

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF WEST)	SECOND ORDER FOR AND
RIVER ELECTRIC ASSOCIATION, INC. FOR A)	NOTICE OF HEARING
DECLARATORY RULING REGARDING)	
SERVICE TERRITORY RIGHTS CONCERNING)	EL02-003
BLACK HILLS POWER, INC. AND WEST)	
RIVER ELECTRIC ASSOCIATION, INC.)	

On February 21, 2002, the South Dakota Public Utilities Commission ("Commission") received a Petition for Declaratory Ruling from West River Electric Association, Inc. (WREA) requesting the Commission to make declaratory rulings as to: (i) whether Black Hills Power, Inc. (BHP) is rendering or has extended service within WREA's territory in violation of SDCL § 49-34A-42; and (ii) whether WREA has the right to provide future electrical service to the Rapid City Waste Water Treatment Facility (the sewer plant) located within WREA's assigned service area.

The Commission has jurisdiction over this matter pursuant to SDCL 49-34A-4 and 49-34A-59 and ARSD 20:10:01:34 and 20:10:01:35.

On February 25, 2002, WREA filed its agreement to an extension of the fifteen-day hearing requirement of SDCL 49-34A-59 to thirty (30) days, as provided in ARSD 20:10:01:35. The Commission originally scheduled the petition for hearing on March 21, 2002. On March 7, 2002, prior to formal order and notice of hearing, BHP filed a request to reschedule the hearing to which WREA had previously agreed.

A hearing on WREA's Petition for Declaratory Ruling will accordingly be held on May 22, 2002, beginning at 9:00 a.m. CDT in Room 412 of the Capitol Building in Pierre, South Dakota.

The deadline for intervention fixed by the Commission was March 15, 2002. On March 11, 2002, BHP filed a Petition to Intervene, and the Commission considered BHP's Petition at its regular meeting on March 28, 2002. No one appeared in opposition to the Petition to Intervene. Finding that WREA, in its original filing, had requested that "the Commission formally serve BHP with a copy of the Petition at such time as the Commission may set the matter for hearing" and that the relief sought by WREA would obviously have a direct and immediate effect on BHP's pecuniary interest in continuing to provide electric service to the sewer plant, the Commission voted unanimously to grant intervention to BHP.

In addition to the two questions set forth in the first paragraph above, the Petition further states that WREA "is entitled to a declaratory ruling that BHP has illegally extended its service within WREA's designated service area and that WREA is entitled to provide all future service to the sewer plant." The particular statutes and rules involved include

SDCL 49-34A-42 through 49-34A-44, inclusive, and 49-34A-59 and ARSD 20:10:01:34 and 20:10:01:35.

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All persons testifying will be subject to cross-examination. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights will be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of this hearing, the Commission may determine: (i) whether WREA has the right to provide the service to the sewer plant installed by BHP in 1985 or 1986; (ii) whether such installation of service by BHP constituted an unlawful rendering or extension of service under SDCL 49-34A-42; and (iii) WREA's and BHP's respective rights to provide future electrical service to the sewer plant. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a hearing on this matter will be held on May 22, 2002, at 9:00 a.m. CDT in Room 412 of the Capitol Building in Pierre, South Dakota. It is further

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 17th day of April, 2002.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Aldaine Kelso</u>
Date:	<u>4/17/02</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner