

**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**

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STIPULATED PROTECTIVE ORDER

EL18-038

COME NOW the parties, by and through their respective counsel, and stipulate to the following Protective Order being entered by the South Dakota Public Utilities Commission (“Commission”) as to party documents that fall within the scope of this Order.

1. The word “documents” means all written, recorded or graphic matter whatsoever (in any format or medium, including but not limited to paper or electronic) including, but not limited to documents produced by a producing party to this action whether pursuant to Commission Rules, the South Dakota Rules of Civil Procedure, subpoena or by agreement.

2. The term “party” includes a party’s officers, employees, directors or attorneys, if any.

3. Any party or other person producing documents, testimony or information that contains confidential, proprietary, technical, scientific, trade secret, business, financial and/or any other information they deem confidential, which is not generally known and which the designating party would not normally reveal to third parties or would cause third parties to maintain in confidence, or information, the present disclosure of which would, in the good faith judgment of the designating party, be detrimental to (1) the designating party in the conduct of its business, including the security of any its facilities, (2) public safety, or (3) the privacy rights of individuals, or which is required to be maintained as confidential pursuant to any order, settlement, or other contractual agreement, may designate such documents, testimony and/or information as

“CONFIDENTIAL” and subject to this Order by typing or stamping on the front of the document, or on the portion(s) of the document for which confidential treatment is desired, “CONFIDENTIAL.” Designation of such material will also render confidential any copies, excerpts, summaries, or other disclosure of the substance or contents of such material. Documents so marked or identified and all information derived therefrom shall constitute "Confidential Material" and shall be treated in accordance with the terms of this Order.

4. All documents and every portion thereof so designated as described in paragraph 3 hereof, and produced pursuant to any discovery procedure or informal exchange of documents in this matter, shall be considered “Confidential” for purposes of this Order and shall only be used by the non-producing parties for the preparation for and conduct of proceedings herein and not for any business or other purpose whatsoever. However, the non-producing party may challenge the “Confidential” designation by (1) first attempting to informally resolve the designation dispute with counsel for the producing party within twenty (20) business days of such designation and production; and (2) if not informally resolved, then by filing an appropriate motion with the Commission within thirty (30) business days after such disputed designation and production. In any event, all documents shall be treated as Confidential until agreed otherwise or until the Commission issues an Order declaring that such documents shall not be considered Confidential.

5. Confidential Material, or any portion or summary thereof, may be given, shown, disclosed or communicated by the non-producing parties **without further written agreement to:**

- a. the attorneys of record for the parties;
- b. the members or employees of the law firms of the attorneys of record who are involved with the prosecution or defense of the litigation;
- c. Stenographic reporters, engaging in proceedings as are necessarily incident to the preparation for trial (e.g., depositions) and/or trial of this action;

- d. the parties to this litigation or directors, officers, managing agents, and employees of any party to this action;
- e. copying or scanning services;
- f. the Commission at any stage in this action, under seal or under such other safeguards as the Commission may require; and
- g. persons actually deposed or called to testify at any hearing or trial.
- h. any experts or consultants who are employed or retained by counsel for assistance in this litigation; and
- i. any arbitrator, mediator, or other alternative dispute resolution facilitator in front of whom the parties agree to appear or are ordered to appear.

6. No person to whom Confidential Material pursuant to this Order is furnished or disclosed shall copy or otherwise use the document or information for any purpose whatsoever, except in connection with pre-trial proceedings, preparation for trial, trial, or other proceedings associated with the above-captioned litigation.

7. Any party or attorney for a party furnishing documents or disclosing information pursuant to the terms of this Order shall not waive the Confidentiality thereof.

8. Any person receiving Confidential Material shall take reasonable precautions with regard to storage, custody, and use to prevent the unauthorized or inadvertent disclosure of any Confidential Material.

