines Black Hills may generally implement interim rates in a PIRP proceeding, Black Hills must obtain Commission approval prior to implementing the specific Interim Rates Noticed on October 30, 2026. SDCL 49-34A-17 provides that if a public utility uses a rate design different than the rate design currently in effect, or the rate design the public utility proposed with the public utility filed for the increased rate, commission approval is needed prior to implementation. Black Hills' October 30, 2026, Notice of Intent to Implement Interim Rates specifically recognizes "Black Hills Power will implement the Interim Rate using the design set forth in its initial filings in the present docket, Docket No. EL26-024, *modified to reflect changes in the Company's rate structure stemming from the Company's pending rate case before this Commission in Docket No. EL26-003*.[16]" (emphasis added).

[16] See Notice of Intent to Implement Interim Rates, October 30. 2026, page 1-2.

Black Hills suggests "[t]he proposed rate design reflects the allocation of the revenue requirement among customer classes as presented in the Company's August 5, 2026, Application and Supporting Testimony, modified to reflect changes in the allocation factors stemming from the Company's pending rate case before this Commission in Docket No. EL26-003. The interim rate preserves the fundamental rate relationships and cost-allocation principles proposed by the Company in this proceeding."[17] According to Black Hills, despite these modifications, Black Hills has the authority to implement interim rates without any action by the Commission. Black Hills' refusal to recognize that a modification to the allocation of revenue requirement to the classes results in a change to the rate structure is not determinative and does not align with state law.

Black Hills' proposal to modify the allocation of the revenue requirement to the classes does change the proposed interim rates from the current rate design and from the rate design Black Hills initially proposed in this docket as neither are consistent with the proposed interim rate design noticed on October 30th. To comply with SDCL 49-34A-17, the rate design would need to be either the current or the proposed PIRP design. EL26-003 approved a specific rate design and allocations for base rates that did not extend to Black Hills' PIRP. In this case, Black Hills is attempting to implement a different rate design from the current PIRP and from Black Hills' Proposed Rate Plan, which does require Commission approval prior to implementation of the interim rate noticed on October 30th. Because Black Hills does not have authority pursuant to SDCL 49-34A-17 to implement these proposed rates, Staff alternatively requests the Commission issue an Order that Black Hills' October 30, 2026, Notice to Implement Interim Rates does not comply with state law

[17]See Notice of Intent to Implement Interim Rates, October 30. 2026, page 4.

based on the proposed rate design, and Black Hills is without authority to implement the proposed interim rates without Commission approval.

3. In the Alternative, Commission Staff Moves to Suspend the implementation of interim rates for 180 days after filing.

Should the Commission determine Black Hills does have authority to implement interim rates in this proceeding regardless of being allowed with or without Commission approval, Staff submits this Alternative Motion to Suspend the Operation of the Proposed Rate or Practice for 180-days after filing pursuant to SDCL 49-34A-14. SDCL 49-34A-14 provides that the Commission may suspend the implementation of proposed rates for up to 180 days. The statute does not require any particular showing for the Commission to suspend interim rates, nor is there a requirement that the Commission issue a specific reason for the suspension, and the Commission could arguably suspend these rates without a specific Motion. Staff makes this Alternative Motion to put this question before the Commission particularly because a suspension in this docket is necessary and proper and in the interest of customers.

On November 4, 2026, the Commission approved the stipulation proposed in Docket EL26-003, which approved final rates in this docket at a level lower than the interim rates Black Hills imposed on August 18, 2026. Under the stipulation, the final rates would be effective December 1. 2026, and Black Hills would then implement the approved plan to refund the over collected rates. As a result of the stipulation, Black Hills' customers would have recognized a reduction in base rates for services provided on or after December 1, 2026, along with the future refund for previously collected interim rates. However, if Black Hills is permitted to implement interim rates in the EL26-024 proceeding on December 1st, customers would not recognize a reduction in their bills but would instead see an increase. This will likely result in a significant

amount of confusion regarding customer bills because customers have been sent a notice for final rates and a refund of interim rates in EL26-003 as well as a notice for interim rates in EL26-024, plus various news reports that have likely left customers expecting a reduction in rates.

Delaying implementation of interim rates in this docket, by even a couple of months will allow Staff more time to conduct its review of this docket. This may provide sufficient time for this matter to be brought before the Commission for a final resolution without the need for the implementation of interim rates and further burden on customers. Staff recognizes that the implementation of interim phase in rates in conjunction with the implementation of final lower base rates (with refund), may prevent a temporary short-term dip in rates just for customers to see an increase a couple of months down the road after the Phase in docket is resolved. However, the relief from the EL26-003 interim rates, and refund, is significant to ratepayers who had no input in the timing of this docket, particularly over the holiday season and during the winter months, where there is increased usage for electric heating. When there is a legal mechanism that allows the Commission to suspend interim rates and prevent this burden falling on customers for even a couple of additional months, the customers should receive that benefit.

WHEREFORE, Staff requests the Commission issue an Order finding Black Hills does not have authority to implement interim rates pursuant to SDCL 49-34A-17, or if the Commission determines Black Hills can implement interim rates pursuant to SDCL 49-34A-17, in the alternative that Black Hills does not have authority to implement the proposed interim rates without prior approval, or, the Commission issue an Order Granting Staff's Motion to Suspend Interim Rates for 180 days after the initial filing of Docket EL26-024. In either event Staff further

requests the Commission issue an Order requiring Black Hills Energy to keep an accurate account in detail of all amounts received by reason of any interim rate imposed, specifying by whom and in whose behalf the amounts are paid, and Order that any such interim rate imposed is subject to refund, with interest, to customers.

Further, Staff requests the Commission hear this matter on less than 10 days notice at the November 19, 2026, Commission meeting, or that the Commission schedule an ad hoc meeting prior to December 1, 2026, to consider this matter.

Dated this 9th day of November 2026



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