

112 FERC ¶ 61,318
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Black Hills Power, Inc.

Docket Nos. ER05-1217-000
ER05-1217-001

ORDER ACCEPTING REVISED ATTACHMENT H

(Issued September 20, 2005)

1. On July 15, 2005, as corrected on July 22, 2005, Black Hills Power, Inc. (Black Hills Power) and Powder River Energy Corporation (PRECorp) submitted for filing Substitute First Revised Sheet No. 139 to Applicants' Joint Open Access Transmission Tariff (Joint OATT) to correct a recently-discovered error in Attachment H.¹ Applicants state that correcting the error conforms Attachment H (which identifies the annual transmission costs) to the transmission rate methodology already accepted by the Commission.²

2. Our preliminary analysis indicates that the Applicants' filing has not been shown to be unjust and unreasonable, and it does not appear unduly discriminatory, preferential or otherwise unlawful. Therefore, we will accept for filing Substitute First Revised Sheet No. 139, to become effective August 1, 2005.

I. Background

3. Black Hills Power is a South Dakota corporation and a regulated affiliate of Black Hills Corporation. It owns transmission facilities in South Dakota, Wyoming, Montana, and Nebraska, some of which it owns jointly with PRECorp and Basin Electric Power Cooperative (Basin Electric). Basin Electric is a consumer-owned rural regional electric cooperative headquartered in Bismarck, North Dakota. It is not

¹ Basin Electric Cooperative, a third party to the Joint OATT, intends to address this error in a separate filing with the Commission in the future.

² The Commission, in *Black Hills Power, Inc. et al.*, 106 FERC ¶ 61,119 (2004) (the Initial Order), accepted the Joint OATT, which included an error-free version of Attachment H.

a “public utility” under the Federal Power Act.³ PRECorp is a member cooperative of Basin Electric and likewise is not subject to Commission’s section 205 jurisdiction because it is not a “public utility” under the Federal Power Act.⁴

4. Applicants own transmission facilities in South Dakota, Wyoming, Montana, and Nebraska, some of which they own jointly. Black Hills Power, Basin Electric, and PRECorp, collectively referred to as Joint Tariff Transmission Providers, have combined their respective transmission systems located in the Western Interconnection into a single system, which is referred to as the AC Transmission System. The Joint Tariff Transmission Providers filed the Joint OATT with the Commission to provide open access transmission service over the AC Transmission System.⁵ The Joint Tariff Transmission Providers now provide transmission service on the AC Transmission System under the Joint OATT. Black Hills Power has transferred its transmission customers from service under its OATT to service under the Joint OATT.⁶

5. The Joint OATT governs the provision of open access transmission service on the combined transmission systems of the three parties to the Joint OATT. Attachment H of the Joint OATT identifies the Annual Transmission Costs for each of the Transmission Providers resulting from a formula used to compute the Monthly Network Transmission Revenue Requirement for service on the AC Transmission System. Applicants note that the Transmission Providers mistakenly substituted their *net* Annual Transmission Costs (which already reflect a deduction from gross transmission costs) for their *gross* Annual Transmission Costs figures used in the Joint OATT’s Commission-approved formula methodologies. Because the formula reduces the recoverable monthly transmission costs by the sum of the revenues for all point-to-point service, using the net Annual Transmission Costs provides network service customers with a double credit for point-to-point service revenues. As such, the Transmission Providers are under-recovering their costs of providing transmission service on the AC Transmission System. Discovery of the error prompted Applicants to file the revised Attachment H, Substitute First Revised Sheet No. 139.

³ 16 U.S.C. § 824(e)(2000).

⁴ *Id.*

⁵ *Id.* See also *Black Hills Power, Inc.*, 108 FERC ¶ 61,165 (2004), and *Black Hills Power, Inc.*, Letter Order of October 28, 2004 in Docket Nos. ER03-1354-004 and ER04-821-001 (2004).

⁶ The Commission, by Delegated Letter Order dated June 27, 2005, accepted Black Hills Power’s Notice of Cancellation of its OATT in Docket Nos. ER05-924-000 and ER05-924-001.

6. Applicants request that the Commission waive its sixty-day prior notice requirement and allow the correction to become effective August 1, 2005.

