

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

IN THE MATTER OF THE COMPLAINT OF)	ORDER GRANTING IN PART
ENERGY OF UTAH, LLC AND FALL RIVER)	AND DENYING IN PART
SOLAR, LLC AGAINST BLACK HILLS)	MOTION TO QUASH AND
POWER INC. DBA BLACK HILLS ENERGY)	PROTECT ORDER
FOR DETERMINATION OF AVOIDED COST)	
)	EL18-038

On September 14, 2018, Energy of Utah, LLC and Fall River Solar, LLC (Fall River) filed with the South Dakota Public Utilities Commission (Commission) a Complaint Against Black Hills Power Inc. dba Black Hills Energy (Black Hills Energy) for Determination of Avoided Cost.

On September 20, 2018, the Commission electronically transmitted notice of the filing and the intervention deadline of October 5, 2018, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv.

On October 4, 2018, the Commission received Black Hills Power Inc. 's Answer to Energy of Utah, LLC and Fall River Solar, LLC's Complaint for Determination of Avoided Costs.

On December 19, 2018, the Commission received Commission staff's (staff) Motion for Procedural Schedule.

On March 22, 2019, Fall River filed direct testimony and exhibits.

On April 9, 2019, the parties submitted a stipulated procedural schedule which was amended on April 25, 2019.

On May 7, 2019, Black Hills Energy filed direct testimony and exhibits.

On May 30, 2019, Fall River filed a Motion for Order Compelling Responses to Discovery Requests (Motion to Compel). On June 5, 2019, staff filed a response to the Motion to Compel which specified and clarified the request. On June 6, 2019 Black Hills Energy filed a brief in response to the Motion to Compel. On June 10, 2019, Fall River replied to Black Hills Energy's brief.

On June 11, 2019, at its regularly scheduled meeting, the Commission considered the Motion to Compel and issued an order granting the Motion to Compel for those discovery requests enumerated in staff's memo under the column heading of granted, with the inclusion of numbers 111, 112, and 113, and the exception of number 75.

On June 25, 2019, the parties submitted a Proposed Stipulated Protective Order which was granted by the Commission on June 26, 2019. Staff filed Pre-filed Testimony and Exhibits on August 8, 2019.

On August 12, 2019, Fall River filed a Notice of Deposition Pursuant to SDCL 15-6-30(b)(6), naming Black Hills Energy as a deponent and requesting Black Hills Energy designate one or more persons to testify on its behalf with respect to 13 inquiries. Black Hills Energy responded and objected on August 14, 2019.

On September 25, 2019, Black Hills Energy filed a Motion to Quash Portions of Fall River's Notice of Deposition Pursuant to SDCL 15-6-30(b)(6) and for a Protective Order (Motion to Quash and Protect). The Motion to Quash and Protect specifically applies to topics 2, 5(a), 5(b), 5(c), 5(e), 6, 7, and 8 of Fall River's Notice of Deposition. On October 11, 2019, Fall River responded.

The Commission has jurisdiction over this matter pursuant to 16 U.S.C. Chapter 12, § 824a-3, 18 C.F.R. Part 292, and SDCL Chapters 1-26 and 49-34A, specifically 49-34A-93.

16 U.S.C. § 824a-3(a) requires the Federal Energy Regulatory Commission to promulgate rules "to encourage cogeneration and small power production..., which rules require electric utilities to offer to... (2) purchase electric energy from such facilities." Under 16 U.S.C. § 824a-3(f), following FERC's promulgation of such rules, "each State regulatory authority shall, after notice and opportunity for public hearing, implement such rule (or revised rule) for each electric utility for which it has ratemaking authority." Pursuant to 16 U.S.C. § 824a-3(b), "rates for such purchase-

- a. shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and
- b. shall not discriminate against qualifying co-generators or qualifying small power producers.

No such rule prescribed under subsection (a) of this section shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy."

16 U.S.C § 824a-3 defines "incremental cost to the electric utility of alternative electric energy" as follows:

"incremental cost of alternative electric energy" means, with respect to electric energy purchased from a qualifying co-generator or qualifying small power producer, the cost to the electric utility of the electric energy which, but for the purchase from such co-generator or small power producer, such utility would generate or purchase from another source.

The FERC rules set forth in 18 C.F.R. Part 292 set forth the standards for the Commission's determination of avoided cost.

On October 15, 2019, at its regularly scheduled meeting, the Commission considered the Motion to Quash and Protect. Commissioner Nelson moved to grant the Motion to Quash and Protect for topics 5(a), 5(b), 6, 7, and 8. Having reviewed the filed documents and having listened to the oral presentations and arguments of the parties, the Commission voted unanimously to grant Commissioner Nelson's motion. Commissioner Nelson then moved to deny the Motion to Quash and Protect for topics 2, 5(c), and 5(e). The motion passed unanimously.

It is therefore

ORDERED, that the Motion to Quash and Protect for topics 5(a), 5(b), 6, 7, and 8 is hereby granted. It is further

ORDERED, that the Motion to Quash and Protect for topics 2, 5(c), and 5(e) is hereby denied.

Dated at Pierre, South Dakota, this 18th day of October 2019.

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, electronically or by mail.
By: <u>Adam de Hueck</u>
Date: <u>10/18/19</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson

GARY HANSON, Chairman

Chris Nelson

CHRIS NELSON, Commissioner

Kristie Fiegen

KRISTIE FIEGEN, Commissioner