

128 FERC ¶ 61,062
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Black Hills Power, Inc.

Docket No. OA09-11-000

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued July 16, 2009)

1. On October 31, 2008, Black Hills Power, Inc. (Black Hills Power)¹ submitted revisions to its transmission planning process through a revised joint open access transmission tariff (Joint OATT), as required by Order No. 890² and the NTTG Planning Order.³ In this order, we accept Black Hills Power's compliance filing, as modified, as in compliance with the NTTG Planning Order.

¹ Black Hills Power submitted the revisions on behalf of itself, Basin Electric Power Cooperative, and Powder River Energy Corporation (collectively, the Transmission Providers). The Transmission Providers own and operate a common use transmission system under a joint open access transmission tariff for the areas located within Southwestern South Dakota and Northeastern Wyoming. For purposes of this order, "Black Hills Power" refers to all of the Transmission Providers.

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

³ *Idaho Power Co., et al.*, 124 FERC ¶ 61,053 (2008) (NTTG Planning Order). Black Hills Power filed its initial Attachment K jointly with companies of the Northern Tier Transmission Group (NTTG), which is a sub-regional planning group that coordinates transmission planning for multiple local transmission providers that are located in the Pacific Northwest. Here, Black Hills Power submits a separate filing to comply with the Commission's directives in the NTTG Planning Order addressing certain NTTG agreements. NTTG's compliance with the Commission's directives in the NTTG Planning Order will be addressed under Docket No. OA08-23-001, *et al.*

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new attachment (Attachment K) to their OATTs.

3. The nine planning principles each transmission provider was directed by Order No. 890 to address in its Attachment K planning process are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability;⁴ (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed transmission providers to address the recovery of planning-related costs. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation of and to build on transmission planning efforts and processes already underway in many regions of the country. The Commission also explained, however, that although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process, and that all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules, as supplemented with web-posted business practices when appropriate,⁵ must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.

4. On December 7, 2007, Black Hills Power submitted its initial Attachment K filing jointly with companies of the NTTG. In the NTTG Planning Order, the Commission accepted Black Hills Power's initial Attachment K subject to a further compliance filing.

⁴ In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its Attachment K planning process, how it will treat resources on a comparable basis and, therefore, how it will determine comparability for purposes of transmission planning. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

II. Notice of Filing and Responsive Pleadings

5. Notice of Black Hills Power's October 31, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 67,495 (2008), with interventions and protests due on or before November 21, 2008. None was filed.

III. Discussion

6. We find that Black Hills Power's revised transmission planning process, with certain further modifications discussed below, complies with the NTTG Planning Order and the nine planning principles and other planning requirements adopted in Order No. 890. Accordingly, we accept Black Hills Power's planning process, as modified, to be effective December 7, 2007. Although the Commission accepts Black Hills Power's compliance filing below, subject to a further compliance filing to address certain discrete issues, the Commission remains interested in the development of transmission planning processes and will continue to examine the adequacy of the processes accepted to date. We reiterate the encouragement made in prior orders for further refinements and improvements to the planning processes as transmission providers, their customers, and other stakeholders gain more experience through actual implementation of the processes. As part of the Commission's ongoing evaluation of the implementation of the planning processes, the Commission intends to convene regional technical conferences later this year to determine if further refinements to these processes are necessary. The focus of the 2009 regional technical conferences will be to determine the progress and benefits realized by each transmission provider's transmission planning process, obtain customer and other stakeholder input, and discuss any areas that may need improvement. The conferences will examine whether existing transmission planning processes adequately consider needs and solutions on a regional or interconnection-wide basis to ensure adequate and reliable supplies at just and reasonable rates. The Commission will also explore whether existing processes are sufficient to meet emerging challenges to the transmission system, such as the development of interregional transmission facilities, the integration of large amounts of location-constrained generation, and the interconnection of distributed energy resources.

