

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE APPLICATION OF ) BLACK HILLS POWER, INC. FOR A PERMIT TO ) CONSTRUCT A 230 KV TRANSMISSION LINE ) FROM NORTHEASTERN WYOMING TO THE ) RAPID CITY AREA IN SOUTH DAKOTA )</b>	<b>FINAL DECISION AND ORDER; NOTICE OF ENTRY  EL14-061</b>
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**PROCEDURAL HISTORY**

On June 30, 2014, Black Hills Power, Inc. (Black Hills or Applicant), a South Dakota corporation, filed with the South Dakota Public Utilities Commission (Commission) an Application of Black Hills Power, Inc. for a 230-kV Transmission Line and Associated Substation Modification Facility Permit (Application)<sup>1</sup>. Ex BHP-1<sup>2</sup>. Included with the Application filing was pre-filed Direct Testimony of Eric Egge and Michael J. Fredrich. The Application requests Commission approval of a permit to construct the South Dakota portion of an approximately 144-mile long 230-kilovolt (kV) transmission line to connect the Teckla Substation in Campbell County, Wyoming to the Osage Substation in Weston County, Wyoming and the Lange Substation in Pennington County, South Dakota near Rapid City. The South Dakota portion of the project (Project) consists of approximately 45.4 miles of 230-kV transmission line from the South Dakota/Wyoming border in Pennington County to the Lange Substation near Rapid City and modifications to the Lange Substation to accommodate the new transmission facility.

On July 2, 2014, the Commission issued a Notice of Application; Order for and Notice of Public Hearing; Notice of Opportunity to Apply for Party Status (Notice) setting the matter for public input hearing in Rapid City on August 25, 2014, at 6:30 p.m. MDT. The Notice was served by the Commission via first class mail on the Pennington County Commission and the Rapid City Council and Mayor and electronically on the Pennington County Auditor. On July 2, 2014, the Application was filed by Black Hills on behalf of the Commission with the Pennington County Auditor as required by SDCL 49-41B-15. On July 3, 2014, the Commission electronically transmitted notice of the Application and the intervention deadline of August 29, 2014, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. On July 14, 2014, Black Hills served the Notice on all landowners within one-half mile of the Project as required by SDCL 49-41B-5.2 plus other landowners living within an additional five hundred feet beyond one-half mile. TR 11. On August 4, 2014, Ruby B. Matejcik filed an Application for Party Status. On August 10, 2014, the Commission issued an Order Assessing Filing Fee. On August 25, 2014, the Commission held a public input hearing in Rapid City, SD. At the hearing, Victoria Leonard submitted an Application for Party Status which was filed on August 26, 2014. On August 26, 2014, GCC Dacotah, Inc., Michael Lewis, and Stephen Vadney filed Applications for Party Status. On August 27, 2014, Dave Riemenschneider filed an

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<sup>1</sup>The Commission's Orders in the case and all other filings and documents in the record are available on the Commission's web page for Docket EL14-061 at:  
<http://www.puc.sd.gov/Dockets/Electric/2014/el14-061.aspx>

<sup>2</sup>References to the November 6, 2014, Hearing Transcript are in the format "TR" followed by the hearing transcript page number(s) referenced, and references to hearing Exhibits are in the format Ex followed by the Exhibit number and, where applicable, the page number(s) referenced or other identifying reference and, where applicable, the attachment or sub-exhibit identifier and page number(s) referenced.

Application for Party Status. On August 28, 2014, Barbara Anderson Lewis filed an Application for Party Status, and on August 29, 2014, Robert Varilek/AW LLC filed an Application for Party Status. On September 4, 2014, the Commission issued an Order Granting Party Status and Intervention to Ruby B. Matejcek, Victoria Leonard, GCC Dacotah, Inc., Michael Lewis, Stephen Vadney, Dave Riemenschneider, Barbara Anderson Lewis, and Robert Varilek/AW LLC.

