

**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 COST)**

**ORDER APPROVING
STIPULATION AND
CANCELLING MOTION
HEARING**

EL18-038

On September 14, 2018, Energy of Utah, LLC and Fall River Solar, LLC (Fall River) filed with the South Dakota Public Utilities Commission (Commission) a Complaint Against Black Hills Power Inc. dba Black Hills Energy (Black Hills Energy) for Determination of Avoided Cost. Fall River is developing a solar energy generating facility near Oelrichs in Fall River County, South Dakota, that will have an anticipated capacity of 80 megawatts and a design life of at least twenty years (Project). The Project is a Qualifying Small Power Production Facility as defined in the Public Utilities Regulatory Policies Act of 1978, 16 U.S.C § 824a-n (PURPA). Fall River disputes the energy and capacity price Black Hills Energy offered as its avoided cost to Fall River for the energy and capacity Black Hills Energy is obligated to purchase from the Project under PURPA.

On September 20, 2018, the Commission electronically transmitted notice of the filing and the intervention deadline of October 5, 2018, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv.

On October 4, 2018, the Commission received Black Hills Energy's Answer to Fall River's Complaint for Determination of Avoided Costs.

On December 19, 2018, the Commission received Commission staff's (staff) Motion for Procedural Schedule.

On March 22, 2019, Fall River filed direct testimony and exhibits.

On April 9, 2019, the parties submitted a stipulated procedural schedule which was amended on April 25, 2019.

On May 7, 2019, Black Hills Energy filed direct testimony and exhibits.

On May 30, 2019, Fall River filed a Motion for Order Compelling Responses to Discovery Requests (Motion to Compel). On June 17, 2019, the Commission granted the Motion to Compel for those discovery requests enumerated in staff's memo under the column heading of granted, with the inclusion of numbers 111, 112, and 113, and the exception of number 75.

On June 25, 2019, the parties submitted a Proposed Stipulated Protective Order which was granted by the Commission on June 26, 2019. Staff filed Pre-filed Testimony and Exhibits on August 8, 2019.

On August 12, 2019, Fall River filed a Notice of Deposition Pursuant to SDCL 15-6-30(b)(6), naming Black Hills Energy as a deponent and requesting Black Hills Energy designate one or more persons to testify on its behalf with respect to 13 inquiries. On September 25, 2019, Black Hills Energy filed a Motion to Quash Portions of Fall River's Notice of Deposition Pursuant

- a. shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and
- b. shall not discriminate against qualifying co-generators or qualifying small power producers.

No such rule prescribed under subsection (a) of this section shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy."

16 U.S.C § 824a-3 defines "incremental cost to the electric utility of alternative electric energy" as follows:

"incremental cost of alternative electric energy" means, with respect to electric energy purchased from a qualifying co-generator or qualifying small power producer, the cost to the electric utility of the electric energy which, but for the purchase from such co-generator or small power producer, such utility would generate or purchase from another source.

The FERC rules set forth in 18 C.F.R. Part 292 set forth the standards for the Commission's determination of avoided cost.

It is therefore

ORDERED, that pursuant to the parties' stipulation, a hearing on Fall River Solar's Objections and Motion to Strike Certain Testimony and Black Hills Energy's Motion for Partial Summary Judgment will be held by the Commission at its regularly scheduled meeting on July 23, 2020, beginning at 1:30 p.m., CDT in Room 413 of the Capitol Building, 500 E. Capitol Ave., Pierre, South Dakota. It is further

ORDERED, that the July 8, 2020, motion hearing is cancelled.

Dated at Pierre, South Dakota, this 29th day of June 2020.

<p>CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.</p> <p>By: <u>Adam DeHueck</u></p> <p>Date: <u>6/29/20</u></p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

Gary Hanson

GARY HANSON, Chairman

Chris Nelson

CHRIS NELSON, Commissioner

Kristie Fiegen

KRISTIE FIEGEN, Commissioner