

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF	:	Docket No. EL19-028
BLACK HILLS POWER, INC. DBA BLACK		
HILLS ENERGY FOR APPROVAL OF	:	
DEFERRED ACCOUNTING TREATMENT FOR	:	FALL RIVER SOLAR, LLC'S
SD SUN PROJECT TRANSACTION AND	:	PETITION TO INTERVENE
DEVELOPMENT COSTS	:	

Fall River Solar, LLC (hereafter "Fall River"), pursuant to SDCL 1-26-17.1 and ARSD 20:10:01:15.02, respectfully requests the South Dakota Public Utilities Commission enter an order permitting it to intervene as a party in the above captioned proceeding. In support of its petition to intervene, Fall River states and alleges:

1. Black Hills Power, Inc., doing business as Black Hills Energy (hereafter "Black Hills"), is a wholly owned subsidiary of Black Hills Corporation. Black Hills Corporation is a publicly traded multi-state energy company based in Rapid City.

2. Black Hills distributes and sells electricity to the public in South Dakota, Montana, and Wyoming. Black Hills serves approximately 65,000 customers in South Dakota, in a service territory spanning multiple western South Dakota counties.

3. Black Hills is a public utility regulated by the South Dakota Public Utilities Commission pursuant to SDCL Chapter 49-34A. The Commission, as part of its oversight of Black Hills, sets certain accounting and business standards to which Black Hills must adhere.

4. Fall River is developing a solar energy generating facility near Oelrichs in Fall River County, South Dakota. The planned Fall River facility is in Black Hills' South Dakota service territory. Fall River's proposed solar generating facility is a Qualifying Small Power

Production Facility as the same is defined in the Public Utility Regulatory Policy Act of 1978, 16 U.S.C. § 824a-n (hereafter “PURPA”).

5. Fall River and its affiliate Energy of Utah are engaged in litigation before the Commission with Black Hills over the determination of the avoided cost rate Black Hills must pay for energy and capacity produced by Fall River’s proposed facility.

6. Fall River intends to begin construction of its solar energy generating facility in 2020. During construction and operation of its project Fall River will purchase electricity from Black Hills and will be a Black Hills ratepayer.

7. Fall River’s affiliate Energy of Utah was, prior to December of 2016, the parent company for SD Sun I, LLC and SD Sun II, LLC. Energy of Utah and SD Sun I and II’s principal, Ros Vrba, negotiated the 2016 power purchase agreement on behalf of SD Sun I and conducted negotiations for the 2017 power purchase agreement for SD Sun II, all with Black Hills. Mr. Vrba is principal of Fall River.

8. Black Hills eventually acquired SD Sun I and II, along with what is been commonly called SD Sun III, a nearby proposed 12-megawatt solar development.

9. At various times, Black Hills has represented that it intended to build all or some of the SD Sun projects, primarily in relationship to Fall River’s requests for indication of avoided cost rates for energy and capacity from Black Hills, but has recently announced that it will not build any of the projects.

10. If Black Hills’ petition herein is granted, it will amortize the costs of acquisition of the SD Sun projects over forty months, which will have the effect of reducing Black Hills’ income and return on capital during the period of amortization, among other things.

11. Fall River believes that one of the principal reasons Black Hills purchased the SD Sun projects was to avoid having to purchase energy and capacity from a Qualified Facility, which, together with other elements of the contract to purchase the rights to the facilities, is an abuse of market power, anti-competitive, inherently discriminatory to Qualified Facilities, a violation of PURPA and the Federal Energy Regulatory Commission and South Dakota Public Utilities Commission regulations that implement PURPA and other laws and regulations.

12. Anti-competitive activities and discrimination against Qualified Facilities is unlawful and accordingly inherently imprudent. If Black Hills' expenditures to acquire the SD Sun projects were unlawful and imprudent, allowing Black Hills the relief it seeks in its petition would accordingly be unlawful.

13. For the foregoing reasons, Fall River has an interest in the pending proceeding and its pecuniary interest will be affected by any order entered by the Public Utilities Commission. Accordingly, Fall River prays the Commission enter its order allowing it to intervene as a party in this proceeding.

Dated this 14th day of August 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August 2019, I served Fall River Solar LLC's Petition to Intervene by email to the following and also by U.S. First Class Mail to the representatives of Black Hills Power listed below:

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