On September 5, 2014, Barton Banks filed an Application for Party Status, and on September 8, 2014, James S. Hodgens filed an Application for Party Status. On September 18, 2014, the Commission issued an Order Granting Party Status and Intervention to Barton Banks and James S. Hodgens. On September 22, 2014, Black Hills filed its responses to the Commission staff's (Staff) first set of data requests. On September 30, 2014, Black Hills filed a response to comments submitted to the Commission by Victoria Leonard. On October 2, 2014, James Hodgens filed comments and a question in response to Black Hills's response to the comments of Victoria Leonard and a request for information from Black Hills. On October 3, 2014, Black Hills filed a Supplemental Response to Staff's Data Request 1-5 and additional Supplemental Responses to Staff's Data Requests 1-5, 1-6, 1-8, 1-13, and 1-17.

On October 7, 2014, the Commission issued an Order for and Notice of Hearing setting the matter for evidentiary hearing on November 6, 2014, at 9:00 A.M. CST in Room 414 of the Capitol Building in Pierre. On October 9, 2014, James Hodgens filed additional comments. On October 15, Victorian Leonard filed additional comments. On October 20, 2014, Black Hills filed a response to James Hodgens additional comments. On October 21, Steve Vadney filed comments and attachments. On October 28, 2014, Black Hills filed a Joint Motion for Approval of Settlement Stipulation and Settlement Stipulation between Black Hills and Staff. On October 31, Black Hills filed its Exhibit List for the hearing and a Witness Designation designating Michael J. Fredrich as Black Hills's sole witness who would adopt the prefiled testimony of Eric Egge as well as his own prefiled testimony. On November 4, 2014, Black Hills filed an Amended Exhibit List with the addition of responses to Staff's Data Requests. On November 5, 2014, James Hodgens filed a Motion Requesting Continuance or Denial of Application and an Exhibit List.

The hearing was held as scheduled on November 6, 2014. Black Hills appeared and presented testimony and introduced the exhibits on its Amended Exhibit List with no objection to the admission of such Exhibits from any party. Staff appeared but did not present any evidence. No intervenors appeared at the hearing. Following the evidentiary portion of the hearing, the Commission voted unanimously to grant the Joint Motion for Approval of Settlement Stipulation and approve the Settlement Stipulation and to grant an energy facility permit to Black Hills subject to the terms and conditions of the Settlement Stipulation.

On November 7, 2014, James Hodgens submitted an email addressed to each of the Commissioners which was filed in the docket, and on November 13, 2014, Chairman Hanson filed a response to Mr. Hodgens email.

Having considered the evidence of record, applicable law and the arguments of the parties, the Commission makes the following Findings of Fact, Conclusions of Law and Decision:

## **FINDINGS OF FACT**

### **Procedural Findings**

1. The Procedural History set forth above is hereby incorporated by reference in its

entirety in these Procedural Findings. The procedural findings set forth in the Procedural History are a substantially complete and accurate description of the material documents filed in this docket and the proceedings conducted and decisions rendered by the Commission in this matter.

## **Parties**

1. The permit Applicant is Black Hills Power, Inc., a South Dakota corporation and a wholly owned subsidiary of Black Hills Corporation. Ex BHP-1, p. 1. Black Hills Power is a “public utility” as defined in SDCL Chapter 49-34A and is engaged in the generation, transmission, distribution, purchase, and sale of electric power and energy through an interconnected transmission network. Ex BHP-1, p. 1.

2. As set forth above in the Procedural History, the Commission granted intervention and party status to Ruby B. Matejcek, Victoria Leonard, GCC Dacotah, Inc., Michael Lewis, Stephen Vadney, Dave Riemenschneider, Barbara Anderson Lewis, Robert Varilek/AW LLC, Barton Banks, and James S. Hodgens.

3. Staff also participated in the case as a full party and entered into a Settlement Stipulation with Black Hills resolving all of Staff's issues in the case. Ex BHP-10.

## **The Project**

4. The Project will be solely owned, managed, and operated by the Applicant, Black Hills Power, Inc., a Rapid City based South Dakota corporation. Ex BHP-1, p. 1.

