

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE FILING BY)
BLACK HILLS POWER, INC DBA)
BLACK HILLS ENERGY FOR) **AMENDMENT TO SETTLEMENT**
APPROVAL OF A RENEWABLE) **STIPULATION**
READY SERVICE TARIFF AND)
TARIFF REVISIONS TO ITS ENERGY)
COST ADJUSTMENT Docket No. EL18-060

It is hereby stipulated and agreed by and among Black Hills Power, Inc. d/b/a Black Hills Energy (“Applicant” or “Black Hills Power”), Walmart, Inc. (“Walmart”) and Staff of the South Dakota Public Utilities Commission (“Staff”) (jointly “Party” or “Parties”), that the following Amendment (“Amendment”) to the Settlement Stipulation executed by and between the Parties on June 17, 2019 (the “Stipulation”) may be adopted by the South Dakota Public Utilities Commission (the “Commission”) in the above captioned matter.

I. INTRODUCTION

On December 17, 2018, Black Hills Power filed an Application with the Commission requesting approval to implement a new Renewable Ready Service tariff and associated revisions to its Energy Cost Adjustment tariff. The Renewable Ready Service tariff is available to commercial retail customers with an aggregate usage of 300,000 kWh or more per year and governmental accounts desiring renewable energy.

On December 20, 2018, the Commission noticed the Application with an intervention deadline of January 4, 2019. On February 11, 2019, Walmart filed a Petition to Intervene, which was granted by the Commission on March 7, 2019. Subsequently, the Company, Walmart, and Commission Staff agreed to a Settlement Stipulation, which resolved all of the issues in the docket. On June 18, 2019, a Joint Motion for Approval of Settlement Stipulation and Settlement Stipulation was filed with the Commission. The Commission voted unanimously to grant the Joint Motion for Approval of the Settlement Stipulation at its regularly scheduled open meeting on June 25, 2019.

On November 1, 2019, Black Hills Power filed an Application with the Commission to amend its Renewable Ready tariff. The Application requested a change to the Renewable Ready Generating Capacity section of the tariff to allow for a 12.5 MW expansion of the Corriedale

Project, due to the strong interest in Black Hills Power's Renewable Ready Service program. In order to effectuate the proposed amendment to the Renewable Ready Service tariff, Black Hills Power and Cheyenne Light, Fuel and Power Company filed a notice with the Wyoming Public Service Commission on November 14, 2019, requesting a determination that a Certificate of Public Convenience and Necessity is not required to expand the Corriedale Project from 40 MW to 52.5 MW (the "WYPSC Notice"). With the 12.5 MW expansion, Black Hills Power's undivided interest in the Corriedale Project will increase from 50% to approximately 62%. The Parties worked together to come to agreement that the Corriedale Project expansion of 12.5 MW, from 40 MW to 52.5 MW, is in the best interest of customers. Therefore, the Parties offer this Amendment set forth below.

Any provision of the Settlement Stipulation not specifically addressed by this Amendment shall remain in full force and effect.

Upon execution of this Amendment, the Parties shall file it with the Commission together with a joint motion requesting that the Commission issue an order approving this Amendment in its entirety without condition and modification.

II. GENERAL PROVISIONS

1. This Amendment is submitted with the condition that in the event the Commission imposes any material changes in or conditions to this Amendment that are unacceptable to either Party, this Amendment may, at the option of any Party, be withdrawn and shall not constitute any part of the record in this proceeding or any other proceeding, nor be used for any other purpose.
2. This Amendment shall become binding upon execution by the Parties, provided however, that if this Amendment does not become effective in accordance with Paragraph 1 above, it shall be null, void, and privileged. Further, if the Wyoming Public Service Commission does not timely grant the WYPSC Notice on terms acceptable to Black Hills Power, this Amendment shall be null, void, and privileged. This Amendment is intended to relate only to the specific matter referred to herein; no Party waives any claim or right, which it may otherwise have, with respect to any matter not expressly provided for herein.
3. The terms and conditions contained in this Amendment shall inure to the benefit of and be binding upon the respective successors, affiliates, owners, stockholders, partners, parents, subsidiaries, directors, officers, agents, employees, representatives, attorneys,

and assigns of the Parties. In addition, the terms and conditions of this Amendment, including all facts leading up to the signing of this Amendment, shall bind the Parties, including consultants, contractors and retained professionals.