Compliance With Order No. 890's Planning Principles

1. Comparability

a. NTTG Planning Order

7. In the NTTG Planning Order, the Commission determined that Black Hills Power's transmission planning process generally complied with the comparability principle stated in Order No. 890 because the planning process treats similarly-situated

customers comparably.⁶ However, the Commission noted that Black Hills Power had not had an opportunity to demonstrate that it complies with the comparability requirements of Order No. 890-A since Order No. 890-A was issued on December 27, 2007, after Black Hills Power submitted its initial Order No. 890 Attachment K compliance filing. In Order No. 890-A, the Commission provided additional guidance as to how the transmission provider can achieve compliance with the comparability principle. Specifically, the Commission stated that the transmission provider needed to identify as part of its Attachment K planning process “how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning.”⁷ The Commission directed Black Hills Power to provide the necessary demonstration required by Order No. 890-A in a compliance filing within 90 days of the date of the order.

b. Black Hills Power Compliance Filing

8. Black Hills Power amends the Definitions section⁸ of its Attachment K to include a definition for the term “stakeholder” that provides for sponsors of transmission solutions, generating solutions, solutions utilizing demand response resources and other parties. Further, it includes a revised Coordination section, in which Black Hills Power states that it will collect “information from sponsors of transmission solutions, generating solutions and solutions utilizing demand response resources.”⁹ For example, Black Hills Power has clarified that, during the first quarter of its local transmission plan study cycle, information from sponsors of transmission solutions, generating solutions and solutions utilizing demand resources will be gathered in defining the study scope, objectives, and scenarios to be considered in the development of the local transmission plan.¹⁰

9. Once Black Hills Power develops its planning models during the first quarter, it will conduct a series of reliability studies deemed necessary to properly analyze the transmission system during the second and third quarters of its study cycle. Based on the results of these studies, Black Hills Power states that it will consider transmission and non-transmission solutions to mitigate system performance that does not meet reliability

⁶ NTTG Planning Order, 124 FERC ¶ 61,053 at P 63.

⁷ NTTG Planning Order, 124 FERC ¶ 61,053 (quoting Order No. 890-A, FERC Stats. & Regs. ¶ 61,261 at P 216).

⁸ Black Hills Power Attachment K, section 1.

⁹ Black Hills Power Attachment K, section 2.2.2.1.1.

¹⁰ *Id.*

criteria.¹¹ During the fourth quarter of its study cycle, Black Hills Power asserts that it will solicit stakeholder input when determining selection criteria and weighting to be used to evaluate the best transmission, generation, or demand resource solution identified in the local study process. Further, Black Hills Power's Attachment K Business Practices indicate that the selection criteria may include the present value of upgrade costs, environmental assessments or costs, and the time available to implement the upgrade, among other things.¹² From this, Black Hills Power states that it will prepare a draft local transmission plan report and publish it on its OASIS and solicit input from all stakeholders.¹³

c. Commission Determination

10. We find that Black Hills Power's revisions to its Attachment K partially comply with the Commission's directives in the NTTG Planning Order. As stated above, Black Hills Power has clarified that, during the first quarter of its local transmission plan study cycle, information from sponsors of transmission solutions, generating solutions and solutions utilizing demand resources will be gathered in defining the study scope, objectives, and scenarios to be considered in the development of the local transmission plan.¹⁴ Further, based upon its described process as stated above, we find that Black Hills Power will treat transmission, generation and demand resource solutions comparably throughout the transmission planning process. It also sufficiently describes how competing solutions will be selected. Notwithstanding Black Hills Power's clarification of the selection criteria in its Business Practices, we direct Black Hills Power to amend its Attachment K to include the selection criteria in its Attachment K tariff language in the compliance filing we direct below.

11. We also note that while Black Hills Power modifies the term "stakeholder" to encompass sponsors of transmission, generation, demand resources, and other parties, it is not clear that a stakeholder may submit a request that the transmission provider study potential alternative upgrades or other investments. According to Black Hills Power's Attachment K, an "Eligible Customer" may make an Economic Study Request by completing the Economic Study Request form on Black Hills Power's OASIS.¹⁵ The

¹¹ Black Hills Power Attachment K, section 2.2.2.2.3.

¹² See Black Hills Power's Business Practices at: http://www.oatioasis.com/BHBE/BHBEdocs/JOATT_Method_Criteria_Process_Business_Practice.pdf.

¹³ *Id.* at section 2.2.2.3.1.

¹⁴ *Id.*

¹⁵ *Id.* at section 2.6.2.

term “Eligible Customer,” as defined in Black Hills Power’s OATT does not include stakeholders. We find that the term “Eligible Customer” is unduly restrictive and does not meet the Commission’s comparability directives. Black Hills Power must amend its Attachment K to clarify that stakeholders may request an economic study.¹⁶ Black Hills Power is hereby required to submit a revised Attachment K with the above changes within 60 days of the date of this order.

