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 AND ADMINISTRATIVE 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 to SDCL 15-6-30(b)(6) and for a 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 and Protect for topics 2, 5(c), and 5(e).

Black Hills Energy submitted Rebuttal Testimony and Exhibits on January 30, 2020.

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.

The Parties filed a Stipulation and Joint Motion for Continuance of Procedural Schedule on April 1, 2020. 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. Staff also submitted Supplemental Testimony and Exhibits.

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

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

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

In accordance with the 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 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 of (sic) Procedural Schedule and Continue Pre-Hearing and Administrative Hearing Dates agreeing that the procedural schedule can be set aside, the current motions hearing scheduled to occur on July 23, 2020, should be continued until further notice, and the administrative hearing scheduled to occur on August 5-6, 2020, should be taken off of the calendar.

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) required the Federal Energy Regulatory Commission 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 purchase-

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 generator 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, the current motions hearing scheduled to occur on July 23, 2020, should be continued until further notice, and the administrative hearing scheduled to occur on August 5-6, 2020, should be taken off of the calendar. It is further

ORDERED, that the July 23, 2020, motion hearing is cancelled.

Dated at Pierre, South Dakota, this 15th day of July 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: Adam de Hueck

Date: 7/15/20

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson

GARY HANSON, Chairman

Chris Nelson

CHRIS NELSON, Commissioner

Kristie Fiegen

KRISTIE FIEGEN, Commissioner