



**BLACK HILLS POWER, INC. - CONFIDENTIALITY AGREEMENT
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION – DOCKET NO. EL26-003**

This Confidentiality Agreement (“Agreement”) is effective as of the 8th day of June, 2026, (the “Effective Date”) by and between Black Hills Power, Inc., a South Dakota corporation doing business as “Black Hills Energy” and having its principal place of business at 7001 Mount Rushmore Rd., Rapid City, SD 57702 (hereinafter referred to as “Company”), and Mr. John D. McKee Sr., an individual intervenor residing in Rapid City, SD (hereinafter referred to as “Recipient”), in connection with a legitimate need for Confidential Information. “Party” or “Parties” refers to Company and Recipient, individually or collectively.

WHEREAS, Recipient desires to receive certain Confidential or Highly Confidential Information for purposes of participating as an intervening Party in the Company’s general rate case proceeding before the South Dakota Public Utilities Commission (“Commission”) in Docket No. EL26-003, such participation to include without limitation, research, analysis of information and documents produced in discovery, and preparation and filing to the Commission of testimony, discussion of settlement, and/or participation in hearing pursuant to South Dakota law, and Commission orders and rules (the “Purpose”), and, to the extent that Company provides such Confidential or Highly Confidential Information to Recipient for the Purpose, it will be subject to the obligations set forth in this Agreement; and,

WHEREAS, the Company and the Recipient have entered into this Agreement to ensure the confidentiality and restricted use of all such Confidential or Highly Confidential Information and to prevent the disclosure of same to third parties except as permitted herein.

NOW THEREFORE, in consideration of the mutual promises, covenants, representations and agreements contained in this Agreement, the Parties agree as follows:

1. **“Confidential Information”** shall include: Any data or information identified as being non-public by Company and its corporate affiliates, including data or information, whether orally, visually, or in writing, provided by Company that is represented by the Company as “Confidential” or marked as “Confidential”, data or information otherwise available through a secure web portal, and/or any other data, notes of Confidential information, copies of Confidential information, or other information provided by Company or used or recreated by Recipient, in any manner, pursuant to this Agreement.

“Highly Confidential Information” shall mean documents that consists of highly sensitive rate, competitive, financial, or other Information designated by Company as “Highly Confidential” that must be limited in disclosure due the potential for loss of competitive rate advantage, reputation damage, financial loss, legal liability, operational disruption, including confidential individual negotiated rates.

Other than Commission staff, only the following individuals, who have first executed and returned to Company a Non-Disclosure Agreement consistent with the form provided in **Attachment A** hereto as a pre-condition to receiving such information this Confidentiality Agreement, shall be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to, any Confidential Materials that are designated pursuant to this Confidentiality Agreement as “HIGHLY CONFIDENTIAL:

- (1) Recipient or an attorney who has made an appearance in this proceeding for the Recipient; and
- (2) a Consultant, an expert, or an employee of a consultant or an expert retained by Recipient for the purpose of advising, preparing for, or testifying in this proceeding; and
- (3) Recipient or representatives who may testify regarding rates or otherwise require access to the Highly Confidential Information so long as the Recipient does not use that Highly Confidential Information for a purpose other than relevant and related Purpose of this rate proceeding, including specifically connection with pre-hearing proceedings, preparation for hearing, hearing, or other related proceedings associated with this proceeding. The Company may restrict Recipient from viewing the specific rate information of another customer.

Recipient is responsible for ensuring that persons under his or her supervision or control comply with this Confidentiality Agreement.

Notwithstanding the above, the Parties agree that information shall not be deemed Confidential or Highly Confidential Information and the Recipient shall have no obligation to hold in confidence such information, where such information:

- (a) Is or becomes known to the Recipient or its Representatives, having been disclosed to the Recipient or its Representatives by a third party not known by the Recipient as having an obligation of confidentiality to the Disclosing Party; or
- (b) Is or becomes publicly available through no wrongful act of the Recipient or its Representatives in breach of this Agreement; or
- (c) Is independently developed by the Recipient or its Representatives without reference to any Confidential or Highly Confidential Information disclosed hereunder; or
- (d) Is approved for release in advance (and only to the extent so approved) by the Disclosing Party in writing.

