

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE)
APPLICATION OF BLACK HILLS)
POWER, INC. TO APPROVE)
TARIFF REVISIONS RELATED TO)
ITS COST OF SERVICE GAS)
AGREEMENT WITH BLACK)
HILLS UTILITY HOLDINGS, INC.)

Docket No. EL 15-036

OBJECTION OF BLACK HILLS POWER, INC. TO INTERVENTION PETITION OF
CONSTELLATION NEWENERGY-GAS DIVISION, LLC.

Black Hills Power, Inc. (“Black Hills Power”), by and through its attorneys, Lindquist & Vennum, LLP and Lee A. Magnuson, objects to the Petition for Leave to Intervene (“Petition”) filed by Constellation Newenergy-Gas Division, LLC (“Constellation”) for the following reasons, and respectfully requests that the Public Utilities Commission (“Commission”) deny the Petition:

Executive Summary of the Position of Black Hills Power:

Constellation does not meet the standards set forth in ARSD 20:10:01:15.05 and therefore the Petition should be denied.

Review of the Applicable Administrative Rules and Argument:

1. ARSD 20:10:01:1.02 provides that a person “who claims an interest in a pending proceeding may petition the commission for leave to intervene.”

2. ARSD 20:10:01:15.05 provides that the petitioner must show that the petitioner “is specifically deemed by statute to be interested in the matter involved, that the petitioner is specifically declared by statute to be an interested party to the proceeding, or that by the outcome of the proceeding the petitioner will be bound and affected either favorably or adversely with respect to an interest peculiar to the petitioner as distinguished from an interest common to the public or to the taxpayers in general.”

3. Constellation’s Petition is deficient under ARSD 20:10:01:15.05 in that Constellation has not shown nor has it alleged that it is a) deemed by statute to be interested in the matter involved or b) specifically declared by statute to be an interested party to the proceeding.

Further, Constellation has not shown that by the outcome of the proceeding Constellation will be bound and affected either favorably or adversely with respect to an interest peculiar to Constellation as distinguished from an interest common to the public

or to the taxpayers in general. Rather, Constellation's interest in this matter is no more than an interest common to the public or to taxpayers in general, which is insufficient grounds for Constellation to be allowed to intervene.

4. Constellation states that it is a competitive natural gas supplier to Black Hills Power. (Constellation Petition at Paragraph 3) That statement is not supported by recent history, as the records of Black Hills Power for 2014 and 2015 indicate that Black Hills Power has not purchased natural gas from Constellation for the power plants of Black Hills Power. Moreover, Black Hills Power does not purchase natural gas for resale to its customers; rather, Black Hills Power is engaged in the sale of electricity to its customers. Generally speaking, the only significant natural gas purchases made by Black Hills Power from any gas supplier would be related to the ownership interest of Black Hills Power in and the purchase of wholesale natural gas supplies required by Black Hills Power's natural gas fired combustion turbines located at the Cheyenne Prairie Generating Station in Cheyenne, Wyoming or at its generating facilities in Gillette, Wyoming and Rapid City, South Dakota. In 2015, the monthly average of wholesale natural gas purchases by Black Hills Power from all gas suppliers is approximately \$381,500. And as noted above, none of those wholesale natural gas purchases were from Constellation. Accordingly, the outcome of this Application will not either favorably or adversely affect Constellation, and therefore Constellation's Petition should be denied.

5. Constellation states that, as a competitor, it is concerned that the Cost of Service Gas Program (the "Program") will affect its prices as well as those passed along to South Dakota consumers. Constellation's purported concern is unfounded. First, Constellation has not and cannot demonstrate that the Program would have any affect Constellation's prices. Indeed, nothing in the Program impacts the prices at which gas is purchased from the market under the Program. Second, Constellation has not and cannot show how the Program will affect the prices being passed along to the South Dakota retail electric customers of Black Hills Power. Third, Constellation's wholesale price of natural gas is subject to larger and unregulated market forces that do not involve the purchase of wholesale natural gas by Black Hills Power. Accordingly, Constellation's statement in its Petition ("in order to adequately protect its interests and the interests of the public" in Paragraph 3 of the Petition) evidences a general interest common to the public or to taxpayers that do not provide this Commission with a reasonable basis to grant Constellation's Petition.

6. The Application filed by Black Hills Power in this matter involves only the very limited wholesale gas purchases of Black Hills Power, and Black Hills Power does not sell wholesale or retail natural gas to its customers, but sells only retail electricity to its customers. Further, the Application is not a proceeding about customer choice of supply. The Application is not a proceeding related to "price manipulation" or other wholesale natural gas issues under the jurisdiction of the Federal Energy Regulatory Commission or the Commodities Futures Trading Commission. In fact, the outcome of the Application does not have any impact on competitive wholesale or retail natural gas providers who sell natural gas at wholesale or retail in South Dakota or Wyoming or who sell natural gas in Wyoming to Black Hills Power.

7. In an unrelated proceeding, Black Hills Corporation, through Black Hills Utility Holdings, Inc. (“BHUH”), has filed an application with the Wyoming Public Service Commission, seeking approval to acquire, through an indirect transfer of control, the Wyoming gas utility operations of SourceGas Distribution LLC (Wy PSC Docket No. 30023-1-GA-15, Record No. 14024). Constellation supplies retail natural gas in Wyoming to customers in the SourceGas Choice Gas Program. No Black Hills Power electric customers are in the SourceGas Choice Gas Program. In addition, the outcome of the Application in this matter will not impact the SourceGas Choice Gas Program in any way, and therefore, Constellation will not be affected in any way. Furthermore, if BHUH were to propose, in the future, to expand or otherwise modify the SourceGas Choice Gas Program, BHUH would need to file a separate application with the Wyoming Public Service Commission at that time, and that may be the appropriate time for the Wyoming Public Service Commission to allow the intervention of Constellation.

8. Constellation has failed to identify any interest that is specific or peculiar to Constellation, but rather has set forth broad statements that are so general as to be insufficient to support the factual showing that Constellation is required to make.

9. Accordingly, Black Hills Power respectfully requests that Constellation’s Petition should be denied.

10. In the event that this Commission decides to allow Constellation to intervene, Black Hills Power respectfully requests, in the alternative, that:

a) Pursuant to SDCL 49-34A-13.1, Constellation not be afforded the status of a party to the proceedings, not be allowed to participate in the discovery process, and only be allowed to provide written or oral comments at the hearing on the Application; or

b) If Constellation is permitted to be a full intervenor, that appropriate restrictions be placed on discovery and hearing materials so that Constellation, as an alleged competitive natural gas wholesale supplier to Black Hills Power, is not permitted access to or to see confidential or highly confidential discovery or hearing materials of Black Hills Power or its related companies that might put Black Hills Power or its related companies at a potential competitive disadvantage.

Request for Denial of Petition:

WHEREFORE, Black Hills Power respectfully requests the following:

1. That the Commission deny Constellation’s Petition;

2. In the alternative, that a) Constellation not be afforded the status of a party to the proceedings, not be allowed to participate in the discovery process, and only be allowed to provide written or oral comments at the hearing on the Application; or b) if Constellation is permitted to be a full intervenor, that appropriate restrictions be placed on discovery and hearing materials so that Constellation, as an alleged competitive natural gas supplier to Black Hills Power, is not permitted access to or to see confidential

or highly confidential discovery or hearing materials of Black Hills Power or its related companies that might put Black Hills Power or its related companies at a potential competitive disadvantage.

Dated this 3rd day of December, 2015.

Respectfully submitted,

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