5. The Project is designed to be an approximately 144-mile long 230-kilovolt (kV) transmission line to connect the Teckla Substation in Campbell County, Wyoming to the Osage Substation in Weston County, Wyoming and the Lange Substation in Pennington County, South Dakota near Rapid City. The South Dakota portion of the project consists of approximately 45.4 miles of 230-kV transmission line from the South Dakota/Wyoming border in Pennington County to the Lange Substation north of Rapid City and modifications to the Lange Substation to accommodate the new transmission facility. Ex BHP-1, p. 4; Ex BHP-4; Ex BHP-5; Ex BHP-12; Ex BHP-13.

6. Black Hills will also modify the existing Lange 230 kV substation to accommodate one new 230 kV line section from Osage to Lange. Ex BHP-1, p. 5.

7. The basic structure type selected for the Facility will be wood H-frame, with 80-foot class two poles carrying a single circuit. Six individual configurations will be used consisting of tangent, light angle, medium angle, heavy angle, deadend angle and terminal structures. All angle and terminal structures will be three-pole-guyed structures. In some sections, steel single pole structures will be used with average height of 90 feet. Poles will be weathering steel and direct embedded or placed on concrete foundations. Strength of all structures will meet or exceed requirements set forth in the National Electrical Safety Code 2012 Edition. Ex BHP-1, p. 40.

8. The purpose of the Project is to strengthen and improve the reliability of the regional transmission network. The Project is also necessary to provide additional transmission capacity to meet the growing demand upon the Common Use System transmission system. Ex BHP-1, p. 2. Black Hills Power is a joint owner, along with Basin Electric Power Cooperative and

Powder River Energy Corporation, of the Common Use System (CUS) transmission system under the jurisdiction of a FERC-approved Joint Open Access Transmission Tariff (JOATT). The CUS transmission system consists primarily of approximately 1,200 miles of 230 kV transmission lines extending from Sheridan, Wyoming to Douglas, Wyoming to Rapid City, South Dakota to Scottsbluff, Nebraska. This system serves an all-time peak combined load of 967 MW in northeast Wyoming, western South Dakota and southeast Montana. BHP-1, p. 2.

9. The need for this Project has been identified and validated through the annual CUS transmission planning process. Long-range transmission planning studies have shown the Project is necessary to strengthen and improve the reliability of the CUS transmission system and the customer loads that rely on it. The Facility will provide an additional 230 kV transmission path into the Rapid City area, reducing the reliance on Rapid City generation to meet reliability criteria. Ex BHP-1, p. 3; Ex BHP-12.

10. Based on the 2014 10-year load forecasts provided by the CUS members for the annual transmission planning assessment, the forecasted load growth in the Black Hills area of the CUS over the next 10 years is 1.2%, or 45 MW total. In addition to the growing load service requirements placed on the transmission system, a transmission customer has requested 130 MW of firm transmission service beginning in 2016 through the JOATT. Currently, there is limited transmission capacity to transfer energy from the Wyodak area to the Rapid City area across the CUS, and the available capacity on the existing CUS 230 kV transmission system will not allow this transmission service commitment to be satisfied. The Facility will provide capacity (in excess of the capacity needed) to meet this transmission service commitment along with supporting additional CUS load growth. Ex BHP-1, p. 4.

11. Black Hills engaged in an extensive route selection process, consisting of analyzing alternative potential routes. BHP-1, pp. 6-9; BHP-1, Appendix B.

### **Environmental and Social and Economic Impact Analysis**

12. Prior to filing the Application, Black Hills performed an extensive analysis of environmental, social, and economic risks in the Project area. Ex BHP-1, pp. 9-37. This included an extensive environmental impact statement evaluation conducted by the Black Hills National Forest (BHNF) and the United States Bureau of Land Management (BLM). Ex BHP-1, Appendix C.

13. The environmental topics analyzed by Black Hills, BHNF, and BLM included the physical environment through which the Project would pass and the potential impact of the Project and mitigation measures, hydrologic resources in the Project area and potential impacts and mitigation measures, terrestrial ecosystems in the Project area and potential impacts and mitigation measures, aquatic ecosystems in the Project area and potential impacts and mitigation measures, air quality in the Project area and potential impacts and mitigation measures. Ex BHP-1, pp. 9-19; Ex BHP-1, Appendix C.

