

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE JOINT) STIPULATED PROTECTIVE
APPLICATION OF NORTHWESTERN) ORDER
ENERGY PUBLIC SERVICE)
CORPORATION, BLACK HILLS)
CORPORATION AND NORTHWESTER) GE25-001
ENERGY GROUP, INC., FOR APPROVAL)
OF MERGER)

The Public Utilities Commission, on the stipulation of the Parties,¹

ORDERS, the Commission Staff and parties in this proceeding to treat Highly Confidential Information and Confidential Information filed with the Commission or produced through discovery as confidential information pursuant to ARSD 20:10:01:39 through 20:10:01:44, and subject to the following provisions of this Stipulated Protective Order ("Order").

1. For purposes of this Order, the word "documents" means all written, recorded or graphic materials in any format or medium, including but not limited to paper or electronic records, including, but not limited to documents produced by the producing party in this matter whether pursuant to Commission Rules, the South Dakota Rules of Civil Procedure, subpoena or by agreement.
2. The term "party" includes a party's officers, employees, directors or attorneys, if any.
3. Any party or other person producing documents, testimony or information, acting in good faith, may designate all or portions thereof as Confidential or Highly Confidential, provided the information so designated:
 - a. Is not generally known or publicly available, and
 - b. Is maintained by the producing party as proprietary and/or confidential, and
 - c. Is of the type which the designating party would not normally reveal or if revealed the designating party would require third parties to maintain in confidence, or

¹ The "Parties" include Joint Applicants, Staff of the South Dakota Public Utilities Commission, the Laborers' International Union of North America, South Dakota Laborers Local 620, and the Great Plains Laborer's District Council.

- d. is financial information that is required to be maintained as confidential pursuant to any law, regulation, order, settlement, or other contractual agreement.

The designating party shall mark such documents, testimony and/or information as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" and subject to this Order by typing or stamping on the front of the document, or on the portion(s) of the document for which confidential treatment is desired, "CONFIDENTIAL" OR "HIGHLY CONFIDENTIAL".² Designation of such material will also render Confidential (or, Highly Confidential, as the case may be) any copies, excerpts, summaries, or other disclosure of the substance or contents of such material. Documents so marked or identified and all information derived therefrom shall be treated in accordance with the terms of this Order.

4. All documents and every portion thereof so designated as described in Paragraph 3 herein, and produced pursuant to any discovery procedure or informal exchange of documents shall be considered "Confidential" or "Highly Confidential," as applicable, for purposes of this Order and shall only be used by the non-producing parties for the preparation for and conduct of proceedings herein and not for any business or other purpose whatsoever.

5. The non-producing party may challenge the "Confidential" or "Highly Confidential" designation by (1) first attempting to informally resolve the designation dispute with counsel for the producing party within ten (10) business days of such designation and production; and (2) if not informally resolved, then by filing an appropriate motion with the Commission within twenty (20) business days after such disputed designation and production. All documents shall be treated as Confidential or Highly Confidential respectively until agreed otherwise or until the Commission issues an order declaring that such documents shall not be considered Confidential or Highly Confidential.

6. Highly Confidential Information, or any portion or summary thereof, may only be given, shown, or otherwise disclosed to:

- a. the attorneys of record for the parties;
- b. the Commission and their assigned advisors;
- c. any, experts, or consultants who are employed or retained by counsel for assistance in this matter, including third-party consultants retained by Commission Staff;
- d. a reasonable number of employee experts and/or employee analysts of the parties, consistent with the terms, conditions, and process set forth in Paragraph 9 and,

² For purposes of this Order, "Highly Confidential Information" and "Confidential Information" designations shall have the same meaning as "Highly Confidential" and "Confidential," respectively.

- e. stenographic reporters, engaging in proceedings as are necessarily incident to the preparation for hearing (e.g., depositions) and/or hearing of this matter.

7. Items marked "Confidential" do not have the same recipient limitations as set forth in Paragraph 6.

8. Any party seeking to receive Confidential Information or Highly Confidential Information shall execute and file with the Commission a Non-Disclosure Agreement consistent with the form provided in **Attachment B** hereto as a pre-condition to receiving such information.