9. Confidential Materials may be used to examine or cross-examine any witness at any hearing or deposition. The intention of the parties is that closer to trial, a separate agreement will be reached as to the handling of Confidential Material at hearing or trial, or an Order from the Commission will be obtained as to trial proceedings. To the extent that any other person is present at such hearing or deposition and is not a person to whom the Confidential Material may

be disclosed, and subject to any agreement or order from the Commission, there shall be no disclosure of the Confidential Material unless and until all such persons are excluded from the proceeding during the disclosure or use of the material. Every court reporter taking any testimony relating to Confidential Material shall be informed of this Order and shall adhere to the provision hereof.

10. In the case of depositions, designation of a portion of the transcript (including exhibits) that contains Confidential Material shall be made by a statement to such effect on the record during the course of the deposition, or within ten (10) business days after the transcript becomes available. Pending the expiration of such ten-day period, transcripts shall be treated as Confidential Material in their entirety. If the designation is made during a deposition with regard to only a portion of the deposition, the reporter attending such deposition shall thereafter bind the transcript thereof and separate portions containing Confidential Material, and the reporter shall place the appropriate legend on the cover of the confidential portions of the transcripts. Notwithstanding the foregoing, counsel retains the right to designate the entire deposition transcript as confidential. If the designation is made after receipt of the transcript of the deposition, all parties shall be notified, in writing, of the pages that are to be treated as confidential. (The parties may modify this procedure for any particular deposition through agreement of all parties attending such deposition, as reflected on the record of such deposition without further order by the Commission.)

11. If any Confidential Material or depositions containing Confidential Material is (are) to be filed or otherwise presented to the Commission by either party in a manner that requires its inclusion in the Commission's filing system, unless the parties agree otherwise, such document shall be handled consistent with the Commission's rules and procedures for filing confidential documents or information. This paragraph, shall not prevent the use of any Confidential Material

in connection with mediation, facilitation, motions, or other Commission-ordered proceedings, provided that the use of the documents/information is in accordance with this Order.

12. The failure to designate information in accordance with this Protective Order or the failure to object to a designation at or within a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or challenge the propriety thereof. Any document not designated as Confidential Material shall not be covered by this Protective Order, provided, however, that inadvertent production of any document without a designation of "Confidential" shall not waive a party's claim of confidentiality as to such document, and the producing party may within 30 days after discovery of the inadvertent production designate the same as "Confidential." Disclosure by any party or non-party of such matter prior to notice by the producing party of the confidential nature thereof shall not be deemed a violation of this Order.

13. Promptly after final termination of this action by judgment, settlement, or otherwise, all Confidential Material produced under the terms of this Protective Order, including all copies thereof and all documents incorporating such information, except all pleadings filed with the Commission, all exhibits marked in discovery, and materials which, in the judgment of the attorney in possession of the materials, are work product materials, shall be returned to the counsel for the producing party, or alternatively the receiving party must provide certification to the producing party that all such materials have been destroyed. The above-described pleadings, exhibits, and work product materials may be retained in confidence under the terms of this Protective Order by outside counsel for the party.

14. This Order shall in no way affect or impair the right of any party or person to raise or assert any defense or objection, including, but not limited to, defenses or objections to the discovery or production of documents or information, and to the use or admissibility at any

hearing of any evidence, whether or not comprised of documents or information governed by this Order.

15. This Order is without prejudice to the right of any party to seek relief from the Commission from any of the restrictions provided above upon good cause shown or for any other grounds provided by applicable law.

16. After the termination of this action, this Order shall continue to be binding upon the parties hereto and all persons to whom designated Confidential Material has been disclosed or communicated.

17. If any party covered by this Order at any time applies to the Commission for relief from any provision of this Order, or if the parties jointly petition the Commission for a modification hereof, the Commission may provide appropriate relief from this Order, including, but not limited to, modifying the terms hereof.

WHEREFORE, counsel for the respective parties stipulates that the Commission may enter this Protective Order as to documents described herein in this stipulation, and for such other and further relief as the Commission deems just and proper.

IT IS SO ORDERED THIS ____ day of _____, 2019.

BY ORDER OF THE COMMISSION:


GARY HANSON, Chairman

CHRIS NELSON, Commissioner

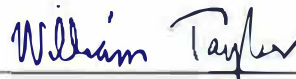
KRISTIE FIEGEN, Commissioner

AGREED AND APPROVED:

DATED: 19 June 2019

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