

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT OF ENERGY OF UTAH LLC, AND FALL RIVER SOLAR, LLC AGAINST BLACK HILLS POWER INC.))))))	Docket No. EL 18-038 BLACK HILLS POWER INC.'S ANSWER TO ENERGY OF UTAH, LLC AND FALL RIVER SOLAR, LLC'S COMPLAINT FOR DETERMINATION OF AVOIDED COSTS
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COMES NOW, Black Hills Power Inc. ("Black Hills") and answers the Complaint filed with the Public Utilities Commission ("Commission") by Energy of Utah, LLC and Fall River Solar LLC (jointly referenced as "Fall River" or "Petitioners").

ARSD 20:10:01:02:03 requires that pleadings filed with the Commission include statements of fact and law set forth in separately numbered paragraphs. Portions of Fall River's Complaint combine multiple allegations of fact or law combined into single numbered paragraphs. Black Hills has attempted to address each allegation included in each paragraph in Fall River's Complaint. Nevertheless, to the extent the Complaint is deemed to contain an allegation to which there has been no response, that allegation should be deemed denied.

ANSWER

1. Black Hills denies each and every allegation of the Complaint except for those specifically admitted below.
2. With regard to Paragraph 1 of the Complaint, upon information and belief, Black Hills admits that Fall River Solar, LLC alone is registered in South Dakota as a Foreign Limited Liability Company and is organized under the laws of Utah. Black Hills is without sufficient information or belief to admit or deny the remaining allegations in Paragraph 1 and thus denies the same.
3. With regard to Paragraph 2 of the Complaint, Black Hills admits that it is a wholly-owned subsidiary of Black Hills Corporation and that its principal place of business is Rapid City, South Dakota. Though it is not relevant to the Complaint or the issues before the Commission, Black Hills admits that Black Hills Corporation is a publically traded energy company which has subsidiaries in multiple states. Black Hills further admits that Black Hills Corporation and its subsidiaries do business under the trade name of Black Hills Energy.
4. With regard to Paragraph 3 of the Complaint, Black Hills admits that it distributes and sells electricity to retail and industrial customers in South Dakota, Montana and

Wyoming. Black Hills admits that it serves approximately 70,000 customers in its service territory in western South Dakota.

5. Black Hills admits the allegations contained in Paragraph 4 of the Compliant.
6. With regard to the allegations contained in Paragraph 5 of the Complaint, Black Hills admits that it has been contacted by Fall River with regard to a potential 80 MW solar generating facility, which Fall River indicates it intends to develop in Fall River County, South Dakota and further admits that Fall River has sought interconnection on that basis. Black Hills is without sufficient information to admit or deny particular information about the facility design or developer plans and thus denies the same.
7. With regard to the allegations in Paragraph 6 of the Complaint, Black Hills admits that, as described by Fall River, the project site would be within its service territory. Black Hills further admits that it is not currently a transmission owning member in any Regional Transmission Organization (RTO) or Independent Market Operator (ISO) organization. Black Hills denies the remaining allegations in Paragraph 7.
8. With regard to Paragraph 7 of the Complaint, Black Hills admits that the project has sought interconnection at the Black Hills' owned Westhill to Stegall 230kV line, and that Black Hills' Westhill to Stegall line is operated as part of the Common Use System or "CUS." The term CUS generally refers to the joint operation of certain transmission facilities owned by Basin Electric Power Cooperative (Basin) and Powder River Electric Company (PRECORP) and Black Hills under a FERC jurisdictional Joint Open Access Transmission Tariff (JOATT). Black Hills admits that the Westhill to Stegall line is used for the transmission of energy to Black Hills retail distribution system, but affirmatively states it has other uses, including network transmission service and firm point-to-point service under the JOATT.
9. With regard to Paragraphs 8 and 9 of the Complaint, Black Hills admits that, through Energy of Utah LLC, Fall River has filed a Form 556 Qualified Facility (QF) self – certification with the Federal Energy Regulatory Commission, which self-certification is located in FERC docket number QF18-630-000.
10. With regard to Paragraph 10 of the Complaint, Black Hills admits that Fall River has provided Black Hills with evidence of site control. Black Hills is without sufficient information to admit or deny the remaining allegations in Paragraph 10, and therefore denies the same.
11. With regard to Paragraph 11 of the Complaint, Black Hills admits that Fall River has communicated that it plans to construct the facility, so as to allow commercial operation in 2020. At this time, Black Hills is without sufficient information as to admit or deny the viability of such plans and thus denies the same.