2. The “Term” of this Agreement for the exchange of Confidential or Highly Confidential Information under this Agreement is two (2) years from the Effective Date, after such time no additional Confidential or Highly Confidential Information shall be exchanged without a new Confidentiality Agreement. All confidentiality provisions of this Agreement protecting Confidential or Highly Confidential Information exchanged pursuant to this Agreement shall remain in effect for five (5) years from the Effective Date, after which the Agreement is terminated.

3. Upon the termination of this Agreement, Recipient agrees that it will promptly and securely destroy the Confidential or Highly Confidential Information and any and all other material or information derived from the Confidential or Highly Confidential Information.

4. Recipient acknowledges that the Company is the sole and exclusive owner of the Confidential or Highly Confidential Information, and Recipient does not acquire any right, title, license or interest in the Confidential or Highly Confidential Information except the limited right to use the Confidential or Highly Confidential Information as provided herein. The Recipient understands and agrees that none of the Company, its Affiliates or any of their respective employees, officers, managers, directors, advisors (including, without limitation, financial advisors, legal counsel, consultants and accountants), or agents: (a) have made or make any representation or warranty hereunder, expressed or implied, as to the accuracy or completeness of the Confidential or Highly Confidential Information; or (b) shall have any liability hereunder to the Recipient or Recipient's representatives relating to or resulting from the use of the Confidential or Highly Confidential Information or any errors therein or omissions therefrom.

To the extent that any Confidential or Highly Confidential Information includes materials subject to the attorney-client or similar legal privilege, neither the Company nor any of its Affiliates is waiving, and shall not be deemed to have waived or diminished, its attorney work-product protections, attorney-client privileges, or similar protections and privileges as a result of disclosing any Confidential or Highly Confidential Information (including Confidential or Highly Confidential Information related to pending or threatened litigation) to the Recipient or any of its Representatives. This same provision shall also apply to other lawful objections of the Company that require disclosure of Confidential information as set forth in this Agreement.

5. Recipient agrees not to sell, disclose, discuss, use, reproduce, duplicate, distribute, copy, reconstruct or in any way communicate, directly or indirectly, the Confidential or Highly Confidential Information for purposes other than in connection with the Purpose. Recipient shall use all reasonable efforts to protect the confidentiality of such information and to prevent any unauthorized use or disclosure of Confidential or Highly Confidential Information. Recipient expressly understands and agrees that the input, uploading, submittal, or disclosure of any Confidential or Highly Confidential Information into any Artificial Intelligence System ("AI System") is strictly prohibited and a material breach of this Agreement. Recipient may share Confidential or Highly Confidential Information only with Authorized Personnel. "Authorized Personnel" means consultants and attorneys who (a) need to have access to such Confidential or Highly Confidential Information in order to assist Recipient in connection with the Purpose (b) are made aware of the Recipient's confidentiality obligations and other obligations set forth in this Agreement, and (c) agree to be bound by those obligations. Authorized Personnel shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to, Confidential or Highly Confidential Information pursuant to this Agreement unless the Authorized Personnel has first executed a Non-Disclosure Certificate, provided that if an attorney qualified as an Authorized Personnel has executed such a certificate, the paralegals, secretarial, and clerical personnel under the attorney's instruction, supervision, or control need not do so. A copy of each Non-Disclosure Certificate shall be provided by Recipient to the Company prior to disclosure of any Confidential or Highly Confidential Information to the Authorized Personnel. Recipient will ensure compliance by Authorized Personnel with the terms and conditions of this Agreement and will be responsible for any breach of such terms and conditions by any Authorized Personnel. Recipient shall notify Company immediately of any loss, misuse, or misappropriation of any

Confidential or Highly Confidential Information of which Recipient becomes aware. In the event Recipient becomes aware of a breach of these terms and conditions by any Authorized Personnel, Recipient shall take prompt action as may be required to limit or prevent furtherance of such breach by the responsible Authorized Personnel.

6. Recipient acknowledges that the extent of damages in the event of breach of any provision in this Agreement would be difficult or impossible to ascertain, and that there will be no adequate remedy at law in the event of any such breach. The Recipient therefore agrees that if it or its Authorized Personnel breach any provision of this Agreement, Company will be entitled to seek specific performance and injunctive or other equitable remedies, in addition to any other relief to which it may be entitled at law and/or in equity, and for which monetary relief will not be a substitute for equitable relief. Should Recipient be found to have breached this Agreement, it may be excluded from future access to Confidential or Highly Confidential Information. Individual Authorized Personnel associated with any breach may also be excluded from future access to Confidential or Highly Confidential Information.