14. An extensive environmental impact statement analysis process was performed on the Project by BLM and the BHNF. A draft environmental impact statement was issued by BLM and the Forest Service in December, 2013.

15. Socioeconomic topics analyzed by Black Hills included current land use, both public and private, noise levels, satellite, cellular, radio, TV, and GPS reception, and aesthetics and potential impacts of the Project and mitigation measures; agriculture and potential impacts

of the Project and mitigation measures; transportation and potential impacts and mitigation; cultural resources and potential impacts and mitigation; and employment estimates.

### **Public Outreach**

16. Before filing the Application, Black Hills engaged in an extensive public outreach process. Ex BHP-1, Appendix B, Appendix B; Ex BHP-1, Appendix E.

17. Black Hills has continued to engage in discussions with landowners in the Project area in an effort to reach a final route that is the least objectionable to landowners in the area. TR 23-34.

### **Satisfaction of Requirements for Issuance of the Transmission Facility Permit**

18. The Settlement Stipulation contains 31 Terms and Conditions, a number of which contain several sub-conditions.

19. Black Hills has satisfied its burden of proving that the transmission facility constructed and operated in compliance with the Terms and Conditions of the Settlement Stipulation, will comply with all applicable laws and rules.

20. Black Hills has satisfied its burden of proving that the Project constructed and operated in compliance with the Terms and Conditions of the Settlement Stipulation, will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area.

21. Black Hills has satisfied its burden of proving that construction and operation of the transmission facility, constructed and operated in compliance with the Terms and Conditions of the Settlement Stipulation, will not substantially impair the health, safety, or welfare of the inhabitants near the facility.

22. Black Hills has satisfied its burden of proving that the transmission facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of governing bodies of affected local units of government. There is no evidence that the Project will adversely affect the orderly development of the region.

23. Black Hills has satisfied its burden of proving all of the requirements imposed by SDCL 49-41B-22 for issuance of the permit by the preponderance of the evidence.

24. Applicants have furnished all information required by the applicable statutes and Commission regulations.

25. The Commission finds that Black Hills has complied with the statutory requirements imposed by SDCL Chapter 49-41B and the regulatory requirements imposed by ARSD 20:10:22 for issuance of the transmission facility permit.

26. Because Black Hills has satisfied its burden of proving each of the elements in SDCL 49-41B-22 and has complied with the requirements of ARSD 20:10:22, the issuance of the transmission facility permit is appropriate. The transmission facility permit is issued

conditioned upon Black Hills's compliance with the Conditions set forth in the Settlement Stipulation.

28. The Terms and Conditions for construction and operation of the Project set forth in the Settlement Stipulation are adopted by the Commission in this Decision as the terms and conditions applicable to the energy facility permit issued by the Commission by this Decision and are incorporated herein by reference and shall have the same force and effect as if set forth herein in their entirety.

29. To the extent that any Conclusion of Law set forth below is more appropriately a finding of fact, that Conclusion of Law is incorporated by reference as a Finding of Fact.

### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Application pursuant to SDCL Chapter 49-41B.

2. The Commission lacks legal authority over private landowner transactions or the terms and conditions of any easement granted by landowners for the Project.

3. Following the filing of the Application with the Commission, certain notice requirements were required by law. SDCL Chapter 49-41B. Specifically, Applicants were required to provide the notices required by SDCL 49-41B-5.2. Additionally, the Commission was required to schedule a public hearing under 49-41B-15 and provide the notice required by SDCL 49-41B-15. These notice requirements have been satisfied.

4. Applicants satisfied their obligations to provide notice to landowners required by 49-41B-5.2. Specifically, 49-41B-5.2 required the Applicants to provide notice, in writing, to the owner of record of any land that is located within one-half mile of the proposed site where the facility is to be constructed. The notice is required to be mailed by certified mail. The landowner notice letter also must advise the landowners of the time, place, and location of the public hearing and provide a description, nature, and location of the facility requested by the Application. The Applicants complied with the landowner notice requirement when they sent the landowner letter via certified mail on July 14, 2014, containing a copy of the Notice of Application; Order for and Notice of Public Hearing; Notice of Opportunity to Apply for Party Status issued by the Commission on July 2, 2014.

