

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

**IN THE MATTER OF THE  
COMPLAINT OF ENERGY OF UTAH )  
LLC, AND FALL RIVER SOLAR, LLC )  
AGAINST BLACK HILLS POWER )  
INC. DBA BLACK HILLS ENERGY )  
FOR DETERMINATION OF )  
AVOIDED COSTS )**

**Docket No. EL 18-038**

**BLACK HILLS POWER'S  
RESPONSE AND OBJECTIONS TO FALL  
RIVER'S NOTICE OF DEPOSITION  
PURSUANT TO SDCL §15-6-30(b)(6)**

Black Hills Power Inc., d/b/a/ Black Hills Energy (“BHE”), respectfully submits this response and objections to the Notice of Deposition Pursuant to SDCL §15-6-30(b)(6) filed by Energy of Utah, LLC and Fall River Solar, LLC (“Fall River”).

**RESPONSES**

1. BHE’s discussions and negotiations with Energy of Utah and its subsidiaries SD Sun I, LLC and SD Sun II, LLC and its principal Ros Vrba and BHE’s proposed avoided cost, avoided cost methodology and avoided cost model employed for the solar generating facilities they proposed to construct.

**RESPONSE:**

BHE objects that this topic area is not reasonably calculated to lead to admissible evidence. However, subject to the objection and without waiving the same, BHE designates Kyle White.

2. BHE’s discussions and negotiations with Energy of Utah and its subsidiaries SD Sun I, LLC and SD Sun II, LLC regarding the power purchase agreements that were entered into. The witness need only to be prepared to testify about the business and commercial aspects of the discussions and negotiations and not technical matters concerning interconnection, engineering and transmission or the legal interpretation of the contract terms.

**RESPONSE:**

BHE objects to this topic area as it is overly broad and is not reasonably calculated to lead to admissible evidence in this case. The current Petition is for determination of avoided cost and does not involve a dispute over PPA contract terms. Moreover, Fall River is now in possession of both PPAs and those PPAs speak for themselves. Finally, any questions relating to contract obligations and interpretation would be legal in nature. BHE will object to deposition questions relating to negotiation of the PPA and will file a motion to quash and/or for a protection order if necessary.

3. The general methodology, including modeling methodology, sources of information for that modeling, and computer programs and software employed in and the general parameters of BHE's avoided cost calculations for the SD Sun I, II, and III projects, including how the methodology employed differed from the calculations done for the Fall River project. The witness will not be expected to testify about how the Planning and Risk Model operates.

**RESPONSE:**

BHE objects that this topic area is not reasonably calculated to lead to admissible evidence. However, subject to the objection and without waiving the same, BHE designates Kyle White.

4. BHE's rationale behind the differences in calculations done for the SD Sun projects avoided cost and Fall River avoided cost.

**RESPONSE:**

BHE designates Kyle White.

5. BHE's discussions and negotiations with 174 Power Global regarding
  - a. Its acquisition of SD Sun I and SD Sun II;
  - b. Changes in the proposed projects during the time 174 Power Global owned the SD Sun companies/projects;
  - c. The power purchase agreement for SD Sun II;
  - d. Determination of avoided cost for the solar generating facilities commonly called SD Sun III, but only to the extent provided for in 3 above.
  - e. The development of a power purchase agreement for SD Sun III.

The witness addressing the areas addressed in this paragraph need only be prepared to testify about the business and commercial aspects of the discussions and negotiations and not technical matters concerning interconnection, engineering and transmission or the legal interpretation of the contract terms.

**RESPONSE:**

- (a) BHE objects to this topic as it is not reasonably calculated to lead to admissible evidence. Moreover, the Commission's June 17, 2019 Order on Fall River's Motion to Compel limited acquisition discovery to the modeling performed in association with the acquisition. BHE further preserves any objection that the request seeks confidential

information. BHE will object to any deposition questions on this topic and will file a motion to quash and/or for a protection order if necessary.

- (b) BHE objects to this topic as it is not reasonably calculated to lead to admissible evidence. Moreover, the topic is vague and ambiguous. BHE will object to any deposition questions on this topic and will file a motion to quash and/or for a protection order if necessary.
  - (c) Please see objections to Item 2 above.
  - (d) BHE objects that this topic area is not reasonably calculated to lead to admissible evidence. However, subject to the objection and without waiving the same, BHE designates Kyle White.
  - (e) Please see BHE's response to Fall River's Interrogatory 88. BHE did not enter into or develop a PPA for SD Sun III. Also, see objections to Item 2 above. BHE will object to any deposition questions on this topic and will file a motion to quash and/or for a protection order if necessary.
6. BHE's internal discussions regarding the potential for acquiring 174 Power Global's interest in the SD Sun projects, including timelines.

**RESPONSE:**

BHE objects to this topic as it is not reasonably calculated to lead to admissible evidence. Moreover, the Commission's Order on Fall River's Motion to Compel limited acquisition discovery to the modeling performed in association with the acquisition. BHE will object to any deposition questions on this topic and will file a motion to quash and/or for a protection order if necessary.

7. BHE's discussions and negotiations with 174 Power Global regarding the potential for acquiring 174 Power Global's interest in the SD Sun projects, including the development of the contract terms governing the acquisition of the projects.

**RESPONSE:**

BHE objects to this topic as it is not reasonably calculated to lead to admissible evidence. Moreover, the Commission's Order on Fall River's Motion to Compel limited acquisition discovery to the modeling performed in association with the acquisition. BHE further preserves any objection that the request seeks confidential information. BHE will object to any deposition questions on this topic and will file a motion to quash and/or for a protection order if necessary.