7. The authorized representative executing this Agreement hereby acknowledges and agrees that he/she is duly authorized to execute this Agreement on behalf of Recipient and that this Agreement shall bind and be enforceable by and against the Recipient and its Authorized Personnel. Neither Party will, to the extent permitted by law, without prior approval of the other Party, make any public announcement of or otherwise disclose the terms of this Agreement (which shall be considered Confidential or Highly Confidential Information hereunder).

8. If Recipient is required by a regulatory request, or a court order or other legal process, to reveal Confidential or Highly Confidential Information, Recipient will promptly notify the Company so that the Company may take action to limit disclosure of the Confidential or Highly Confidential Information, including a protective order, as appropriate, and Recipient will cooperate with the Company to protect the Confidential or Highly Confidential Information in a lawful manner. The Company does not waive its right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Confidential Materials.

All Confidential or Highly Confidential Information filed by the Recipient with the Commission or any other judicial or administrative body in support of or as a part of testimony, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate and prominent markings indicating that the contents include Confidential or Highly Confidential Information, as well as the type of Confidential Materials.

9. Recipient must retain Confidential or Highly Confidential Information in a secure place that prevents unauthorized access. The Recipient shall, and shall cause the Authorized Personnel to use at least the same degree of care as Recipient would use to protect its own confidential information of like character, itself and cause its Authorized Personnel with access to Confidential or Highly Confidential Information to, maintain their respective systems in accordance with industry security standards as well as reasonable and appropriate practices, procedures, and systems, including administrative, technical, physical and electronic safeguards, in order to (A) protect the security, confidentiality, and integrity of Confidential or Highly Confidential Information; (B) ensure

against anticipated threats or hazards to the security or integrity of Confidential or Highly Confidential Information; (C) monitor for and protect against unauthorized access to or use of Confidential or Highly Confidential Information; and (D) otherwise comply with its obligations under the terms of this Agreement with respect to access to, or use of, Confidential or Highly Confidential Information, which safeguards may include, without limitation, a written data security plan, employee training, information access controls, restricted disclosures, systems protections (e.g., intrusion protection, data storage protection and encryption, and data transmission protection and encryption), secure software development processes, and appropriate physical security measures.

Prior to hearing, the parties will negotiate in good faith to reach an agreement as to the handling of Confidential and Highly Confidential Information, at hearing, or an Order from the Commission will be obtained as to hearing proceedings. To the extent that any other person is present at such hearing and is not a person to whom the Confidential or Highly Confidential Information may be disclosed, there shall be no disclosure of the Confidential or Highly Confidential Information unless and until all such persons are excluded from the proceeding during the disclosure or use of the Confidential or Highly Confidential material. Every court reporter taking any testimony relating to Confidential or Highly Confidential material shall be informed of this Confidentiality Agreement and shall adhere to the provision hereof.

If any Confidential or Highly Confidential Information is to be filed or otherwise presented to the Commission by any party in a manner that requires its inclusion in the Commission's filing system, unless the parties agree otherwise, such document shall be handled consistent with the Commission's rules and procedures for filing confidential documents or information. This paragraph shall not prevent the use of any Confidential or Highly Confidential Information in connection with the mediation, facilitation, motions, or other Commission-ordered proceedings, provided that the use of the documents/information is in accordance with this Confidentiality Agreement.

10. Recipient will provide all necessary and reasonable cooperation to Company with respect to the notification, investigation, and prosecution of any Security Breach of Recipient's systems. "Security Breach" means (i) any actual or reasonably suspected unauthorized or accidental, access, use, loss, or disclosure of any Confidential or Highly Confidential Information which compromises the integrity and confidential nature of such Confidential or Highly Confidential Information, or (ii) a breach of Recipient's security or information systems, including a ransomware attack, that could reasonably be expected to expose any Confidential or Highly Confidential Information to such unauthorized or accidental access or use. Recipient will notify Company promptly, but in no event later than forty-eight (48) hours of any Security Breach. Unless attributable wholly and directly to Company, Recipient will promptly (i) take all reasonable measures to remediate any such Security Breach, (ii) provide Company a written report of what Recipient did to remediate, and (iii) comply with all laws regarding data security.