9. Should a party seek to gain access to Highly Confidential Information for an "employee expert" or "employee analyst" of the party legal counsel for a requesting party may propose access for an employee expert or employee analyst of the requesting party in accordance with the following procedure:

- a. Legal counsel for the requesting party shall serve written notice on the legal counsel for the provider of the intent to provide Highly Confidential Information to an employee expert or employee analyst of the requesting party. The notice must contain the name, title, and job description of the employee expert or analyst accessing the information.
- b. Within three business days of service of notice, the provider must serve on the requesting party in writing either an objection or a statement indicating no objection.
- c. If the requesting party receives a statement of no objection, legal counsel for the requesting party may provide access to the Highly Confidential Information to the designated employee expert or employee analyst in accordance with this governing protective order.
- d. If the requesting party receives an objection within the time required, the requesting party and provider must attempt to resolve the objection. If the parties are unable to resolve the objection, the requesting party may apply to the Commission for a ruling. Access to the Highly Confidential Information shall not be given to the designated employee expert or employee analyst pending ruling by the Commission.

10. No person to whom Confidential Information or Highly Confidential Information is furnished or disclosed shall copy or otherwise use the document or information for any purpose whatsoever, except in connection with pre-hearing proceedings, preparation for hearing, hearing, or other proceedings associated with this matter.

11. Any party or attorney for a party furnishing documents or disclosing information pursuant to the terms of this Order shall not waive the confidentiality thereof.

12. Any person receiving Confidential or Highly Confidential Information shall take reasonable precautions with regard to storage, custody, and use to prevent the unauthorized or inadvertent disclosure of any Confidential or Highly Confidential Information.

13. 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 or deposition 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 Order and shall adhere to the provision hereof.

14. In the case of depositions, designation of a portion of the transcript (including exhibits) that contains Confidential or Highly Confidential Information shall be made by a statement to such effect on the record during the course of the deposition, or within ten (10) business days after the transcript becomes available. Pending the expiration of such 10-day period, transcripts shall be treated as Confidential or Highly Confidential Information in their entirety. If the designation is made during a deposition with regard to only a portion of the deposition, the reporter attending such deposition shall thereafter bind the transcript thereof and separate portions containing Confidential or Highly Confidential Information, and the reporter shall place the appropriate legend on the cover of the confidential portions of the transcripts. Notwithstanding the foregoing, counsel retains the right to designate the entire deposition transcript as Confidential or Highly Confidential Information. If the designation is made after receipt of the transcript of the deposition, all parties shall be notified, in writing, of the pages that are to be treated as Confidential or Highly Confidential Information. The parties may modify this procedure for any particular deposition through agreement of all parties attending such deposition, as reflected in the record of such deposition without further order by the Commission.

15. 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 15 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 Order.

16. The failure to designate information in accordance with this Order 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 Order, 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 Order.

17. Promptly after final termination of this matter by order, settlement, or otherwise, all Confidential or Highly Confidential Information produced under the terms of this Order, including all copies thereof and all documents incorporating such information, except all pleadings filed with the Commission, all exhibits marked in discovery, and materials which, in the judgment of the attorney in possession of the materials, are work product materials, shall be returned to the counsel for the producing party, or alternatively the receiving party must provide certification to the producing party that all such materials have been destroyed. The above-described pleadings, exhibits, and work product materials may be retained in confidence under the terms of this Order by outside counsel for the party.

18. This Order 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 Order.

19. This Order 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.

20. After the termination of this matter, this Order 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.

21. If any party covered by this Order at any time applied to the Commission for relief from any provision of this Order, or if the parties jointly petition the Commission for a modification hereof, the Commission may provide appropriate relief from this Order, including, but not limited to, modifying the terms hereof.

Dated at Pierre, South Dakota this 8th day of January 2026.

CERTIFICATE OF SERVICE

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 or by mail.

By: Kristie Fiegen

Date: 8 January 2026

BY ORDER OF THE COMMISSION:

Chris Nelson
CHRIS NELSON, Chairman

Kristie Fiegen
KRISTIE FIEGEN, Commissioner

Gary Hanson
GARY HANSON, Commissioner