

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF BLACK HILLS)
POWER, INC. d/b/a BLACK HILLS) **Docket EL19-028**
ENERGY PETITION FOR APPROVAL OF)
DEFERRED ACCOUNTING TREATMENT)
FOR SD SUN PROJECT TRANSACTION)
AND DEVELOPMENT COSTS)

**BLACK HILLS POWER, INC. d/b/a BLACK HILLS ENERGY’S OBJECTION TO
PETITION TO INTERVENE**

Black Hills Power Inc. d/b/a Black Hills Energy (“Black Hills Power”), through undersigned counsel submits its Objection to Fall River Solar, LLC’s (“Fall River Solar”) Petition to Intervene. In support of this Objection, Black Hills Power states as follows:

Background

On July 31, 2019, Black Hills Power filed its Petition requesting the approval of the South Dakota Public Utilities Commission (the “Commission”) to begin the amortization of costs related to the acquisition of the SD Sun Projects. On August 14, 2019, Fall River Solar filed a petition to intervene asserting it had a pecuniary interest in the outcome of this docket. Fall River Solar is not presently a customer of Black Hills Power, but states that it is developing a solar energy generating facility that once built, will be located within the Black Hills Power service territory. *See Petition to Intervene*, Paragraph 4. Fall River Solar states that it will purchase electricity from Black Hills Power during construction and operation of its proposed solar facility, and that it will therefore become a Black Hills Power customer at some point in the future. *See Petition to Intervene*, Paragraph 6. Fall River Solar is incorrect in this assertion. Its proposed facility is located in Black Hills Electric Cooperative’s service territory, and therefore will not be served by Black Hills Power. *See Exhibits A – D.*

Standard

In a proceeding before the Commission, the standard for intervention is set forth in SDCL

§ 1-26-17.1:

A person who is not an original party to a contested case and whose pecuniary interests would be directly and immediately affected by an agency's order made upon the hearing may become a party to the hearing by intervention, if timely application therefor is made.

ARSD 20:10:01:15:05 provides that a petition to intervene shall be granted:

. . . if the petitioner shows that the petitioner is specifically deemed by statute to be interested in the matter involved, that the petitioner is specifically declared by statute to be an interested party to the proceeding, or that by the outcome of the proceeding the petitioner will be bound and affected either favorably or adversely with respect to an interest peculiar to the petitioner as distinguished from an interest common to the public or to the taxpayers in general.

Under SDCL § 1-26-17.1 and ARSD 20:10:01:15:05 “the Commission has the authority to both deny intervention as a party for failure of the petitioner to make a sufficient showing of pecuniary interest to the petitioner and also to dismiss an intervenor party...if the requisite pecuniary interest of the intervening party cease[s] to exist.”¹

Analysis

In order to have standing to intervene, Fall River Solar must have a distinguishable pecuniary interest that would be “directly and immediately” affected by the outcome of this docket. *See*, SDCL § 1-26-17.1. Fall River Solar's claimed interest in this docket is the planned development of a solar generating facility they claim will be located within the Black Hills Power service territory. Fall River Solar states in its petition that it intends to begin construction

¹ *In the Matter of the Establishment of Switched Access Revenue Requirement for Interstate Telecommunications Coop., Inc.*, No. TC02-053, 2003 WL 26640464, at *3 (Sept. 9, 2003).

in 2020 and “[d]uring construction and operation its project Fall River [Solar] will purchase electricity from Black Hills [Power] and will be a Black Hills [Power] ratepayer.” *See Petition to Intervene*, paragraph 6.

Utilizing the publicly recorded lease agreement related to the proposed Fall River Solar development, Black Hills Power verified that the location of the proposed Fall River solar project and all of the surrounding area is within the service territory of Black Hills Electric Cooperative, Inc. and not Black Hills Power. *See Exhibit A, Memorandum of Lease and Easement for a Solar Energy Project, and Exhibit B, the Affidavit of Ken Meirose. See also, Exhibit C, the Commission’s South Dakota Electric Territory Map² and Exhibit D, Commission’s list of utilities serving South Dakota towns.³ Black Hills Electric Cooperative, Inc. is not affiliated with Black Hills Power and the outcome of this docket will have no impact on customers of Black Hills Electric Cooperative, Inc. If the planned development comes to fruition, Fall River Solar will purchase electricity from and be a customer of Black Hills Electric Cooperative, Inc. The outcome of this docket will have no effect on Fall River Solar and, therefore, it has no pecuniary interest in the docket.*

Further, even if Fall River Solar had designated a planned development location within the Black Hills Power service territory, the possibility of a future interest as a future customer is not enough to establish standing in this docket. The Commission has held that “[s]ome concrete showing of current proximate interest is required as a condition of permitting [a party] to maintain its status as an intervenor party.”⁴ The Commission has held that an interest that is

² <http://arcgis.sd.gov/server/PUC/ElectricServiceTerritories/>

³ <http://puc.sd.gov/commission/Publication/utilitiesservinglist.pdf>, at page 7.

⁴ *In the Matter of the Establishment of Switched Access Revenue Requirement for Interstate Telecommunications Coop., Inc.*, No. TC02-053, 2003 WL 26640464, at *4 (Sept. 9, 2003) (Emphasis added).

theoretical or speculative in nature will not meet the test for standing as an intervenor.⁵ *In the Matter of the Establishment of Switched Access Revenue Requirement for Interstate Telecommunications Cooperative, Inc.*, the Commission found that S & S, a switch-based interexchange telecommunications carrier, did not have a peculiar interest as opposed to the general public. In that decision, the Commission stated:

S&S's mere assertion that it is offering telecommunications assets for sale which might possibly be sold to a person who does not now, but might desire to, provide intrastate interexchange services in South Dakota and who might theoretically have concerns about the Company's switched access revenue requirement is too speculative to meet the test for proof of standing as an intervenor and is not a sufficient showing of interest peculiar to S & S, as opposed to an interest common to the public at large, to justify S & S's intervenor party status in this proceeding.⁶

In this matter, Fall River Solar has yet to begin construction on the project they rely upon to support standing in this docket. Whether Fall River Solar has an interest in this docket is speculative and, as such, insufficient to meet the Commission's standard for intervention.

Conclusion

Fall River Solar asserts it should be allowed to intervene in this docket as it has a planned development within the service territory of Black Hills Power that will make it a customer of the utility sometime in 2020. However, Fall River Solar is mistaken on service territory lines. The proposed development is within the service territory of a different, non-affiliated utility. Further, even if the development was planned for a location within the Black Hills Power service territory, Fall River Solar's petition to intervene fails to meet the test for standing as it has no current, proximate interest.

⁵ *Id.*

⁶ *Id.*

WHEREFORE, Black Hills Power respectfully requests the Commission enter an order denying Fall River Solar's petition to intervene.

Dated this 24th day of September, 2019.



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CERTIFICATE OF SERVICE

I certify that on this 24th day of September, 2019, the foregoing document was filed in the docket and served on the following:

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