2. Dispute Resolution

a. NTTG Planning Order

12. In the NTTG Planning Order, the Commission found Black Hills Power’s proposed Attachment K to be in partial compliance with the dispute resolution principle provided for in Order No. 890. Specifically, the Commission found that Black Hills Power had developed a process for resolving disputes related to transmission planning, but that its proposed process could inappropriately affect parties’ ability to exercise their rights under section 206 of the FPA. Thus, the Commission directed that Black Hills Power revise its dispute resolution procedure to preserve those rights.¹⁷ The Commission also found Black Hills Power’s Attachment K unclear with respect to how the Western Electric Coordinating Council (WECC) dispute resolution process would apply to address disputes outside of WECC or that may involve non-WECC members. Therefore, the Commission also directed Black Hills Power to address how the WECC dispute resolution principles would apply in a dispute over the local transmission plan.¹⁸

b. Black Hills Power Compliance Filing

13. Black Hills Power states that it revised section 2.7 of its Attachment K to clarify that all WECC disputes will utilize the WECC dispute resolution process. For non-WECC disputes, Black Hills Power states that the dispute resolution procedures set forth in Section 12 of the Joint OATT will apply. Black Hills Power clarifies that any affected party may refer a dispute to the Commission for resolution at any time by filing a complaint, a request for declaratory order or a change in rate.¹⁹

¹⁶ See *Entergy Services, Inc.*, 127 FERC ¶ 61,272 (2009).

¹⁷ NTTG Planning Order, 124 FERC ¶ 61,053 at P 73.

¹⁸ *Id.* P 74.

¹⁹ Black Hills Power Attachment K, section 2.7.

c. Commission Determination

14. We find that the proposed revisions to Black Hills Power's Attachment K comply with the directives of the NTTG Planning Order. The new language preserves parties' ability to exercise their rights under section 206 of the FPA, and addresses how the WECC dispute resolution principles would apply in a dispute over the local transmission plan.

3. Regional Participation

a. NTTG Planning Order

15. In the NTTG Planning Order, the Commission found that Black Hills Power's proposed Attachment K generally complied with the regional and sub-regional participation principle provided in Order No. 890;²⁰ however, the Commission required some modifications. Specifically, the Commission directed Black Hills Power to: (1) provide sufficient detail to allow customers and other interested stakeholders to fully understand how the data and inputs they provide on the local transmission plan will be integrated into the sub-regional plan being developed by NTTG and incorporated into WECC Transmission Expansion Policy and Planning Committee (TEPPC) studies; (2) use a direct link to the relevant planning document when using web pages to allow customers and interested stakeholders to obtain details of the NTTG or WECC planning process; and (3) provide sufficient detail on the Colorado Coordinated Planning Group (CCPG) and WestConnect processes and provide links or cites that allow customers and interested stakeholders to locate the information required to understand and participate in these sub-regional processes.²¹

b. Black Hills Power Compliance Filing

16. Black Hills Power's Attachment K incorporates a hyperlink list, which contains the specific links to planning documents for each sub-regional and regional planning process. For example, Black Hills Power designates a section for the NTTG planning process, and shows links to specific documents such as the Planning Committee Charter, the Planning Agreement, the Planning Website, and the Cost Allocation Methodology. Black Hills Power also provides such information for the CCPG, WestConnect, and WECC planning processes.

17. Black Hills Power also adds descriptive language in the NTTG, CCPG, WestConnect and WECC sub-regional and regional planning sections of its Attachment K that clarify how input from stakeholders will be integrated into the planning study

²⁰ NTTG Planning Order, 124 FERC ¶ 61,053 at P 90.

²¹ *Id.* at P 91.

processes, as well as how stakeholders themselves can participate in these processes.²² For example, in each of the sub-regional planning group descriptions (NTTG, CCPG and WestConnect), Black Hills Power includes a Stakeholder Participation section that describes the process by which stakeholders can participate in the sub-regional planning processes. In the NTTG sub-regional planning section of its Attachment K, Black Hills Power states that its stakeholders may participate in the NTTG sub-regional planning process pursuant to the NTTG Planning Committee Charter.²³ Black Hills Power elaborates that the NTTG Planning Committee will conduct open stakeholder Planning Committee meetings each year as outlined in the Planning Charter, and that these meetings will be posted on the NTTG website, to which Black Hills Power provides an indirect link.²⁴ Similarly, Black Hills Power states that stakeholders may participate in the CCPG planning process through attending CCPG meetings, which are held three times per year and are open to any interested party.²⁵ Black Hills Power then provides an indirect link to the CCPG website for stakeholder use. Finally, Black Hills Power provides that all stakeholders can directly participate in the WestConnect planning process through public stakeholder meetings, which will be conducted at least twice per year and which will be noticed on the WestConnect website, to which Black Hills Power provides an indirect link.²⁶

