

**BEFORE THE SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE)	
PETITION FOR DECLARATORY)	PETITION FOR DECLARATORY
RULING OF BLACK HILLS)	RULING
POWER, INC. d/b/a BLACK HILLS)	
ENERGY)	EL17-___
)	

Pursuant to SDCL 49-1-11 and ARSD 20:10:01:34, Black Hills Power, Inc. d/b/a Black Hills Energy (“Company”), does hereby petition the South Dakota Public Utilities Commission (“Commission”) for a declaratory ruling, finding that:

A permit is not required for the rebuild of a 230kV transmission line constructed in 1963 that: 1) involves no change in the line’s nameplate carrying capacity or definition as a transmission facility; and 2) will occur within the line’s existing rights-of-way.

Pursuant to ARSD 20:10:01:34, the Company submits the following information in support of its petition:

1. State Statutes or Commission Rule or Order in Question

SDCL 49-41B-4 provides:

Permit required before construction of facility after certain date. No utility may begin construction of a facility in the state on or after July 1, 1979, without first having obtained a permit issued with respect to such facility by the Public Utilities Commission pursuant to this chapter. No such permit is required for an associated facility to be constructed for the purpose of transporting water if the water management board has issued a permit to appropriate water for the use to be made by that facility. Any facility, with respect to which a permit is required, shall thereafter be constructed, operated, and maintained in conformity with such permit including any terms, conditions, or modifications contained therein.

SDCL 49-41B-2 provides:

Definition of terms. Terms as used in this chapter mean:

* * *

(5) "Construction," any clearing of land, excavation, or other action that would affect the environment of the site for each land or rights of way upon or over which a facility may be constructed or modified, but not including activities incident to preliminary engineering or environmental studies. This term includes modifications to facilities as defined in § 49-41B-2.2;

* * *

SDCL 49-41B-2.2 provides:

Modified facility defined. For the purposes of this chapter, a facility is considered to be modified if:

* * *

(2) An electric transmission line that does not meet the definition of a transmission facility prior to building the line is to be modified in such a way that the line will meet the definition of a transmission facility after the modification is complete or the nameplate carrying capacity of an electric transmission facility is to be increased by an additional twenty kilovolts or greater;

* * *

2. Facts and Circumstances which Give Rise to the Issue to be Answered by the Commission

The Company's existing 230kV transmission line at issue was constructed in 1963, which was prior to any statutes being enacted that would require a construction permit. Over the last several years, an increased rate of outages has occurred on the line due to mechanical and structural failure owing to the age and condition of the line. Consequently, Company plans to rebuild the existing line in order to improve and maintain reliability on its 230kV system. The nameplate carrying capacity of the line will not be increased as part of the rebuild, and the line will not be relocated. The rebuild will occur within the line's existing rights-of-way.

SDCL 49-41B-4 requires a permit for any utility that begins “construction” of a facility on or after July 1, 1979. The existing line was built in 1963, prior to the statutory requirement for obtaining permits prior to commencing construction. Because the project involves the rebuild of an existing facility, the question becomes whether this activity meets the definition of “construction,” for which a permit is required.

“Construction” is defined in SDCL 49-41B-2 as “any clearing of land, excavation, or other action that would affect the environment of the site for each land or rights-of-way upon or over which a facility may be constructed or modified. . . . This term [“construction”] *includes modifications to facilities as defined in § 49-41B-2.2*” (emphasis added).¹ This definition makes clear that for a project rebuild to fall within the definition of construction for permitting purposes, the rebuild must fall within the statutory definition of a “modification.”

The definition of “modification” is straight-forward. As noted above, SDCL 49-41B-2.2 provides the following definition of the term:

For the purposes of this chapter, a facility is considered to be modified if:

* * *

(2) An electric transmission line that does not meet the definition of a transmission facility prior to building the line is to be modified in such a way that the line will meet the definition of a transmission facility after the modification is complete or the nameplate carrying capacity of an electric transmission facility is to be increased by an additional twenty kilovolts or greater;

Under this statutory definition, there are essentially two ways that a rebuild project could be found to be a “modification”: 1) where a line *does not* meet the definition of a transmission

¹ While the Company believes that the resolution of the issue centers around the statutory definition of the term “modification,” it is important to note that the rebuild of the existing 230kV line will stay within the existing rights-of-way. Therefore, the rebuild generally does not involve “clearing of land,

facility before the rebuild, but *does* meet the definition following the rebuild;² or 2) where the rebuild project would increase the nameplate carrying capacity of the facility by more than 20kV. Neither of these circumstances are implicated by the Company's planned rebuild.

Application of the two tests results in the conclusion that the Company's planned rebuild is not a "modification." The key fact here is that the nameplate capacity of the facility will not change as a result of the rebuild. At a rating of 230kV both before and after the rebuild, the line meets the definition of a transmission facility both before and after the rebuild. In addition, the nameplate carrying capacity of the facility will not be increased by more than 20kV through the rebuild. In fact, the nameplate capacity will not be increased at all.

Finding that the rebuild project is not a "modification" is important, because this finding leads to the conclusion that the rebuild is not "construction," as contemplated by SDCL 49-41A-2. Because the rebuild project does not fall within the definition of "construction," the Company believes that SDCL 49-41B-4 is not applicable, and a permit is therefore not required.

3. Precise Issue to be Answered by the Commission's Declaratory Ruling is:

Whether a permit is required for the rebuild of an existing 230kV transmission line, where the rebuild: 1) does not involve an increase in the line's nameplate carrying capacity; 2) does not change the line's status as a transmission facility; and 3) will occur within the line's existing rights-of-way?

excavation, or other action that would affect the environment of the site" as is referenced in the statutory definition of "construction."

² 49-41B-2.1 defines a "transmission facility" as follows: "For the purposes of this chapter, a transmission facility is: (1) An electric transmission line and associated facilities with a design of more than one hundred fifteen kilovolts. . . ."

As noted throughout this Petition, the design for the facility to be rebuild is 230kV, both before and after the rebuild. Because this value exceeds 115kV, the facility meets the definition of "transmission facility," both before and after the rebuild.

Preliminary Information

1. Petitioner's Information:

The Petitioner's name is Black Hills Power, Inc. d/b/a Black Hills Energy ("Company") with its principal place of business at 625 Ninth Street, Rapid City, South Dakota. The Company is a corporation, organized under the laws of South Dakota.

2. Time is of the essence:

This rebuild project is planned for a two-year construction period. Year 1 (2018) of this rebuild is planned for construction to begin February 1st, 2018 and will consist of approximately 81.3 miles from the South Rapid City substation to the SD/NE State line. Year 2 (2019) will consist of total of approximately 93.4 miles, occurring in Nebraska.

3. Company Representatives:

The name, address, telephone number and email address of the Company's representatives to whom all filed pleadings, correspondence and inquiries concerning the Petition should be made are as follows:

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