

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

**IN THE MATTER OF THE APPLICATION OF
BLACK HILLS POWER INC. DBA BLACK
HILLS ENERGY FOR A FACILITY PERMIT
TO CONSTRUCT A 230 KV TRANSMISSION
LINE AND ASSOCIATED FACILITIES IN
PENNINGTON COUNTY**

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**SETTLEMENT STIPULATION
EL19-006**

It is hereby stipulated and agreed by and between the Applicant, Black Hills Power, Inc. d/b/a Black Hills Energy (“Applicant” or “Black Hills”), and Staff of the South Dakota Public Utilities Commission (“Staff”), (jointly “Party” or “Parties”), that the following Settlement Stipulation may be adopted by the South Dakota Public Utilities Commission (“Commission”) in the above-captioned matter.

In its support of its Application, the Applicant hereby offers this Stipulation, the Application filed on February 5, 2019. The Parties offer no answering testimony or exhibits, conditioned upon the Commission accepting the following Stipulation and the Terms and Conditions without any material condition or modification.

I. INTRODUCTION

Black Hills proposes to construct, own and operate a new 230/69 kV substation at the location of the former Ben French Power Plant and to construct, own and operate a new 230 kV transmission line connecting to the proposed substation. The former Ben French Power Plant property is currently vacant land owned and maintained by Black Hills and located within the city limits on the northwest side of Rapid City, SD. The new 230 kV transmission line will be constructed from the substation extending to the southeast approximately 0.2 miles and then to the east approximately 0.5 miles. The new 230 kV transmission line will be completely constructed within existing Black Hills easements.

II. PURPOSE

This stipulation has been prepared and executed by the Parties for the sole purpose of resolving Docket EL19-006. In consideration of the mutual promises hereinafter set forth, the Parties agree as follows:

1. Upon execution of this Stipulation, the Parties shall file this Stipulation with the Commission together with a joint motion requesting that the Commission issue an order approving this Stipulation in its entirety without condition or modification.

2. This Stipulation includes all terms and conditions of the settlement and is submitted with the condition that, in the event the Commission imposes any material changes or conditions to this Stipulation which are unacceptable to any Party, this Stipulation may, at the option of any Party, be withdrawn and shall not constitute any part of the record in this proceeding or any other proceeding nor be used for any other purpose.
3. This Stipulation shall become binding upon execution by the Parties, provided however, that if this Stipulation does not become effective in accordance with Paragraph 2 above, it shall be null, void, and privileged. This Stipulation is intended to relate only to the specific matter referred to herein; no Party waives any claim or right, which it may otherwise have, with respect to any matter not expressly provided for herein. No Party or a representative thereof shall directly or indirectly refer to this Stipulation as precedent in any other current or future proceeding before the Commission.
4. The Parties to this proceeding stipulate that all pre-filed testimony, exhibits, and responses to Staff data requests will be made a part of the record in this proceeding. The Parties understand that if this matter had not been settled, the Parties would have filed direct and rebuttal testimony.
5. The terms and conditions contained in this Stipulation shall inure to the benefit of and be binding upon the respective successors, affiliates, owners, stockholders, partners, parents, subsidiaries, directors, officers, agents, employees, representatives, attorneys, and assigns of the Parties. In addition, the terms and conditions of this Stipulation, including all facts leading up to the signing of this Stipulation, shall bind the Parties, including consultants, contractors and retained professionals.
6. This Stipulation constitutes the entire agreement between the Parties and shall be deemed to supersede any other understanding or agreements, whether written, oral, expressed or implied, relating to the Application. This Stipulation may not be amended, modified, or supplemented, and waivers or consents to departures from the terms and conditions of this Stipulation may not be given without the written consent thereto executed by all Parties.
7. This Stipulation shall be interpreted and construed in accordance with the laws of the State of South Dakota.
8. This Stipulation may be executed by electronic mail or facsimile and in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.
9. The Parties agree that subject to the four elements of proof under SDCL 49-41B-22, the Commission has the authority to grant, deny, or grant upon reasonable terms, conditions, or modifications a permit for the construction, operation, and maintenance of the Project. Each Party further agrees that Applicant has met its burden of proof

pursuant to SDCL 49-41B-22 and is entitled to a Permit to construct the Project as provided in SDCL 49-41B-24, subject to the following:

