

**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
SETTLEMENT STIPULATION**

EL18-038

Procedural Background

On September 14, 2018, Energy of Utah, LLC and Fall River Solar, LLC (collectively "Fall River") filed a Complaint against Black Hills Power, Inc., dba Black Hills Energy ("Black Hills Energy") for Determination of Avoided Cost with the South Dakota Public Utilities Commission ("Commission"). 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 (the "Project"). The Project is certified as a Qualifying Facility under the Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. §824a-n (PURPA), as amended. In its Complaint, Fall River disputed the rate Black Hills Energy had calculated as its avoided cost for the energy and capacity generated by the Project.

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 Pre-filed Direct Testimonies and Exhibits.

On April 9, 2019, the Parties submitted a Stipulation for Procedural Schedule, which was amended on April 25, 2019.

On May 7, 2019, Black Hills Energy filed Pre-Filed Direct Testimonies and Exhibits.

On May 30, 2019, Fall River filed a Motion for Order Compelling Responses to Discovery Requests (Motion to Compel). Staff filed a response to that motion on June 5, 2019 and Black Hills Energy filed its response on June 6, 2019. 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 19, 2019, the Parties filed a Second Amended Stipulation for Procedural Schedule.

On June 25, 2019, the Parties submitted a Proposed Stipulated Protective Order which was granted by the Commission on June 26, 2019.

On August 9, 2019, Staff filed Pre-filed Direct Testimony and Exhibits.

On August 12, 2019 Fall River filed a Notice of Deposition Pursuant to SCL 15-6-30(b)(6), naming Black Hills Energy as a deponent and requesting that 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 to SDCL 15-6-30(b)(6) and for Protective Order (Motion to Quash and Protect). The Motion to Quash and Protect specifically applied to topics 2, 5(a), 5(b), 5(c), 5(e), 6, 7 and 8 of Fall River's Notice of Deposition. On October 18, 2019, the Commission granted the Motion to Quash and Protect for topics 5(a), 5(b), 6, 7 and 8 and denied the Motion to Quash for topics 2, 5(c) and 5(e).

On January 30, 2020, Black Hills Energy submitted Pre-filed Rebuttal Testimonies and Exhibits.

On March 16, 2020, Black Hills Energy filed a motion for Order Compelling Responses to Discovery Requests and For Extension of Pre-Hearing Motion Deadline.

On April 1, 2020, the Parties filed a Stipulation and Joint Motion for continuance of Procedural Schedule. That day, the Commission issued an Order Granting Stipulation and Joint Motion for Continuance of Procedural Schedule.

On April 30, 2020, Black Hills Energy filed a motion to Continue Administrative Hearing and Scheduling Order and Staff filed Supplemental Testimony and Exhibits.

On May 8, 2020, Fall River submitted Objections and Motions to Strike Certain Testimony.

On May 13, 2020, the Commission issued an Order Granting Motion to Continue Administrative Hearing and Scheduling Order.

On June 9, 2020, the Parties filed a Stipulation for Continuance of Procedural Schedule setting the deadline to file prehearing motions and Black Hills Energy's Response to Fall River's Objections and Motion to Strike Certain Testimony to June 17, 2020 with motions to be heard on July 8, 2020; witness and exhibit lists to be exchanged on July 13, 2020, and an evidentiary hearing to be held on August 5-6, 2020.

In accordance with the June 9, 2020, stipulated schedule, Black Hills Energy filed a response to Fall River Solar's Objections and Motion to Strike Certain Testimony and a Motion for Partial Summary Judgment on June 17, 2020.

On June 19, 2020, the commission issued an Order for and Notice of Motion Hearing, for July 8, 2020.

On June 29, 2020, the Parties filed a Stipulation to Reset Argument on Motions. On the same day, the Commission issued an Order Approving Stipulation and Cancelling Motion Hearing, directing the argument on motions set for July 8, 2020 be reset to July 23, 2020.

On July 15, 2020, the Parties filed a Stipulation to Set Aside Procedural Schedule and Continue Pre-Hearing and Administrative Hearing Dates ("July 15, 2020 Stipulation") agreeing that the procedural schedule could be set aside, the July 23, 2020 motions hearing could be

continued until further notice, and the administrative hearing scheduled to occur on August 5-6, 2020 should be taken off the calendar. The July 15, 2020 Stipulation provided that Fall River and Black Hills Energy had reached a settlement in principle, but the settlement in principle "was conditioned on the culmination of certain definitive agreements and approvals." The July 15, 2020 Stipulation also indicated that Fall River, Black Hills Energy and Staff would be working in good faith to culminate those definitive agreements.

On July 15, 2020, the Commission issued an Order Approving Stipulation and Cancelling Motion Hearing and Administrative Hearing.

On August 12, 2020, Fall River, Black Hills Energy, and Staff filed a Joint Motion for Approval of a Settlement Stipulation, and a Settlement Stipulation. The Settlement Stipulation was filed in a public and non-public version. The Settlement Stipulation is a negotiated, disputed fact, and disputed claim settlement. The Parties have represented that the Settlement Stipulation resolves all of the matters in dispute in *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*, Docket EL18-038, subject to Black Hills Energy and Fall River entering into a Power Purchase Agreement and Large Generator Interconnection Agreement as considered in the Settlement Stipulation.

On August 14, 2020, Staff filed a Memorandum Supporting Settlement Stipulation

Order

The Commission has jurisdiction over this matter pursuant to 16 U.S.C. Chapter 12, §824a-3, 18 C.F.R. Part 292, and SDCL Chapters 1-26 and 49-34A, specifically 49-34A-93.

16 U.S.C. §824a-3(a) requires the Federal Energy Regulatory Commission ("FERC") to promulgate rules "to encourage cogeneration and small power production ..., which rules require electric utilities to offer to ... (2) purchase electric energy from such facilities." Under 16 U.S.C. §824a-3(f), following FERC's promulgation of such rules, "each State regulatory authority shall, after notice and opportunity for public hearing, implement such rule (or revised rule) for each electric utility for which it has ratemaking authority." Pursuant to 16 U.S.C. §824a-3(b), "rates for such purchases-

- 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(d) 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 in 18 C.F.R. Part 292 set forth the standards for the Commission's determination of avoided cost.

The Commission, having reviewed the Settlement Stipulation, heard the arguments of the Parties, and reviewed the record to the extent it deems necessary and appropriate, finds that the settlement embodied in the Settlement Stipulation complies with PURPA as it has been negotiated between Black Hills Energy and Fall River and is based on a thorough and good faith analysis and is supported by Staff.

It is therefore ORDERED that the Settlement Stipulation and the settlement embodied therein is in all respects approved.

It is further ORDERED that, upon execution of the Power Purchase Agreement and Large Generator Interconnection Agreement described in the Settlement Stipulation, the Parties are directed to execute and file a Stipulation for Dismissal with prejudice in *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*, Docket EL18-038 and an Order of Dismissal may be entered by the Commission thereafter without hearing or further notice.

Dated at Pierre, South Dakota this 19th day of August 2020.

CERTIFICATE OF SERVICE
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.
By: <u>Adam DeHueck</u>
Date: <u>8/19/20</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairperson

Chris Nelson
CHRIS NELSON, Commissioner

Kristie Fiegen
KRISTIE FIEGEN, Commissioner