

126 FERC ¶ 61,104
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Black Hills Power, Inc.	Docket Nos.	ER08-1584-000
		ER08-1584-001
		ER08-1584-002
		ER08-1584-003

ORDER ACCEPTING PROPOSED TARIFF SHEETS, AS AMENDED

(Issued February 10, 2009)

1. In this order, the Commission accepts Black Hills Power, Inc.'s (Black Hills) revised tariff sheets, as amended, reflecting changes to its Joint Open Access Transmission Tariff for the Common Use System (Common Use Joint OATT),¹ to be effective January 1, 2009, as requested, as discussed below.

I. Details of Filing

2. On September 29, 2008, Black Hills filed revised tariff sheets to reflect an updated Transmission Revenue Requirement and the implementation of a formula rate methodology as a replacement for its current stated transmission rates.² In that filing,

¹ The Common Use System is the transmission system located in the Western Interconnection whose facilities are owned and operated by Black Hills Power, Basin Electric Power Cooperative, and Powder River Energy Corporation.

² On October 1, 2008, Black Hills filed a supplement to the September 29, 2008 filing, in Docket No. ER08-1584-001 (to submit affidavits from Mr. Heintz and Mr. Avera verifying their respective testimonies); on October 2, 2008, Black Hills submitted a second supplement to the September 29, 2008 filing, in Docket No. ER08-1584-002 (to submit revised pages comprising Attachment N that were inadvertently omitted from the original filing).

among other revisions, Black Hills proposes to increase its Transmission Revenue Requirement from \$5.6 million to approximately \$10.1 million. Black Hills states that the increase in transmission rates was the result of an increase in capital-related costs associated with the large amount of new transmission investment that Black Hills is expecting to place into service. Additionally, Black Hills requests that the Commission authorize a return on equity of 10.95 percent.

II. Notices of Filings and Responsive Pleadings

3. Notice of Black Hills' filing in Docket No. ER08-1584-000 was published in the *Federal Register*, 73 Fed. Reg. 58,948 (2008); notice of Black Hills' filing in Docket No. ER08-1584-001 was published in the *Federal Register*, 73 Fed. Reg. 60,683 (2008); notice of Black Hills' filing in Docket No. ER08-1584-002 was published in the *Federal Register*, 73 Fed. Reg. 60,684 (2008); and notice of Black Hills' filing in Docket No. ER08-1584-003 was published in the *Federal Register*, 73 Fed. Reg. 79,462 (2008) with interventions and protests due on or before October 20, 2008, October 22, 2008, October 23, 2008, and January 2, 2009, respectively.

4. On October 20, 2008, in response to Black Hills' filing, the Municipal Energy Agency of Nebraska (MEAN) and the City of Gillette, Wyoming (Gillette) filed a timely motion to intervene and a Protest, Request for Rejection or Summary Disposition, Maximum Suspension and Hearing (MEAN/Gillette Protest) of Black Hills' proposed tariff changes. Among other things, they object to Black Hills' proposed return on equity as being excessive, assert that Black Hills did not provide for adequate formula rate monitoring procedures, and maintain that Black Hills failed to post Period I and Period II data under the Commission's rules and regulations.³ Basin Electric Power Cooperative filed a timely motion to intervene.

5. On November 24, 2008, Black Hills filed a motion requesting the Commission to defer action pending the filing of a settlement agreement. Black Hills states that since the MEAN/Gillette Protest, Black Hills, MEAN and Gillette (collectively, the Parties) have engaged in settlement discussions intended to resolve the MEAN/Gillette Protest.

6. On December 12, 2008, Black Hills submitted revised tariff pages of the Common Use Joint OATT to resolve all remaining disputes raised by the MEAN/Gillette Protest.⁴

³ 18 C.F.R. § 35.13(d)(1)-(2) (2008).

⁴ While Black Hills filed these tariff revisions as a settlement agreement pursuant to Rule 602(b)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(b)(2) (2008), it should have filed them as, and we are treating them as, a filing under section 205 of the Federal Power Act. *See Stowers Oil and Gas Co. and Northern*
(continued...)

The amended filing reflects, among other things, a reduction to the return on equity from the initially proposed 10.95 percent to 10.80 percent. The Transmission Revenue Requirement is reduced from the initially proposed \$10.1 million to \$9.4 million.

7. On December 19, 2008, MEAN and Gillette filed to withdraw their Protest.

III. Commission Determination

8. 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.

9. We will accept Black Hills' proposed revisions, as amended, to its Common Use Joint OATT as just and reasonable and not unduly discriminatory or preferential to be effective January 1, 2009, as requested.

The Commission orders:

Black Hills' proposed tariff sheets, as amended, are hereby accepted, to be effective January 1, 2009.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.