8. The business case and rationale behind BHE's decision to acquire the SD Sun projects including the reasoning behind the acquisition and how an acceptable purchase price was determined and the modeling that was done relating to the acquisition.

**RESPONSE:**

BHE objects to this topic area as it is not reasonably calculated to lead to admissible evidence. The Commission's Order on Fall River's Motion to Compel limited acquisition discovery to the modeling performed in association with the acquisition. BHE would designate Justin Briggs on the modeling produced and information contained in Responses 112, 113 and 114, but would object to the remainder of the topic area and will file a motion to quash and/or for a protection order if necessary.

9. Background and history of BHE's plans and intentions for developing/constructing the SD Sun projects, including BHE's decision(s) to reduce the scope of development and/or construction of the SD Sun projects, and ultimately not develop/construct the SD Sun projects at all. The witness or witnesses should be prepared to testify regarding the general effect of inclusion of various levels of SD Sun contribution in the Fall River avoided cost modeling.

**RESPONSE:**

BHE does not object to this request, to the extent that it is limited to "BHE's plans and intentions for developing/constructing the SD Sun projects" or "the inclusion of various levels of SD Sun contribution in the Fall River modeling." To the extent, you would seek to discuss topics similar to DR 121-125, BHE objects the request is not reasonably calculated to lead to admissible evidence and Fall River's Motion to Compel on those topics was denied. Subject to the foregoing, BHE would designate Kyle White on the topics for which objections have not been raised. With regard to the inquiry of DR 121-125 and similar information, BHE will object to any questioning and will file a motion to quash and/or for a protection order if necessary.

10. BHE's discussions and negotiations with Energy of Utah and Fall River Solar pertaining to the determination of avoided cost for the solar generating facilities they proposed to construct. The witness should be prepared to testify regarding business discussions.

**RESPONSE:**

BHE designates Kyle White.

11. BHE's process in deciding how it would calculate avoided cost for Fall River, what methodology it would use for the calculations and what modeling would be employed.

**RESPONSE:**

BHE designates Kyle White.

12. Background and history of BHE's discussions and negotiations with the counter-party to the August 16, 2018 power purchase agreement mentioned in BHE's initial response to Fall River's Discovery Request numbered 136. The witness need not be prepared to testify in depth about the discussions and negotiations between the parties that led to power purchase agreement, but should be prepared to testify about the dates indications of interest and discussions began and the milestone dates in the course of those discussions. The witness should be prepared to discuss items considered in Fall River's discovery requests 137 and 138.

**RESPONSE:**

BHE objects that this request is not reasonably calculated to lead to admissible evidence. However, subject to the objection and without waiving the same, BHE designates Kyle White.

13. Background and history of BHE's decision to seek amortization of the company's expenditures to acquire 174 Power Global's interest in the solar generating projects referred to in these proceedings as SD Sun I, II and III, including the business case for the decision, all as set forth in BHE's Petition in South Dakota Public Utilities Commission Docket EL19-028.

**RESPONSE:**

BHE objects that this request is not reasonably calculated to lead to admissible evidence. However, subject to the objection and without waiving the same, BHE designates Kyle White.

Dated this 14<sup>th</sup> day of August, 2019.

By: Cathy M. Sabers  
Catherine M. Sabers  
Associate General Counsel  
Black Hills Power, Inc.  
7001 Mt. Rushmore Road  
Rapid City, SD 57702  
(605) 721-1914  
[Cathy.Sabers@blackhillscorp.com](mailto:Cathy.Sabers@blackhillscorp.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of August, 2019, I served the foregoing Black Hills Power's Response and Objections to Fall River's Notice of Deposition Pursuant to SDCL §15-6-30(b)(6) to by email to the following:

Ms. Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
500 E. Capitol Avenue  
Pierre, SD 57501  
[Patty.Vangerpen@state.sd.us](mailto:Patty.Vangerpen@state.sd.us)

Ms. Kristen Edwards  
Staff Attorney  
South Dakota Public Utilities Commission  
500 E. Capitol Avenue  
Pierre, SD 57501  
[Kristen.Edwards@state.sd.us](mailto:Kristen.Edwards@state.sd.us)

Mr. Darren Kearney  
Staff Analyst  
South Dakota Public Utilities Commission  
500 E. Capitol Avenue  
Pierre, SD 57501  
[Darren.Kearney@state.sd.us](mailto:Darren.Kearney@state.sd.us)

Mr. Jon Thurber  
Staff Analyst  
South Dakota Public Utilities Commission  
500 E. Capitol Avenue  
Pierre, SD 57501  
[Jon.Thurber@state.sd.us](mailto:Jon.Thurber@state.sd.us)

Mr. William Taylor  
Mr. John E. Taylor  
Mr. Jeremy Duff  
4820 E. 57<sup>th</sup> Street, Ste. B  
Sioux Falls, SD 57108  
[bill.taylor@taylorlawsd.com](mailto:bill.taylor@taylorlawsd.com)  
[john.taylor@taylorlawsd.com](mailto:john.taylor@taylorlawsd.com)  
*Attorneys for Energy of Utah, LLC  
and Fall River Solar, LLC*

Ms. Brittany Mehlhaff  
Staff Analyst  
South Dakota Public Utilities Commission  
500 E. Capitol Avenue  
Pierre, SD 57501  
[Brittany.Mehlhaff@state.sd.us](mailto:Brittany.Mehlhaff@state.sd.us)

By: Cathy M Sabers  
Catherine M. Sabers  
Associate General Counsel  
Black Hills Power, Inc.  
7001 Mt. Rushmore Road  
Rapid City, SD 57702  
(605) 721-1914  
[Cathy.Sabers@blackhillscorp.com](mailto:Cathy.Sabers@blackhillscorp.com)