

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

IN THE MATTER OF THE COMPLAINT	)	
OF ENERGY OF UTAH, LLC AND FALL	)	BLACK HILLS POWER, INC.'S
RIVER SOLAR, LLC AGAINST BLACK	)	STATEMENT OF UNDISPUTED
HILLS POWER INC. DBA BLACK HILLS	)	MATERIAL FACTS
ENERGY FOR DETERMINATION OF	)	
AVOIDED COST	)	

EL18-038

INTRODUCTION

Black Hills Power Inc., d/b/a, Black Hills Energy (“BHE”) hereby submits this Statement of Undisputed Material Facts in support of its Motion for Partial Summary Judgment, pursuant to SDCL §15-6-56(c)(2). The deposition excerpts cited herein are attached to the Affidavit of Catherine M. Sabers, which is being filed contemporaneously with BHE’s Motion and Statement of Undisputed Material Facts. As pre-filed testimony is already in the record, BHE relies on the filed testimony rather than attaching excerpts. In addition, BHE’s Joint Open Access Transmission Tariff (“JOATT”) referenced in footnotes 10-13 is publicly filed on the website of the Federal Energy Regulatory Commission.¹

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Fall River made its initial request for avoided cost on February 13, 2018.²
2. BHE provided an initial avoided cost calculation on April 27, 2018.³
3. On June 8, 2018 Fall River sent Black Hills an email and letter which rejected BHE’s April 27, 2018 avoided cost, proposed an avoided cost of \$41.69 MW/hr (which Fall River believed to be the avoided cost quoted to a different solar developer in 2017) and attached a proposed PPA.⁴

¹ <https://etariff.ferc.gov/TariffBrowser.aspx?tid=2860>

² Vrba pre-filed testimony at page 10, lines 15-16.

³ Vrba pre-filed testimony at page 11, line 1.

⁴ Vrba pre-filed testimony Exhibit E, F and G. Vrba pre-filed testimony at page 12, lines 2-4.

4. Fall River's June 7, 2018 correspondence referred to the potential of a formal complaint by June 14, 2018, however, no formal complaint was filed at that time.⁵
5. On August 14, 2018, Fall River's counsel wrote BHE: Fall River's counsel described ongoing discussions between BHE and Fall River over the last six months as to avoided costs, represented that Fall River would enter into a PPA for a slightly lower price of \$41.66 MW/hr, and reiterated Fall River's willingness to enter into in a PPA in the form previously provided.⁶
6. In the August 14, 2018 correspondence, BHE was given seven days to respond or the proposal would be considered rejected.
7. BHE sought an extension of time to consider the letter and prepare a response, which extension was granted by Fall River until August 29, 2018.⁷
8. On August 29 and August 30, 2018, BHE provided an updated avoided cost to Fall River, which included use of the Spring 2018 reference case and the removal of a portion of a the previously planned SD Sun utility solar project from the utility's resource stack.⁸
9. BHE's modeling resulted in an increased calculated avoided cost of \$21.77/MW/hr.⁹
10. When it provided the updated offer, BHE offered to meet with Fall River to discuss additional views on avoided cost.¹⁰
11. Application for interconnection and the provision of a study deposit allows certain transmission interconnection study work to commence.¹¹
12. The first transmission study in the FERC *pro forma* Large Generator Interconnection process and the OATT is a feasibility study.¹²

⁵ Vrba pre-filed testimony Exhibit F.

⁶ Vrba pre-filed testimony Exhibit I.

⁷ Vrba pre-filed testimony at page 13, lines 19-20.

⁸ Vrba pre-filed testimony at Exhibit J. The Exhibit reflects an initial email to Fall River's counsel on August 29, 2018, but due to technical difficulties appears to have been received on August 30, 2018.

⁹ Vrba pre-filed testimony at Exhibit J.

¹⁰ Vrba pre-filed testimony Exhibit J.

¹¹ See Joint Open Access Tariff at Attachment P.

¹² See Joint Open Access Transmission Tariff, Attachment P at Section 6.

13. The feasibility study is designed to “preliminarily evaluate the feasibility of the proposed interconnection to the Transmission System.”¹³
14. The Interconnection Feasibility Study for Fall River was completed on August 16, 2018.¹⁴
15. On September 6, 2018, Fall River rejected the updated avoided cost that had been provided by BHE in late August and indicated it would be filing a Petition in the near future.¹⁵
16. On September 14, 2018, Fall River filed its Petition.¹⁶
17. In his deposition, Mr. Ros Vrba made the following statement with regard to the LEO date in this case: “Mr. Kearney raised a valid point as to not only demonstration to sell the entire output of the plant to the utility, but also supported by a transmission study allowing that generation being delivered in a timely fashion[.]”¹⁷
18. With regard to regulation costs, Commission Staff Analyst Darren Kearney has testified as follows:

In order to integrate solar resource with the power system additional regulation services will need to be procured by either the QF or the utility. The regulation services are needed to respond to the fluctuation of energy production for the solar resources.” He further explains that “since integration costs would not be incurred but for the QF those costs should be paid by the QF in order to hold utility customers indifferent.”¹⁸

¹³ Joint Open Access Transmission Tariff, Attachment P, Section 6.2.

¹⁴ The Interconnection Feasibility Study has been provided as a confidential attachment to the Confidential Affidavit of Eric Egge, which has been filed simultaneously with BHE’s Motion for Summary Judgment.

¹⁵ Vrba pre-filed testimony Exhibit K.

¹⁶ See Petition filed in Docket No. EL18-038.

¹⁷ Vrba deposition at 137, lines 3-13.

¹⁸ Kearney pre-filed supplemental testimony at page 12, lines 31-33.

Dated this 17th day of June, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of June, 2020, I served the foregoing Black Hills Power's Statement of Undisputed Material Facts by email to the following:

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