

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

**IN THE MATTER OF THE FILING BY
BLACK HILLS POWER, INC. DBA BLACK
HILLS ENERGY FOR APPROVAL OF A
RENEWABLE READY SERVICE TARIFF
AND TARIFF REVISIONS TO ITS ENERGY
COST ADJUSTMENT**

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**SETTLEMENT STIPULATION
EL18-060**

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

In its support of its Application, the Applicant hereby offers this Stipulation, and the Application, along with its testimony and exhibits, filed on December 17, 2018. The Parties offer no answering testimony or exhibits, conditioned upon the Commission accepting the following Stipulation and the Terms and Conditions without any material condition or modification.

I. INTRODUCTION

Black Hills is requesting Commission approval of a new tariff to serve commercial retail customers with an aggregate usage of 300,000 kWh or more per year and governmental accounts desiring renewable energy. Black Hills does not currently have a tariff designed to serve customers with renewable energy and this request is made in response to customer interest and requests for renewable energy. The renewable energy used to serve customers under the proposed Renewable Ready Service Tariff will be obtained from the proposed Corriedale Project, to be built near Cheyenne, Wyoming.

II. PURPOSE

This stipulation has been prepared and executed by the Parties for the sole purpose of resolving Docket EL18-060. In consideration of the mutual promises hereinafter set forth, the Parties agree as follows:

1. Upon execution of this Stipulation, the Parties shall file this Stipulation with the Commission together with a joint motion requesting that the Commission issue an order approving this Stipulation in its entirety without condition or modification.
2. This Stipulation includes all terms and conditions of the settlement and is submitted with the condition that, in the event the Commission imposes any material changes or

conditions to this Stipulation which are unacceptable to any Party, this Stipulation 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.

3. This Stipulation shall become binding upon execution by the Parties, provided however, that if this Stipulation does not become effective in accordance with Paragraph 2 above, it shall be null, void, and privileged. Further, if the Corriedale Project application for a certificate of public convenience and necessity ("CPCN") and/or the Renewable Ready Service Tariff application for Cheyenne Light, Fuel and Power Company ("Cheyenne Light") are not approved by the Wyoming Commission, the Stipulation shall be null, void, and privileged. This Stipulation 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. No Party or a representative thereof shall directly or indirectly refer to this Stipulation as precedent in any other current or future proceeding before the Commission.
4. The Parties to this proceeding stipulate that all pre-filed testimony, exhibits, and responses to Staff data requests will be made a part of the record in this proceeding. The Parties understand that if this matter had not been settled, the Parties would have filed direct and rebuttal testimony.
5. The terms and conditions contained in this Stipulation 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 Stipulation, including all facts leading up to the signing of this Stipulation, shall bind the Parties, including consultants, contractors and retained professionals.
6. This Stipulation constitutes the entire agreement between the Parties and shall be deemed to supersede any other understanding or agreements, whether written, oral, expressed or implied, relating to the Application. This Stipulation may not be amended, modified, or supplemented, and waivers or consents to departures from the terms and conditions of this Stipulation may not be given without the written consent thereto executed by all Parties.
7. This Stipulation shall be interpreted and construed in accordance with the laws of the State of South Dakota.
8. This Stipulation 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 SETTLEMENT STIPULATION

1. **Subscription Level Guarantee.** During the first fifteen years following commercial operation of the Corriedale Project (years 1-15), Black Hills will guarantee annual subscription revenue under the Renewable Ready Service Tariff up to \$1.425 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' levelized revenue requirement for the project. If subscription or assigned subscription revenue in the rate review period is less than \$1.425 million, Black Hills will include an annual revenue credit equal to the \$1.425 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 and continuing through the twenty-fifth anniversary of the commercial operation date (years 16-25), Black Hills will guarantee annual subscription revenue under the Renewable Ready Service Tariff up to \$1.710 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' levelized revenue requirement for the project. If subscription or assigned subscription revenue in the rate review period is less than \$1.710 million, Black Hills will include an annual revenue credit equal to the \$1.710 million guarantee less test period subscription revenue for the total company including its South Dakota, Montana, and Wyoming jurisdictions.

Black Hills 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 is subject to a "soft" cost cap of \$57 million and a "hard" cost cap of \$63 million for the Corriedale Project. The estimate of \$57 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 up to Black Hills' ownership portion of the \$57 million estimate. Black Hills will not be allowed recovery of any Corriedale Project costs that exceed its ownership portion of \$63 million in its next general rate review. Staff and Walmart reserve their right to challenge, and Black Hills reserves its right to defend, any Corriedale Project costs, between \$57 million and \$63 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 \$57 million and \$63 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 shall bear the risks related to any construction delays of the Corriedale Project 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 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, 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 and/or Cheyenne Light and Project Contractors. This will not include any instance where Black Hills 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.

4. **Black Hills Wyoming Tariff.** Black Hills will file an application with the Wyoming Public Service Commission for approval of a Renewable Ready Service Tariff for its Wyoming customers. The terms of this proposed tariff will be similar to that proposed in Black Hills' South Dakota Renewable Ready Service Tariff application. For purposes of future South Dakota jurisdictional revenue requirement determinations, the revenues from Renewable Ready subscribers shall not be directly assigned to the state jurisdiction where originated, but instead shall be allocated consistent with the general allocation of the Corriedale Project as determined in future rate reviews. If the subscriber revenue guarantee is being utilized to support the Corriedale Project revenue requirement, then any revenue credit required under the guarantee shall be allocated as if it were subscriber revenue.
5. **Fixed Cost Recovery Proposal.** Prior to July 1, 2020, Black Hills shall prepare a proposal for reasonably addressing the under-recovery of fixed costs which occurs when customers elect to install behind-the-meter generation for Staff's consideration, review, and input. Staff and Black Hills will work together to determine appropriate next steps regarding the proposal, which may include a filing with the Commission.
6. **Related Wyoming Dockets.** The parties agree this Stipulation is conditioned on Cheyenne Light and Black Hills receiving an acceptable approval of the pending Cheyenne Light Renewable Ready Service Tariff and the Corriedale Project CPCN from the Wyoming Public Service Commission. If Cheyenne Light, Black Hills and the Wyoming Office of Consumer Advocate reach a stipulation in the consolidated Renewable Ready Service Tariff and Corriedale Project docket, any more favorable terms in that stipulation will be incorporated into this Stipulation with the South Dakota

Commission Staff. This incorporation will be made through an amendment to the Stipulation agreement that will be presented to the Commission for approval. Whether a term is more favorable will be determined by Staff.

Dated this 17th day of June, 2019.

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

By: *Lytle D. White*
Its: *V.P. Regulatory Strategy*

Walmart, Inc.

By: *[Signature]*
Its: *Attorney*

Public Utilities Commission Staff

By: *Trista Edwards*
Its: Staff Attorney