4. This Amendment shall be interpreted and construed in accordance with the laws of the State of South Dakota.

5. This Amendment may be executed by electronic mail or facsimile and in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

III. TERMS AND CONDITIONS OF THE AMENDMENT

1. **Subscription Level Guarantee.** During the first fifteen years (years 1-15) following commercial operation of the Corriedale Project (52.5 MW), Black Hills Power will guarantee annual subscription revenue under the Renewable Ready Service Tariff up to \$2.32 million at each rate review, subject to the subscription revenue included in the rate review period. This level of guarantee equates to approximately 75% of the Black Hills Power's levelized revenue requirement for its 32.5 MW share of the project. If subscription or assigned subscription revenue in the rate review period is less than \$2.32 million, Black Hills Power will include an annual revenue credit equal to the \$2.32 million guarantee less test period subscription revenue for the total company including its South Dakota, Montana, and Wyoming jurisdictions.

Beginning on the fifteenth anniversary of the commercial operation date of the Corriedale Project (52.5 MW) and continuing through the twenty-fifth anniversary of the commercial operation date (years 16-25), Black Hills Power will guarantee annual subscription revenue under the Renewable Ready Service Tariff up to \$2.78 million at each rate review, subject to the subscription revenue included in the rate review period. This level of guarantee equates to approximately 90% of the Black Hills Power's levelized revenue requirement for its 32.5 MW share of the project. If subscription or assigned subscription revenue in the rate review period is less than \$2.78 million, Black Hills Power will include an annual revenue credit equal to the \$2.78 million guarantee less test period subscription revenue for the total company including its South Dakota, Montana, and Wyoming jurisdictions. Black Hills Power reserves the right to demonstrate in any subsequent rate review that guarantee amounts are not necessary due to other program or Corriedale Project benefits, even if the program is not fully subscribed.

2. **Corriedale Project Cost Cap.** For rate-making purposes, Black Hills Power is subject to a "soft" cost cap of \$75 million and a "hard" cost cap of \$82.5 million for the Corriedale Project (52.5 MW). The estimate of \$75 million for the construction of the Corriedale Project is reasonable, prudent and in the public interest. Staff and Walmart will not challenge the prudence or recovery of costs of the Corriedale Project in the next general rate review for Black Hills Power up to Black Hills Power's ownership portion of the \$75 million estimate. Black Hills Power will not be allowed recovery of any Corriedale Project costs that exceed its ownership portion of \$82.5 million in its next general rate review. Staff and Walmart reserve their right to challenge, and Black Hills Power reserves its right to defend, any Corriedale Project costs, between \$75 million and \$82.5 million. Any challenge of costs by Staff or Walmart will be limited to the prudence of costs in excess of the estimated costs.

The proposed caps of \$75 million and \$82.5 million shall not apply to any costs that are the result of (1) a change in law; or (2) an event that is beyond the reasonable control of Cheyenne Light and Black Hills Power and third-parties contracted with on the Corriedale Project, including contractors, vendors, and suppliers ("Project Contractors"). An event that is beyond the reasonable control of Cheyenne Light and Black Hills Power and Project Contractors will be defined as a force majeure event as set forth in the applicable agreement(s) that are associated with the Corriedale Project entered into between Cheyenne Light and/or Black Hills Power and Project Contractors and any change in steel tariffs or laws occurring after the date of the original Corriedale Project Wyoming CPCN application which impact the price, availability or quality of materials necessary for the Corriedale Project. These costs will be clearly identified, calculated and explained in any future rate proceeding in which their recovery is requested.

3. **Production Tax Credits.** Black Hills Power shall bear the risks related to any construction delays of the Corriedale Project (52.5 MW) that result in the project not qualifying for Production Tax Credits ("PTCs"). To the extent the Corriedale Project fails to qualify for PTCs, in whole or in part, PTCs will be imputed at the PTC value that would have been in effect had the entire Corriedale Project been in service on December 31, 2020. The imputed PTC value will be included in the determination of the revenue requirement for any subsequent rate review (including full gross up for federal and other applicable taxes). No imputed value for PTCs will be made if the failure to qualify is the result of either: 1) a change in law; or 2) an event that is beyond the reasonable control of Black Hills Power and Cheyenne Light and third-parties

contracted with on the Corriedale Project, including contractors, vendors, and suppliers ("Project Contractors"). An event that is beyond the reasonable control of Black Hills Power, Cheyenne Light, and Project Contractors will be defined as a force majeure event as set forth in the applicable agreement(s) that are associated with the Corriedale Project entered into between Black Hills Power and/or Cheyenne Light and Project Contractors. This will not include any instance where Black Hills Power and Cheyenne Light fail to make all commercially reasonable efforts to obtain approval of PTCs, including the pursuit of an excusable disruption under federal tax rules.

Dated this 18th day of November, 2019.

Black Hills Power, Inc. d/b/a Black Hills Energy

By: Kyle D. White
Its: V.P. Regulatory Strategy

Walmart, Inc.

By: [Signature]
Its: Attorney

Public Utilities Commission Staff

By: Tristin Edwards
Its: Staff Attorney