

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

DOCKET EL26-003 IN THE MATTER OF THE APPLICATION OF BLACK HILLS POWER, INC. FOR AUTHORITY TO INCREASE RATES

PROTECTIVE ORDER

This Protective Order is issued pursuant to SDCL Chapter 49-34A and ARSD 20:10:01:39 through 20:10:01:44 to govern the treatment of confidential information produced in discovery in this proceeding. This Order supersedes any private nondisclosure agreement and controls all confidentiality designations in this docket.

1. Purpose and Scope

This Order establishes a Commission-supervised framework for the handling of confidential information. It applies to all parties, including Black Hills Power, Inc. (“BHP”), Intervenors, and Commission Staff. Confidentiality designations are permitted only as authorized by South Dakota law and Commission rules.

2. Definition of Confidential Information

“Confidential Information” means information that:

1. falls within a category recognized under South Dakota law as confidential;
2. is specifically identified by BHP at the time of production; and
3. is accompanied by a written explanation of the basis for confidentiality.

Generalized, blanket, or retroactive designations are not permitted.

3. Designation Procedure

For each document or data response designated as confidential, BHP must:

- mark the material “CONFIDENTIAL – EL26-003”;
- identify the specific statutory or rule-based justification; and
- provide a description sufficient for the receiving party to understand the nature of the information without revealing the confidential content.

4. Challenges to Designation

Any party may challenge a confidentiality designation. If a challenge is made:

- the parties shall confer in good faith;
- if unresolved, the challenging party may bring the matter before the Commission;
- the burden of proof rests with BHP to justify the designation.

The information remains confidential pending Commission resolution.

5. Permitted Use of Confidential Information

Confidential Information may be used **solely for purposes of this proceeding**, including analysis, testimony preparation, briefing, and participation in hearings.

6. Authorized Recipients

Confidential Information may be disclosed to:

- parties to this docket;
- their attorneys, consultants, and expert witnesses;
- Commission Staff;
- the Commission.

All such individuals are bound by this Order.

7. Use of Analytical Tools, Including AI Systems

Nothing in this Order prohibits the use of **software-assisted analytical tools**, including but not limited to:

- text-analysis software,
- document-management systems,
- search tools,
- machine-learning or artificial-intelligence-assisted drafting or review tools,

provided that such tools do not disseminate, publish, or make the Confidential Information publicly accessible.

Use of such tools is treated as functionally equivalent to other automated processes (e.g., indexing, OCR, spell-checking) and is permissible so long as confidentiality is preserved.

8. Filing of Confidential Information

If a party files Confidential Information with the Commission, it must be filed under seal in accordance with ARSD 20:10:01:41. A public redacted version shall also be filed when feasible.

9. Use in Hearings

Confidential Information may be used in hearings. The Commission may close portions of the hearing or seal portions of the transcript as necessary.

10. Return or Destruction of Materials

Within 30 days after the final order in this docket, parties shall either:

- return Confidential Information to the producing party, or
- destroy it and certify destruction.

Work product containing Confidential Information may be retained but remains subject to this Order.

11. Commission Authority

The Commission retains full authority to:

- modify this Order,
- resolve disputes,
- determine whether information is properly designated, and
- impose remedies for misuse.

12. Effective Date

This Order is effective upon issuance and governs all Confidential Information produced in this docket, including information previously provided.