c. Commission Determination

18. Black Hills Power amends its Attachment K to resolve regional and sub-regional planning concerns regarding stakeholder participation and the location of specific planning documents. It clarifies the procedures that interested parties can follow for the transmission study process at the sub-regional and regional level, as well as how stakeholders can identify how their provided data and input pertaining to the local transmission plan will be incorporated into the sub-regional plans and regional WECC study plans. For example, Black Hills Power clarifies how interested parties can participate in the WestConnect study plan process, through attending public stakeholder meetings or providing input to Black Hills Power to convey to WestConnect on behalf of the stakeholder. Further, Black Hills Power provides the specific links that connect the

²² Black Hills Power Attachment K, sections 3.1.1.1, 3.1.4.1, 3.1.4.2, 3.1.5, 3.2.5.1, 3.3.3.1, and 4.8.1.

²³ *Id.* at section 3.1.4.1.

²⁴ Black Hills Power provides a link to its Attachment K hyperlink list, including a link to the NTTG website where this information is located.

²⁵ Black Hills Power Attachment K, section 3.2.5.1.

²⁶ *Id.* at section 3.3.3.1.

interested party to WestConnect's public stakeholder meeting notices.²⁷ Black Hills Power amends its Attachment K in a manner that includes participation from stakeholders in the local, sub-regional, and regional processes in a clear and open manner. Therefore, Black Hills Power's Attachment K complies with the regional planning principle.

4. Economic Planning Studies

a. NTTG Planning Order

19. In the NTTG Planning Order, the Commission found that Black Hills Power's Attachment K partially complied with the economic studies principle set forth in Order No. 890.²⁸ However, the Commission directed Black Hills Power to clarify the methodology it will use to cluster or batch economic studies, as well as to either describe how the TEPPC regional congestion study process will be conducted or provide direct links to the appropriate document on the WECC website where the processes to prioritize and complete regional economic studies are discussed.²⁹

b. Black Hills Power's Compliance Filing

20. Black Hills Power includes a new section 2.6.11 to its Attachment K to describe exactly how it will cluster similar economic study requests. For example, Black Hills Power states that all local transmission provider Economic Study Requests that are designated as high priority will be evaluated to determine if the requests can be feasibly studied as a group.³⁰ After determining which, if any, high priority local studies will be studied in a group, Black Hills Power states that it will notify the study requestor and allow for the study requestor to opt out of the clustered study. Further, Black Hills Power provides for a study requestor to request that its study be clustered with other local transmission study requests.³¹

21. With regard to the Commission's directive that Black Hills Power either describe the methodology of TEPPC regional congestion studies or provide direct links to the appropriate document on the WECC website, Black Hills Power revises section 4.9 of its Attachment K to refer the interested party to its Attachment K Hyperlink List, which

²⁷ *Id.* at 3.3.3.1.

²⁸ NTTG Planning Order, 124 FERC ¶ 61,053 at P 101.

²⁹ *Id.* P 102.

³⁰ Black Hills Power Attachment K, section 2.6.11.1.

³¹ *Id.* at 2.6.11.3.

in turn leads the interested party directly to the page on WECC's website that describes the economic studies in great detail.

c. Commission Determination

22. We find that Black Hills Power's proposed revisions comply with the directives of the NTTG Planning Order to clarify the methodology it will use to cluster or batch economic studies and by providing a link that leads a party interested in the TEPPC regional congestion study process directly to the page on WECC's website where that process is discussed in detail.

5. Cost Allocation

a. NTTG Planning Order

23. In the NTTG Planning Order, the Commission found that Black Hills Power's Attachment K partially complied with the cost allocation principle provided in Order No. 890. The Commission stated that while Black Hills Power pointed to its "Local Cost Allocation Methodology Projects Outside the OATT" business practices to be used to allocate costs, it did not incorporate the relevant provisions of the business practice into its Attachment K. Further, the Commission stated that Black Hills Power failed to provide detail in its Attachment K on the types of new local projects that are not covered under existing cost allocation rules or how this existing business practice meets the requirements of the cost allocation principle of Order No. 890. Therefore, the Commission directed Black Hills Power to amend its Attachment K to include a cost allocation methodology that provides the degree of certainty required by participants seeking to pursue new investments.³²

24. Additionally, the Commission stated that, while Black Hills Power's Attachment K provides that NTTG will make a cost allocation recommendation for sub-regional projects based on the NTTG Cost Allocation Principles for certain projects, Order No. 890 requires a specific cost allocation methodology that is reflected up front in the Attachment K, rather than considered on a case-by-case basis.³³ Thus, the Commission directed Black Hills Power, through its participation in NTTG, to work to further refine a specific methodology for cost allocation to provide more certainty for transmission providers and market participants to support new regional and sub-regional infrastructure investment.

