

6. Fall River's project site is in Black Hills' South Dakota service territory, in an area that does not have access to an independently administered organized wholesale market for the sale of energy and capacity. Accordingly, Fall River will not have access to such markets.

7. The project site is adjacent to and is proposed to interconnect with the Westhill-Stegal 230 kV transmission line. The transmission line is part of the so-called Common User System, which is operated by and partially owned by Black Hills' transmission affiliate. The transmission line is used in part to transmit energy from generating facilities to Black Hills' retail distribution system.

8. Fall River's solar generating facility is a Qualifying Small Power Production Facility (hereafter "QF") as the same is defined in the Public Utility Regulatory Policy Act of 1978, 16 U.S.C. § 824a-n (hereafter "PURPA").

9. The Federal Energy Regulatory Commission granted Fall River QF status for its project on February 14, 2018, designating the project QF18-630-000.

10. Fall River has secured the land on which the solar generating facility will be constructed and has acquired all necessary planning and zoning permits.

11. Fall River plans to construct the solar generating facility so as to begin generation of commercially viable quantities of electricity in 2020.

12. Black Hills is an electric utility as that term is defined in PURPA, and accordingly, subject to the requirements of PURPA, the federal regulations that implement the Act, and the orders of the South Dakota Public Utilities Commission that implement PURPA.

13. PURPA requires Black Hills to purchase the electricity generated and capacity created by Fall River's solar generator at the cost to Black Hills of the electric energy which, but

for the purchases from Fall River, Black Hills would generate or purchase from another source, its so-called avoided cost, as defined in federal and state law (hereafter “avoided cost rate”).

14. In South Dakota, per the Commission’s 1982 direction in *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*, docket number F-3365 (hereafter the “SD PURPA Order”), Black Hills is obligated to negotiate with Fall River, acting in good faith, to establish an avoided cost rate and to resolve a power purchase agreement between them.

15. Under state and federal law, Black Hills must not behave in a manner that presents an unreasonable or discriminatory barrier to Fall River’s market entry.

16. On February 14, 2018, Fall River solicited an indication of avoided cost pricing for its proposed solar generating facility from Black Hills.

17. As required by 18 C.F.R. § 292.207(a)(ii), Fall River gave Black Hills notice of its project’s QF designation.

18. Fall River submitted an interconnection request to Black Hills transmission affiliate, soliciting Network Resource status, indicating its intent to sell the entire output of its solar generating facility to Black Hills.

19. Black Hills, as a condition of discussions with Fall River, required Fall River to sign a non-disclosure agreement, essentially declaring all communications between the parties confidential.

20. In 2016 and 2017, Black Hills entered into Power Purchase Agreements with QFs for energy and capacity to be produced by solar generators located less than thirty miles from the proposed facility, called South Dakota Sun I and II, respectively. Black Hills calculated a

twenty-year levelized avoided cost rate for each project in excess of \$40.00 per megawatt hour of capacity and energy produced, as reflected by the Power Purchase Agreements.

21. On April 27, 2018, Black Hills proposed to pay Fall River \$17.06 per megawatt hour for capacity and energy produced by Fall River's solar generator, contending that amount to be Black Hills avoided cost rate levelized over twenty years.

22. On June 7, 2018, Fall River sent Black Hills a proposed Solar Energy Purchase Agreement, essentially identical to the agreements Black Hills entered into with South Dakota Sun I and II, proposing that the relationship between Black Hills and Fall River be governed by the agreement. Black Hills did not respond to the proposal, which by its nature constitutes a rejection of Fall River's offer.

23. Fall River, using the same market price forecasting data employed by Black Hills, determined Black Hills' twenty-year levelized avoided cost rate to be \$41.66 per megawatt hour for energy and capacity. On August 14, 2018, Fall River offered to enter into a power purchase agreement essentially on the same terms and conditions as the power purchase agreements negotiated between South Dakota Sun I and II and Black Hills, employing \$41.66 as the avoided cost rate. Fall River gave Black Hills seven days to accept or decline the offer.

24. Black Hills requested additional time to recalculate its avoided cost, which Fall River granted. On August 29, 2018, Black Hills proposed a recalculated avoided cost rate of \$21.77 per megawatt hour for the Fall River Project.

25. Fall River declined the proposed rate on September 6, 2018, and advised Black Hills that it believed the parties are at an impasse with respect to an appropriate avoided cost.

26. Fall River, since August 14, 2018, has stood ready to enter into a Solar Energy Purchase Agreement with Black Hills at \$41.66 per megawatt hour of generation from its

project. Accordingly, a legally enforceable obligation in the sense considered by PURPA and the FERC regulations relating thereto was effectuated August 14, 2018.

27. In its SD PURPA Order, the Commission determined that it had jurisdiction to resolve disputes which arise between QFs and the utility companies the Commission regulates. Accordingly, the Commission has jurisdiction to hear and resolve this dispute.


REQUEST FOR RELIEF

WHEREFORE, Fall River and its parent Energy of Utah, LLC pray the Commission open a docket for this proceeding, enter an order setting an expedited hearing for the matters in controversy, and after hearing the evidence presented, enter its order

1. That Fall River created a legally binding obligation as contemplated by PURPA on August 14, 2018;
2. That Black Hills' avoided cost, levelized over 20 years, is \$41.66 per megawatt hour of energy and capacity produced by Fall River's solar generator;
3. Determine an appropriate amount for a Power Purchase Agreement deposit and an appropriate time in which the deposit should be posted;
4. Order Black Hills to enter into a power purchase agreement with Fall River at the levelized avoided cost rate of \$41.66 per megawatt hour or such other rate as the Commission deem just and proper under the evidence presented;
5. Grant Energy of Utah, LLC and Fall River reasonable attorney fees incurred in the prosecution of this action; and
6. Any other and further relief appropriate under the circumstances.

Dated this 14th day of September, 2018.

TAYLOR LAW FIRM, LLC


By 

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September 2018 I served the foregoing Complaint for Determination of Avoided Cost by email and by first class mail, postage prepaid, to the following:

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One of the attorneys for Energy of Utah, LLC
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