12. Black Hills admits the allegations contained in Paragraph 12 of the Complaint.
13. With regard to Paragraph 13 of the Complaint, Black Hills admits that, unless otherwise exempted by 18 CFR Section 292.309 or 292.310 and absent a different agreement between an electric utility and a QF, PURPA's implementing regulations require Black Hills to purchase energy made available by a qualifying facility at a price no more than its "avoided cost." Black Hills further admits that the term "avoided cost" is defined as the incremental cost to the utility of electric energy, capacity or both which, but for the purchase from the QF, the utility would generate itself or purchase from another source. Black Hills further affirmatively states, however, that any avoided cost pricing, is subject to the requirement that rates remain just, reasonable, and in the public interest.
14. With regard to Paragraphs 14 and 15 of the Complaint, Black Hills admits that it has an obligation to negotiate an avoided cost rate and Power Purchase Agreement with a QF in good faith and in a manner that is not unreasonable or discriminatory toward the QF. Black Hills admits that, in December of 1982, the Commission issued an order on PURPA implementation in docket number F-3365. Black Hills denies that all of the conclusions and findings in that Order remain in effect today, unmodified and unchanged by subsequent orders. To the extent Fall River alleges failure to act in good faith, unreasonable action, discriminatory treatment, or intentional barriers to market entry, Black Hills specifically denies any and all such allegations.
15. Black Hills admits the allegations contained in Paragraph 16.
16. Black Hills admits the allegations contained in Paragraph 17.
17. With regard to Paragraph 18 of the Complaint, Black Hills admits that Fall River has submitted an interconnection request and has sought Network Resource Interconnection Service. Black Hills admits that, in its FERC Form 556, Fall River indicated that it intended to sell the entire output of its solar generating facility to Black Hills.
18. With regard to Paragraph 19 of the Complaint, Black Hills admits that the parties executed a non-disclosure agreement ("NDA"), but affirmatively states that contents of the NDA is a contractual document that speaks for itself.
19. With regard to Paragraph 20 of the Complaint, Black Hills admits that it has previously provided avoided cost pricing for other proposed solar QF's, and that in such instances different project-specific costs, considerations and methodologies were utilized, and resulted in different avoided cost pricing. Black Hills denies that the allegations in Paragraph 20 are in any way relevant to this proceeding.

20. With regard to Paragraph 21 of the Complaint, Black Hills admits that, as part of its obligation to negotiation in good faith, it appropriately provided avoided cost pricing to Fall River on April 27, 2018. Black Hills further states that the methodology it used is consistent with the methodology recently approved by the Commission *In the Matter of the Complaint by Consolidated Edison Development, Inc. Against Northwestern Corporation, DBA Northwestern Energy For Establishing a Purchase Power Agreement*. Docket EL 16-021, yielding an avoid cost of \$17.02 MWh for energy and capacity.
21. With regard to Paragraph 22 of the Complaint, Black Hills admits that on June 7, 2018, Fall River provided Black Hills with a proposed Solar Energy Purchase Agreement. Black Hills admits that it rejected any “offer” to enter into Solar Energy Purchase Agreement that did not align with Black Hills calculation of avoided costs in relation to the proposed facility. Black Hills denies the remaining allegations in Paragraph 22.
22. With regard to Paragraph 23 of the Complaint, Black Hills admits that on August 14, 2018, Fall River contacted Black Hills and represented that Fall River believed Black Hills’ avoided cost calculation was incorrect, that Fall River believed the correct calculation would yield an avoided cost of \$41.66 per MWh for energy and capacity, and included a seven day period for Black Hills to accept or reject its offer to enter into a Solar Energy Purchase Agreement on those terms. Black Hills is without sufficient information to admit or deny what methodology or data was utilized by Fall River in calculating the price referenced in Paragraph 23 and thus denies their allegation. Black Hills specifically denies that Fall River’s offer is representative of the utility’s avoided cost for energy and capacity, denies the remaining allegations in Paragraph 23 and places Fall River on its strict proof thereof.
23. With regard to Paragraph 24 of the Complaint, Black Hills admits that it requested an extension of time to respond to Fall River’s August 14, 2018 letter, admits that it continued to negotiate in good faith with Fall River, admits that it provided a new calculation of avoided costs based on more current and up to date information, and that the avoided cost rate it provided on August 29, 2018 was \$21.77 per MWh.
24. With regard to Paragraph 25 of the Complaint, Black Hills admits that Fall River rejected Black Hills updated avoided cost calculation and thereafter filed its Complaint.
25. With regard to Paragraph 26 of the Complaint, Black Hills denies that Fall River’s proposed \$41.66 per MWh represents Black Hills’ avoided cost under state and federal law. Black Hills affirmatively states that Fall River’s calculation appears inconsistent with Commission precedent, and would result in rates that are not just, reasonable or in the public’s interest. Black Hills further denies that a legally enforceable obligation was created on August 14, 2018.

26. With regard to Paragraph 27 of the Complaint, Black Hills admits that the Commission has jurisdiction to hear and resolve this dispute.
27. Black Hills denies each and every allegations, claim, statement or request for relief in Petitioner's "Request for Relief," including all of those contained in Paragraphs 1-6.

WHEREFORE, Black Hills seeks the following relief and/or action from the Commission.

1. That the Commission deny each and every one of Fall River's requests for relief;
2. That the Commission deny Fall River's request for an expedited hearing;
3. That the Commission establish a procedural schedule which that provides for Fall River's submittal of prefiled testimony, discovery on Fall River's Complaint and prefiled testimony, response testimony by Black Hills, discovery on Black Hills' testimony, reply testimony by Fall River, discovery on reply testimony, hearing briefing and oral argument;
4. That the Commission find Black Hills has utilized an appropriate methodology to determine avoided costs; and
5. And that the Commission grant such other and further relief as the Commission deems just and reasonable under the circumstances.

Dated this 4th day of October, 2018.

By: Cath M. Sh
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2018, I served the foregoing Black Hills Power, Inc.'s Answer to Energy of Utah, LLC and Fall River Solar, LLC's Complaint for Determination of Avoided Cost by email and by first class mail, postage prepaid, to the following:


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