

126 FERC ¶ 61,059  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Black Hills Power, Inc.

Docket No. OA08-91-000

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING, SUBJECT  
TO A FURTHER COMPLIANCE FILING

(Issued January 21, 2009)

1. On March 17, 2008, pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> Black Hills Power, Inc., on behalf of itself, Basin Electric Power Cooperative (Basin Electric), and Powder River Energy Corporation (collectively, Black Hills) submitted proposed revisions to Black Hills' joint Open Access Transmission Tariff (Joint Tariff) to comply with Order No. 890-A.<sup>2</sup> In this order, we conditionally accept Black Hills' revised Joint Tariff, effective March 17, 2008, subject to a further compliance filing, as discussed below.

**I. Background**

2. In Order No. 890-A, the Commission granted limited rehearing and clarification of Order No. 890, largely affirming its reforms. The Commission in Order No. 890-A continues its Order No. 890 objectives of ensuring that electric transmission service is provided on a nondiscriminatory, just and reasonable basis, helping improve the foundation for a competitive electric power market, and providing for more effective regulation and transparency in the operation of the transmission grid.

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<sup>1</sup> 16 U.S.C. § 824e (2006).

<sup>2</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2008), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008).

3. The revisions in Order No. 890-A address, among other things, how transmission providers process service requests, under what circumstances long-term customers may renew (roll over) their transmission service, the ability of network customers to designate certain resources, and how point-to-point customers may reassign transmission capacity. The Commission also directed transmission providers to address certain issues related to the calculation of available transfer capability and the calculation of incremental costs for purposes of imbalance charges.

## **II. Black Hills' Compliance Filing**

4. Black Hills states that its revised Joint Tariff adopts the revised non-rate terms and conditions for open access transmission service promulgated in Order No. 890-A. Black Hills refiled its entire Joint Tariff in order to simplify pagination and designation issues. Black Hills requests that its revised Joint Tariff be made effective March 17, 2008.

## **III. Notice of Filing and Responsive Pleadings**

5. Notice of Black Hills' filing was published in the *Federal Register*, 73 Fed. Reg. 16,001 (2008), with interventions and protests due on or before April 7, 2008.

6. The Municipal Energy Agency of Nebraska filed a timely, unopposed motion to intervene. Basin Electric filed a timely, unopposed motion to intervene and comments.

## **IV. Discussion**

### **A. Procedural Matters**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

### **B. Substantive Matters**

8. We find that Black Hills' filing, with certain modifications, complies with Order No. 890-A. Accordingly, we conditionally accept Black Hills' filing to be effective March 17, 2008, subject to a further compliance filing as discussed below.

#### **1. Incremental Costs in Imbalance Charges**

9. Order No. 890-A requires each transmission provider to provide language in its Open Access Transmission Tariff specifying the method by which it calculates the incremental costs for purposes of imbalance charges, as well as the method it

will use to obtain each component of the calculation.<sup>3</sup> In Order No. 890-A, the Commission found that imbalance charges should be based on the actual cost to correct the imbalance and, therefore, modified the definition of incremental costs to include the cost of the last ten megawatts dispatched for any purpose, whether to serve native load, correct imbalances, or make off-system sales.<sup>4</sup> If start-up costs are incurred during an hour different from the hour of excess imbalance, the start-up costs may also be included in the calculation of incremental costs, as long as they are associated with providing imbalance service.<sup>5</sup>

### **Black Hills' Filing**

10. Black Hills proposes that for Schedule 13 (Generator Imbalance Service), incremental and decremental cost represent the transmission provider's actual average hourly cost of the last ten MW dispatched for any purpose, i.e., to supply the transmission provider's native load customers, correct imbalances, or make off-system sales, based on the replacement cost of fuel, unit heat rates, start-up costs (including any commitment and redispatch costs), incremental operation and maintenance costs, and purchased and interchange power costs and taxes, as applicable.

### **Commission Determination**

11. Although Black Hills has modified the definition of incremental costs in Schedule 13 of its Joint Tariff to include the cost of the last ten megawatts dispatched for any purpose, it has not modified the definition of incremental costs in Schedule 4 (Energy Imbalance Service) of its Joint Tariff as required by Order No. 890-A. Additionally, for both Schedules 4 and 13, Black Hills has not specified the method by which it calculates the incremental costs for purposes of imbalance charges, and the method it will use to obtain each component of the calculation. Therefore, we direct Black Hills to file, within 30 days of the date of this order, a further compliance filing that modifies the definition of incremental costs in Schedule 4 and specifies the methods it will use in Schedules 4 and 13.

## **2. Basin Electric's Comments**

12. Basin Electric states that Black Hills' Joint Tariff does not comply with two provisions of Order No. 890-A. Basin Electric states that Schedule 4 of Black Hills' Joint Tariff fails to include the penalty provisions applicable to a customer

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<sup>3</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 310.

<sup>4</sup> *Id.* P 309.

<sup>5</sup> *Id.* P 312.

that is responsible for causing an energy imbalance. We agree and therefore direct Black Hills to include in Schedule 4 the penalty provisions applicable to a customer causing an energy imbalance.

13. Basin Electric asserts that the word “Firm” was not removed from the title of Attachment A-1 to the Joint Tariff as required by Order No. 890-A. We agree and therefore direct Black Hills to submit a compliance filing, within 30 days of the date of this order, that deletes the word “Firm” from the title of Attachment A-1 in the Joint Tariff.

### **3. Additional Issues**

14. We also find that Black Hills has failed to comply with the Order No. 890-A *pro-forma* tariff in the following instances: (1) failed to include the word “competing” between the words “preempt” and “reservations” in section 13.2(iii); (2) failed to delete the “(s)” from the word “area(s)” in section 29.2(v); (3) in both Schedules 9 and 10, failed to capitalize the word “Affiliate’s” and include the subsection “Resales” consistent with similar revisions it made in Schedules 7 and 8; and (4) failed to delete the words “Long-Term Firm” from Attachment A-1 in the Table of Contents.

15. Accordingly, we direct Black Hills to file, within 30 days of the date of this order, a compliance filing making these corrections.

#### The Commission orders:

(A) Black Hills’ compliance filing is hereby conditionally accepted, effective March 17, 2008, subject to a further compliance filing, as discussed in the body of this order.

(B) Black Hills is hereby directed to submit a further compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.