III. TERMS AND CONDITIONS OF THE SETTLEMENT STIPULATION

1. The Applicant will obtain all governmental permits which reasonably may be required by any township, county, state or federal agency or any other governmental unit for construction and operation activity prior to engaging in the particular activity covered by that permit. Copies of any permits obtained by the Applicant shall be filed with the Commission.
2. The Applicant shall comply with all other terms and conditions as set forth in this Settlement Stipulation.
3. If construction of any portion of the Project commences more than four years after the date the permit is granted, the Applicant must certify to the Commission before the construction commences that such facilities will meet the permit conditions.
4. The Permit granted by the Order in this matter shall not be transferable without the approval of the Commission pursuant to SDCL 49-41B-29.
5. The Applicant shall construct, operate, and maintain the Project in a manner consistent with:
 - a. Descriptions in the Application,
 - b. Responses to any data requests,
 - c. The Terms and Conditions of the Permit to Construct Facilities,
 - d. Any applicable industry standards, and
 - e. Any permits issued by a Federal, State, or Local agency.
6. Applicant agrees that the Commission's complaint process as set forth in ARSD 20:10:01 shall be available to landowners and other persons sustaining or threatened with damage as the result of Applicant's failure to abide by the conditions of the Permit or otherwise having standing to seek enforcement of the conditions of the Permit.
7. The Applicant shall provide each landowner on whose property the Project is to be constructed with the following information:
 - a. A copy of the Commission Order Granting Permit to Construct Facilities;
 - b. Detailed safety information describing:
 - i. Reasonable safety precautions for existing activities on or near the Project,
 - ii. Known activities or uses that are presently prohibited near the Project, and
 - iii. Other known potential dangers or limitations near the Project;
 - c. Construction/maintenance damage compensation plans and procedures;
 - d. The Commission's address, website and phone number; and
 - e. Contact person for Applicant, including name, e-mail address, and phone number.
8. In order to ensure compliance with the terms and conditions of this Permit pursuant to SDCL 49-41B-33, it is necessary for the enforcement of this Order that all employees, contractors,

and agents of Applicant involved in this Project be made aware of the terms and conditions of this Permit.

9. Except as otherwise provided in the conditions of this Stipulation, Applicant shall comply with all mitigation measures set forth in the Application and Applicant responses to Staff data requests. Material modifications to the mitigation measures shall be subject to prior approval of the Commission.
10. Applicant shall comply with the following conditions regarding road protection:
 - a. Applicant shall acquire all necessary permits authorizing the crossing of federal, state, county, and township roads.
 - b. Applicant shall coordinate road closures with federal, state, and local governments and emergency responders.
 - c. Applicant shall implement a regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the public.
 - d. After construction Applicant shall repair and restore deteriorated roads resulting from construction traffic, or compensate governmental entities for their repair and restoration of deteriorated roads, such that the roads are returned to their preconstruction condition.
 - e. Privately owned areas used as temporary roads during construction will be restored to their preconstruction condition, except as otherwise requested or agreed to by the landowner.
 - f. Should applicant need to widen any existing roadways during construction of the Project, the Applicant shall return the roadways back to original width after completion of the Project, unless agreed upon otherwise with the federal, state, county, or township entities, or the landowner.
 - g. Applicant shall use appropriate preventative measures to prevent damage to paved roads and to remove excess soil or mud from such roadways.
11. Applicant shall use appropriate preventative measures to prevent damage to paved roads and to remove excess soil or mud from such roadways. Before commencing construction, the Applicant shall furnish an indemnity bond in the amount of \$250,000 to comply with the requirements of SDCL 49-41B-38. Such bond shall be issued in favor of, and for the benefit of, all such townships, counties, and other governmental entities whose property is crossed by the transmission facilities or used by associated construction equipment. The bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Applicant shall give notice of the existence and amount of this bond to all counties, townships and other governmental entities whose property is crossed by the transmission facilities.
12. Applicant will provide signage that identifies road closures and disturbances resulting from the Project in accordance with the most recent editions of the Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration.