³² NTTG Planning Order, 124 FERC ¶ 61,053 at P 116-17.

³³ *Id.* P 118.

b. Black Hills Power Compliance Filing

25. In its compliance filing, Black Hills Power revises its local cost allocation procedures to provide for an open season solicitation of interest, where for any project in which Black Hills Power is the sponsor, it will solicit interest to secure additional project participants. Black Hills Power includes a provision that, when using an open season solicitation process, it will allocate project costs and associated transmission rights proportionally to project participants, subject to the Commission's approval of the participation agreement.³⁴ Black Hills Power states that whenever the solicitation of interest results in a single project sponsor, the full cost and transmission rights will be allocated to that participant. Further, Black Hills Power states that for projects wholly on Black Hills Power's system that are undertaken for economic reasons or congestion relief at the request of a requestor, the project costs will be allocated to the requestor.³⁵ Finally, Black Hills Power states in its Attachment K that the cost allocation for sub-regional projects will be allocated consistent with the cost allocation principles of the applicable sub-regional entity, specifically WestConnect or NTTG.³⁶

c. Commission Determination

26. We find that Black Hills Power has complied with the requirements in the NTTG Planning Order regarding cost allocation. Black Hills Power has proposed a cost allocation methodology providing that when a transmission project is entered into by more than one participant from a solicitation of interest, project costs and associated transmission rights will be allocated proportionally to project participants. For projects resulting from the open season process which result in a single participant, the full costs and transmission rights will be allocated to that participant. In addition, the proposed cost allocation methodology is generally accepted and utilized throughout the WestConnect footprint.

27. Finally, Black Hills Power includes a link to the specific sub-regional cost allocation methodology for NTTG. However, we note that in an NTTG order being issued contemporaneously with this order, the Commission finds that the NTTG cost allocation lacks sufficient clarity, and therefore must be revised. As a result, we will accept Black Hills Power's cost allocation methodology subject to the final outcome of NTTG's compliance filing in Docket Nos. OA08-23-001, *et al.*

³⁴ Black Hills Power Attachment K, section 2.5.2.1.4.1.

³⁵ *Id.* at section 2.5.2.1.4.2.

³⁶ Black Hills Power includes in its Attachment K a direct link in its hyperlinks list that leads an interested party to NTTG's cost allocation methodology.

6. Recovery of Transmission Planning Costs

a. NTTG Planning Order

28. In the NTTG Planning Order, the Commission found that Black Hills Power “did not address cost recovery for planning activities in its Attachment K,” and directed it to file a compliance filing “explaining how it intends to recover transmission planning costs.”³⁷

b. Black Hills Power Compliance Filing

29. In its compliance filing, Black Hills Power revises section 5.1 of its Attachment K to read that “[u]nless the Transmission Provider allocates planning-related costs to an individual Stakeholder as permitted under the [Joint] OATT, all costs incurred by the Transmission Provider related to the [Local Transmission Plan] process, or as part of sub-regional or regional planning process, shall be included in the Transmission Provider’s transmission rate base.”

c. Commission Determination

30. We interpret Black Hills Power’s revision to mean that unless the Transmission Provider allocates planning-related costs to an individual stakeholder as permitted under the [Joint] OATT, all costs incurred by the Transmission Provider related to the Local Transmission Plan process or as a part of the sub-regional or regional planning process, shall be included in the Transmission Provider’s transmission rate, i.e., cost of service. As such, we find that Black Hills Power’s revised Attachment K complies with the directives of the NTTG Planning Order by addressing cost recovery for planning activities and clarifying that it will recover applicable transmission planning costs through its transmission rate.

The Commission orders:

(A) Black Hills Power’s compliance filing is hereby accepted, as modified, effective December 7, 2007, as discussed in the body of this order and subject to the outcome of NTTG’s compliance filing in Docket No. OA08-23-001, *et al.*

³⁷ NTTG Planning Order, 124 FERC ¶ 61,053 at P 122.

(B) Black Hills Power is hereby directed to submit a compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.