5. Although Black Hills, as a result of its public outreach process, made several modifications to the original route as described in the Application, no new landowners came within the half mile notice requirement.

6. SDCL 49-41B-5.2 also required Black Hills to publish notice in the official newspaper of each county which the Project is located for two consecutive weeks. Black Hills complied with the publication notice requirement of SDCL 49-41B-5.2 when they had notice of the August 25, 2014 public hearing published two successive weeks in the Rapid City Journal.

7. Following the filing of the Application, SDCL 49-41B-15 required the Commission to schedule a public hearing. The Commission scheduled the public hearing through the Notice, which set the matter for public hearing on August 25, 2014. The Commission thus complied with SDCL 49-41B-15(1).

8. The Commission also is required to notify Black Hills of the hearing and serve notice of the Application hearing upon the governing bodies of the counties and municipalities totally or partially within the area of the proposed facility. SDCL 49-41B-14(2) and (3). The Commission complied with these requirements by serving the Notice on the Pennington County Commission and Rapid City Council.

9. The Commission also caused Application to be filed with the County Auditor for Pennington County as required by SDCL 49-41B-15(5).

10. SDCL 49-41B-15 requires the Commission to publish notice of the time, place and purpose of the public hearing in one newspaper of general circulation in counties totally or partially within the area of the Project. The Commission complied with those requirements when it published notice of the August 25, 2014 public input hearing in the Rapid City Journal on July 30 and August 20, 2014.

11. Black Hills and the Commission have satisfied all the notice requirements required by SDCL 49-41B-15 and 49-41B-5.2, and no one has objected to the notice provided.

12. The Commission held an evidentiary hearing pursuant to SDCL Ch. 1-26 on the Application on November 6, 2014. Due process rights were afforded to all the parties at the evidentiary hearing consistent with SDCL Ch. 1-26.

13. None of the intervenors appeared at the hearing and therefore presented no evidence upon which the Commission could base a denial of the permit.

14. Following the evidentiary hearing, based upon the evidence presented, and based upon the Settlement Stipulation, the Commission concludes that Black Hills has satisfied its burden of proving the elements required by SDCL 49-41B-22 for issuance of the transmission facility permit as requested in the Application. The Commission thus concludes that the Application should be granted and a facility permit should be issued for the Project for the reasons stated in these Findings of Fact and Conclusions of Law.

15. The Commission grants the transmission facility permit requested in the Application, as amended, subject to the Terms and Conditions of the Settlement Stipulation. Black Hills is required to comply with the Conditions imposed by the Settlement Stipulation. With the Conditions in the Settlement Stipulation, the Commission concludes that the necessary requirements of SDCL 49-41B-22 are all satisfied.

16. To the extent that any Finding of Fact set forth above is more appropriately a conclusion of law, that Finding of Fact is incorporated by reference as a Conclusion of Law.

It is therefore

ORDERED, that the terms and Conditions for construction and operation of the Project set forth in the Settlement Stipulation are adopted by the Commission in this Decision as the terms and conditions applicable to the energy facility permit issued by the Commission by this Decision and are incorporated herein by reference and shall have the same force and effect as if set forth herein in their entirety. It is further

ORDERED, that an energy facility permit is issued for the construction and operation of the Project, subject to the Terms and Conditions of the Settlement Stipulation. It is further

ORDERED, that Black Hills shall comply with all of the Terms and Conditions set forth in the Settlement Stipulation.

**NOTICE OF ENTRY AND OF RIGHT TO APPEAL**

PLEASE TAKE NOTICE that this Final Decision and Order; Notice of Entry was duly issued and entered on the 24<sup>th</sup> day of December, 2014. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition with the Commission within 30 days after the date of issuance of this Final Decision and Order; Notice of Entry. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Final Decision and Order to the appropriate Circuit Court by serving notice of appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 24<sup>th</sup> day of December, 2014.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.	
By:	<u>Tina Douglas</u>
Date:	<u>12-24-14</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Gary Hanson

GARY HANSON, Chairman

Chris Nelson

CHRIS NELSON, Commissioner

Kristie Fiegen

KRISTIE FIEGEN, Commissioner