The failure to designate information in accordance with this Confidentiality Agreement or the failure to object to a designation at or within a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or challenge the propriety thereof. Any

document not designated as Confidential or Highly Confidential shall not be covered by this Confidentiality Agreement, provided, however, that inadvertent production of any document without a designation of “Confidential” or “Highly Confidential” shall not waive a party’s claim of confidentiality as to such document, and the producing party may within 30 days after discovery of the inadvertent production designate the same as “Confidential” or “Highly Confidential.” Likewise, initial designation of a document as “Confidential” does not preclude a party from later claiming the information is “Highly Confidential.” Disclosure by any party or non-party of such matter prior to notice by the producing party of the Confidential or Highly Confidential nature thereof shall not be deemed a violation of this Confidentiality Agreement.

11. This Agreement is governed by South Dakota laws, excluding its conflict-of-laws principles, and any action brought with respect to this Agreement must be brought in the appropriate court in South Dakota.

12. Any notice, request, consent, or other communication required or authorized under this Agreement to be given by one Party to the other Party or Parties shall be in writing. It shall either be delivered through electronic mail (e-mail) or personally delivered or mailed, postage prepaid, to the representative of said other Party or Parties. Any such notice, request, consent, or other communication shall be deemed to be given when delivered or mailed.

13. Recipient agrees that the provisions of this Agreement are to be considered as severable. In the event that any provision is held to be invalid or unenforceable, the Recipient agrees that the remaining provisions will remain in full force and effect.

14. Failure by Company to enforce or exercise any provision, right or option contained in this Agreement will not be construed as a present or future waiver of such provision, right or option. Any amendments must be in writing.

15. Nothing in this Agreement shall be construed as precluding any Party from objecting to the production or use of Confidential or Highly Confidential Information on any appropriate ground. This Confidentiality Agreement shall in no way affect or impair the right of any party or person to raise or assert any defense or objection, including, but not limited to, defenses or objections to the discovery or production of documents or information, and to the use or admissibility at any hearing of any evidence, whether or not comprised of documents or information governed by this Confidentiality Agreement.

This Confidentiality Agreement is without prejudice to the right of any party to seek relief from the Commission from any of the restrictions provided above upon good cause shown or for any other grounds provided by applicable law.

After the termination of this matter, this Confidentiality Agreement shall continue to be binding upon the parties hereto and all persons to whom designated Confidential or Highly Confidential Information has been disclosed or communicated.

16. Recipient agrees that this Agreement represents the entire understanding between the Parties on this topic, and the terms and conditions of this Agreement supersede the terms of any prior agreements or understandings, express or implied, written or oral.

17. This Agreement does not create any agency or partnership relationship. This Agreement is not assignable or transferable by Recipient without the prior written consent of Company.

18. A manually signed copy of this Agreement, or a copy of this Agreement signed with an electronic or digital signature, delivered electronically shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

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The Parties have caused this Agreement to be executed by its authorized representatives as of the Effective Date.

RECIPIENT – JOHN D. MCKEE, SR.

By: **/s/ John D. McKee, Sr.**

Residential Customer
Rapid City, SD
jdmc_keesr@msn.com

and

BLACK HILLS POWER, INC. D/B/A BLACK HILLS ENERGY

By: **/s/ Jerrad Hammer**

Director of Regulatory
Black Hills Energy
7001 Mt. Rushmore Road
P.O. Box 1400
Rapid City, SD 57709
jerrad.hammer@blackhillscorp.com

ATTACHMENT A

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

IN THE MATTER OF THE)	Docket No. EL26-003
APPLICATION OF BLACK HILLS)	
POWER, INC. DBA BLACK HILLS)	
ENERGY FOR AUTHORITY TO)	AFFIDAVIT RELATING TO
INCREASE RATES FOR ITS UTILITY)	CONFIDENTIAL AND HIGHLY
SERVICE IN SOUTH DAKOTA)	CONFIDENTIAL INFORMATION

I hereby state that I have read the Confidentiality Agreement relating to Confidential and Highly Confidential Information in this Docket No. EL26-003 and agree to be bound by the terms of the Confidentiality Agreement with respect to all evidence and information produced or arising during the course of this proceeding. I further state that I am authorized to receive:

- Confidential Information
- Highly Confidential Information

Recipient

John D. McKee, Sr.
Rapid City, SD
jdmc_keesr@msn.com

Signature

Date

Please scan and return signed Confidentiality Agreement Affidavit to Becky Purington, Sr. Paralegal, Black Hills Power at becky.purington@blackhillscorp.com.