13. Applicant shall promptly report to the Commission the presence of any critical habitat of threatened or endangered species in the siting area that Applicant becomes aware of and that was not previously reported to the Commission.
14. Applicant shall confer with the applicable agencies in the implementation of measures for the protection of avian species and design the transmission line following the Avian Power Line Interaction Committee Suggested Practices.
15. Applicant agrees to avoid cultural resources sites evaluated or eligible for listing on or already listed on or that are eligible for listing on the National Register of Historic Places (NRHP), and those that are not evaluated for listing on the NRHP. When NRHP eligible or listed sites cannot be avoided, Applicant will notify the State Historic Preservation Office (SHPO) and the Commission of the reasons that complete avoidance cannot be achieved in order to coordinate minimization and/or treatment measures.
16. If during construction Applicant discovers what may be a cultural resource, human skeletal remains, or associated funerary objects, Applicant or its agent shall immediately cease work at the location and notify the landowner(s), the SHPO, and other authorities as appropriate (per SDCL 34-27-25 and SDCL 34-27-28 in the case of human burials). If it is determined, in coordination with SHPO, that a significant resource is present, Applicant shall develop a plan that is reasonably acceptable to the landowner and SHPO that minimizes the impact or threat to the resource.
17. Applicant shall provide the Stormwater Pollution Prevention Plan (SWPPP) to the Commission when Applicant has a final design for the Project. The SWPPP will outline the water and soil conservation practices that will be used during construction to prevent or minimize erosion and sedimentation. The SWPPP will be completed before submittal of an application for a National Pollutant Discharge Elimination System (NPDES) general permit for construction activities. All contractors will be given a copy of the SWPPP and requirements will be reviewed with them prior to the start of construction.

Applicant will repair and restore areas disturbed by construction or maintenance of the Project. Except as otherwise agreed to by the landowner, restoration will include replacement of original pre-construction topsoil or equivalent quality topsoil to its original elevation, contour, and compaction and re-establishment of original vegetation as close thereto as reasonably practical.

18. Applicant shall work closely with landowners or land management agencies, such as the NRCS, as applicable, to determine a plan to control noxious weeds.
19. Applicant's obligation with respect to restoration and maintenance of the right-of-way (ROW) shall continue throughout the life of the Project for disturbances caused by the actions of the Applicant. Where the soil is disturbed during construction or maintenance of the line, Applicant shall restore vegetation in and along the ROW. Applicant shall remove or eliminate noxious weeds that sprout in restored areas. Landowner permission shall be obtained before the initial application of herbicides.