II. Notice of Filings and Pleadings

7. Notice of the instant filings was published in the *Federal Register*,⁷ with interventions and protests due on or before August 12, 2005. Timely motions to intervene and protest were filed by Basin Electric Power Cooperative and by Municipal Energy Agency of Nebraska (MEAN) and the City of Gillette, Wyoming (Gillette), (collectively, protestors). Black Hills Power filed an answer to the protest.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Black Hills Power's answer and will, therefore, reject it.

B. Revisions to Attachment H

9. According to Black Hills Power, the Transmission Providers made a simple mistake by substituting *net* Annual Transmission Costs in lieu of *gross* Annual Transmission Costs in Attachment H of the Joint OATT). Black Hills Power claims that this error causes Applicants to under-recover their costs of providing transmission service under the Joint OATT. That is, because the formula itself reduces the recoverable monthly transmission costs by the sum of the revenues for all point-to-point service, use of the net Annual Transmission costs affords network service customers a double credit for point-to-point transmission service revenues. This, as concluded by Black Hills Power, causes point-to-point transmission service rates to be lower than are justified by the Transmission Providers' costs. As a result, the Transmission Providers underrecover their costs for providing transmission service.

⁷ See 70 Fed. Reg. 42,542 (July 25, 2005) (Docket No. ER05-1217-000); and 70 Fed. Reg. 44,350 (August 2, 2005) (Docket No. ER05-1217-001).

10. Black Hills Power explains that the Commission accepted an error-free version of Attachment H, which was filed on December 19, 2003, in its Initial Order accepting the Joint OATT for filing effective October 15, 2003, subject to refund, hearing and settlement proceedings.⁸ According to Black Hills Power, this demonstrates that the Commission found acceptable the proposed formula rate methodology as well as the specification of Annual Transmission Costs. Black Hills Power continues that in subsequent filings thereafter, the Transmission Providers mistakenly specified their Annual Transmission Costs. Black Hills Power notes that when Applicants recently discovered the error, they filed the corrected version of Attachment H so as not to perpetuate the error. Black Hills Power believes that accepting the corrective Attachment H effective August 1, 2005 will allow for the error to be fixed promptly, thereby restoring Attachment H to conformity with the version of Attachment H the Commission accepted in the Initial Order.

C. Protest

11. The protestors' argument centers on the timing issue only. Specifically, protestors assert that Applicants have not supported or justified their request for an August 1, 2005 effective date. Thus, the protestors argue that the Commission should not waive the sixty-day notice requirement. Applicants state that, though they do not oppose Black Hills Power's proposed prospective change in the tariff; they assert however that the change should be made effective only sixty days from the date when it was filed, as provided under Commission regulation.⁹

D. Commission Determination

12. The Commission will accept the Applicants' revised Attachment H. The Commission finds that the corrections to the Annual Transmission Costs for Network service customers are necessary to eliminate the errors that occurred subsequent to the Commission's Initial Order and have been perpetuated since that time through multiple erroneous filings. Applicants made this filing with the Commission once the error was discovered. Moreover, as a result of the error, network customers have received what amounts to a windfall, while applicants have under-recovered their costs of providing network service from the time the Commission approved the Joint OATT August 6, 2004.

13. With respect to the Applicants' request for an August 1, 2005 effective date and waiver of the Commission's sixty-day prior notice provision, the Commission

⁸ See Application at 3.

⁹ 18 C.F.R. § 35.2(e)(2005).

points out that generally, under *Central Hudson Gas & Electric Corporation*,¹⁰ the Commission will not grant waiver of the sixty-day prior notice requirement of section 205 of the Federal Power Act, absent good cause. However, because the correction will have prospective application only and will correct an error that has resulted in under-recovery of costs by the Applicants and a windfall for their customers, the Commission finds that waiver of its sixty-day prior notice requirement is warranted.

The Commission orders:

(A) Applicants' revised Attachment H, Substitute First Revised Sheet No. 139 is hereby accepted effective August 1, 2005, as requested.

(B) Applicants' request for waiver of the Commission's sixty-day prior notice requirement is hereby granted as discussed in the body of the order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁰ 60 FERC ¶ 61,106 (1992).