

STATE OF SOUTH DAKOTA
BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF BLACK HILLS POWER, INC., FOR)
AUTHORITY TO INCREASE ITS)
ELECTRIC RATES)
)
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)
)

Docket No. EL 14-026

PROTECTIVE AGREEMENT

I. BACKGROUND:

1. On March 31, 2014, Black Hills Power, Inc., a South Dakota corporation, (herein "Black Hills Power") filed the above-captioned matter with the South Dakota Public Utilities Commission ("Commission" or "SDPUC").

2. During the proceedings in this matter, Black Hills Power may file, and requests of Black Hills Power may be made whereby Black Hills Power provides data that it determines is confidential, proprietary, trade secret and/or has not been publicly disclosed.

3. The Administrative Rules of South Dakota ("ARSD") 20:10:01:39 to 44 govern the disclosure and use of confidential information in matters before the Commission.

4. This Agreement, by and between Black Hills Power and the Black Hills Industrial Intervenors,¹ establishes a procedure for the handling of confidential information of Black Hills Power.

¹ GCC Dacotah, Inc.; Pete Lien & Sons, Inc.; Rapid City Regional Hospital, Inc.; Rushmore Forest Products, Inc.; and Spearfish Forest Products, Inc.

II. ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

5. (a) Confidential Information. The term Confidential Information, for purposes of this Agreement, means data designated as Confidential or Confidential Information or Trade Secret by Black Hills Power. All Confidential Information shall be furnished pursuant to the terms of this Protective Agreement, and shall be treated by all persons accorded access thereto pursuant to this Protective Agreement as constituting Confidential Information and shall be used solely for the purpose of this proceeding and solely in accordance with this Protective Agreement, and shall not be used or disclosed for any other purpose or in any other manner. For purposes hereof, notes made pertaining to or prepared as the result of a review of Confidential Information shall be subject to the terms of this Protective Agreement. Any Confidential Information received in photographic, digital or electronic formats shall be identified as protected by Black Hills Power by means appropriate to the medium and shall be handled by the recipient in a manner suitable to protect its confidentiality.

(b) Use and Disclosure of Confidential Information. By signing this Protective Agreement, each entity has accepted and agreed to the terms of this Protective Agreement; provided, however, that Confidential information made available pursuant to this Protective Agreement shall be given solely to employees of said entity who have signed a Nondisclosure Protective Agreement in the form which is attached hereto and incorporated herein as Exhibit A, a copy of which shall be provided to counsel for Black Hills Power in advance of the employee being provided the Confidential Information. Confidential Information shall not be used or disclosed except for purposes of this proceeding. The Confidential Information may not be used or referenced in other proceedings in South Dakota or in other jurisdictions. Unless

otherwise provided in this Protective Agreement, all Confidential Information will be safeguarded and handled in Commission proceedings with at least the degree of care set forth in the Commission Procedures for Confidential Information.

(c) Nondisclosure Protective Agreement. Prior to giving access to Confidential Information to any other person who has not signed this Protective Agreement ("Other Person"), such Other Person shall agree in writing to comply with and be bound by this Protective Agreement by signing a Nondisclosure Protective Agreement in the form which is attached hereto and incorporated herein as Exhibit A and shall provide a copy of the signed Exhibit A to counsel for Black Hills Power in advance of being provided the Confidential Information. Black Hills Power shall have five (5) business days from receipt (eight (8) business days if mailed) in which to object to the disclosure of the applicable information to the proposed Other Person. No disclosure of any Confidential Information shall be made to the Other Person until no such objection has been made and the period for objecting has expired. The Nondisclosure Protective Agreement, Exhibit A, shall contain the Other Person's full name, permanent address, phone number, email address and employer.

(d) Challenge to Confidential Information Designation and Other Special Requests. This Protective Agreement establishes a procedure for the expeditious handling of Confidential Information. It shall not be construed as an agreement or ruling on the discoverability, confidentiality or privileged designation of any such information or document. Any person at any time upon ten (10) days prior notice may seek by appropriate pleading to have documents or other matters that have been designated as Confidential Information removed from the protective requirements of this Protective Agreement or to have them handled in a manner differently than described in this Protective Agreement

(either for greater or lesser confidentiality protections). If the Confidential nature of this information is challenged, resolution of the issue shall be made by the SDPUC after proceedings in a manner that preserves the Confidential nature of the information unless and until a decision is made by the SDPUC that the information is not entitled to treatment as Confidential Information and Black Hills Power has not appealed that decision within ten (10) business days.

6. Use of Confidential Information in Hearings or Commission Meetings. No person receiving Confidential Information shall use the Confidential Information in a hearing without first (a) providing prior notice to Black Hills Power regarding the information to be used and obtaining written approval (electronic format acceptable); and (b) conferring with Black Hills Power regarding limitations or procedures that can be used to avoid disclosing the confidential aspects of the Confidential Information at issue to persons not otherwise entitled to receive such information. If the parties cannot reach agreement regarding the use of such information, then the dispute shall be submitted to the SDPUC before the information is used or publicly disclosed. Without limiting the foregoing, no party shall refer to Confidential Information in written or oral testimony, cross-examination or argument except in accordance with this paragraph.

7. Return. Unless otherwise ordered, all Confidential Information shall remain under seal, shall continue to be subject to the protective requirements of this Protective Agreement, and shall either be certified as destroyed by the receiving person or returned to counsel for Black Hills Power within 30 days after final settlement or conclusion of the above-identified matter including administrative or judicial review thereof, unless otherwise agreed upon by Black Hills Power. The restrictions and obligations of this Agreement shall

survive the final settlement or conclusion of the above-identified matter.

8. Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this Protective Agreement shall neither use nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of these proceedings, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure and in accordance with the purposes and intent of this Protective Agreement.

9. Reservation of Rights. The parties hereto affected by the terms of this Protective Agreement further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Agreement in response to data requests, interrogatories, requests for information or documents or cross-examination on the grounds of relevancy or materiality. Nothing in this Agreement shall be construed as a waiver of the parties' rights to decline to provide information protected from disclosure by the rules of privilege recognized by law.

10. Inadvertent Disclosure. Black Hills Power shall not have waived its right to designate any documents, data, information, studies, or other materials as Confidential Information by inadvertent disclosure, provided Black Hills Power thereafter gives written notice to the recipient(s) of such information that it should have been designated as Confidential Information. From and after receipt of such notice, the previously disclosed information subsequently identified as Confidential Information shall be treated as Confidential Information for purposes of this Protective Agreement.

11. Information Provided to SDPUC. Any filing made with the SDPUC that contains Confidential Information shall comply with the requirement of ARSD § 20:10:01:40 and 20:10:01:41.

12. Governed by South Dakota Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Breach of this Agreement shall entitle Black Hills Power to apply for any legal or equitable remedy that may be available. In the event of any such legal action, Black Hills Power shall be entitled to reasonable attorneys fees and expenses in addition to any other relief or award of damages.

ACCEPTED AND AGREED by the undersigned representatives on behalf of the parties:


**BLACK HILLS INDUSTRIAL
INTERVENORS**

Dated: April 9, 2014

By: 
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BLACK HILLS POWER, INC.

Dated: April 10th, 2014

By: 
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