20. Applicant shall stage construction materials in a manner that minimizes the adverse impact to landowners and land users as agreed upon between Applicant and landowner or Applicant and appropriate federal, state, and/or local government agencies. All excess construction materials and debris shall be removed upon completion of the Project, unless the landowner agrees otherwise.
21. Applicant shall repair or replace all property removed or damaged during all phases of construction, including but not limited to, all fences and gates and utility, water supply, irrigation, or drainage systems. Applicant shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses. All repair, replacement, and/or compensation described above shall be in accordance with the terms and conditions of written agreements between Applicant and affected landowners where such agreements exist.
22. Applicant shall, in the manner described in its written landowner agreements, indemnify and hold the landowner harmless for loss, damage, claim, or actions resulting from Applicant's use of the easement, including any damage resulting from any release, except to the extent such loss, damage, claim, or action results from the negligence or willful misconduct of the landowner or his employees, agents, contractors, or other representatives.
23. Applicant shall locate all structures, to the extent feasible and prudent, to minimize adverse impacts and interferences with shelterbelts and other land uses or activities. Applicant shall take appropriate precautions to protect forested areas and recreational trails during construction.
24. If it becomes necessary to materially deviate from the described centerline to accommodate engineering and applicable safety and construction requirements based on actual conditions encountered during construction, all landowners affected by the deviation and the Commission must be notified in writing five working days before any deviation may occur. Applicant shall seek approval from the Commission prior to making any material deviations to the Project. For purposes of this paragraph, the term "material deviations" shall mean any action or activity outside the reasonable parameters of this Permit.
25. The terms and conditions of the Permit shall be made a uniform condition of construction, subject only to an affirmative written request for an exemption addressed to the Commission. A request for an exemption shall clearly state which particular condition should not be applied to the property in question and the reason for the requested exemption. The Commission shall evaluate such requests on a case-by-case basis which evaluation shall be completed within 60 days unless exigent circumstances require action sooner.
26. If the Project causes interference with radio, television, or any other licensed communication transmitting or receiving equipment, Applicant shall take all appropriate action to minimize any such interference and shall make a good faith effort to restore or provide reception levels equivalent to reception levels in the immediate areas just prior to construction of the Project.

This mitigation requirement shall not apply to any dwellings or other structures built after completion of the Project.

27. Applicant will provide Global Positioning System coordinates of structure locations to affected landowners at any time during the life of the Project. Coordinates will be provided in writing to landowners within 30 days of a request.
28. Applicant shall secure all necessary easements for the Project prior to construction.
29. Not less than 30 days prior to commencement of construction work in the field, Applicant will provide to Staff the most current preconstruction design, layout, and plans. Applicant will also provide such additional Project preconstruction information as Staff requests.
30. Within 90 days of the Project's completion, Applicant shall submit a report to the Commission that provides the following information:
 - a. As-built location of structures and route;
 - b. The status of remedial activities for road damage, landowner property damage, crop damage, environmental damage, or any other damage resulted from construction activities; and
 - c. A summary of known landowner complaints and Applicant's plan for resolving those complaints.
31. Prior to construction, Applicant will provide notices of construction to the South Dakota Department of Public Safety, the Sheriff of Pennington County, the Office of Emergency Management of Pennington County, and the Director of the Rapid City Public Works Department and Director of the Rapid City Parks & Recreation with a schedule and location of work to be performed within the agency's jurisdiction.
32. Applicant shall comply with the conditions set forth in this section regarding recreational trail protection. Recreational trails include, but are not limited to, ATV trails, motorcycle trails, snowmobile trails, hiking trails, and biking trails.
 - a. Applicant shall coordinate recreational trail closures with appropriate federal, state, and/or local government agency, if trail closure is required during Project construction.
 - b. Applicant shall provide notice to appropriate federal, state, and/or local government agency of construction activities that may adversely impact the use of a recreational trail during Project construction.
 - c. Should the Project adversely impact the use of a recreational trail during construction, Applicant shall work with the appropriate federal, state, and/or local government agency to provide adequate notice of construction activities to trail users.

- d. Applicant shall implement a regular program of recreational trail maintenance and repair throughout the active construction period for any recreational trails used to access the Project ROW.
- e. After construction, Applicant shall repair and restore deteriorated recreational trails resulting from construction traffic and/or compensate governmental entities for their repair and restoration of deteriorated trails, such that the trails are returned to their preconstruction condition.
- f. Should Applicant need to widen any recreational trails during construction of the Project, Applicant shall return the trails back to original width after completion of the Project, unless agreed upon otherwise with the appropriate federal, state, county, or township entities, or the landowner.

Dated this 20th day of May, 2019.

Black Hills Power, Inc. d/b/a Black Hills Energy

By: 

Its: VP Electric Operations - South Dakota

Public Utilities Commission Staff

By: 

Its: Staff Attorney