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

**IN THE MATTER OF THE JOINT APPLICATION OF NORTHWESTERN ENERGY PUBLIC SERVICE
CORPORATION, BLACK HILLS CORPORATION, AND NORTHWESTERN ENERGY GROUP, INC. FOR
APPROVAL OF MERGER**

**STAFF MEMORANDUM
SUPPORTING SETTLEMENT STIPULATION**

DOCKET GE25-001

Commission Staff (Staff) submits this Memorandum in support of the Settlement Stipulation (Settlement) of April 29, 2026,¹ between Staff and NorthWestern Energy Public Service Corporation (NorthWestern), Black Hills Corporation (Black Hills), and NorthWestern Energy Group, Inc. (NorthWestern Group) (collectively, Joint Applicants) in the above-captioned matter.

BACKGROUND

On October 27, 2025, Joint Applicants filed a Joint Application with the South Dakota Public Utilities Commission (Commission) requesting approval of a merger transaction (Merger) pursuant to SDCL §§ 49-34A-35 and 49-34A-36.² Under the Merger Agreement signed August 18, 2025, NorthWestern Group will become a direct subsidiary of Black Hills, which will be renamed Bright Horizon Energy Corporation upon closing.³ NorthWestern will remain a direct subsidiary of NorthWestern Group, such that the direct holding company structure for NorthWestern, which was approved by the Commission in Docket GE22-002, will not change, although Black Hills will become the indirect parent company of NorthWestern.⁴

The Merger is structured as a tax-free, stock-for-stock “merger of equals” transaction with no transaction debt, no exchange of cash, and no refinancing of existing indebtedness.⁵ NorthWestern Group shareholders will receive 0.98 shares of Black Hills stock for each share of NorthWestern Group stock at closing. Upon completion, Black Hills’ pre-Merger shareholders will own approximately 56 percent of the combined company, and NorthWestern Group’s pre-Merger shareholders will own approximately 44 percent.⁶ The combined company will have an enterprise value of approximately \$15.4 billion and serve approximately 2.1 million customers across eight states.⁷

Joint Applicants supported their Application with the direct testimony of five witnesses: Brian B. Bird (President and CEO of NorthWestern and NorthWestern Group), Marne M. Jones (Senior Vice President and Chief Utility Officer of Black Hills), Crystal D. Lail (Chief Financial Officer of NorthWestern and

¹Settlement Stipulation, Docket GE25-001 (Apr. 29, 2026) (Settlement).

²Joint Application of NorthWestern Energy Public Service Corporation, Black Hills Corporation, and NorthWestern Energy Group, Inc. for Approval of Merger, Docket GE25-001 (Oct. 27, 2025) (Application).

³Application, Exhibit BBB-1 (Agreement and Plan of Merger dated August 18, 2025); Settlement at 1.

⁴Settlement at 2.

⁵See Direct Testimony of Crystal D. Lail at 2–3; Direct Testimony of Brian B. Bird at 14.

⁶See Direct Testimony of Brian B. Bird at 15.

⁷See Direct Testimony of Brian B. Bird at 20.

NorthWestern Group), Kimberly F. Nooney (Senior Vice President and CFO of Black Hills), and Thomas D. Stevens (Vice President and Treasurer of Black Hills Service Company, LLC).⁸ Black Hills Power, Inc. (Black Hills Power) is not a Joint Applicant in this matter because the Merger does not change the ownership or control of Black Hills Power; however, Black Hills Power is bound by certain commitments in the Settlement that affect its South Dakota operations.⁹

Following filing of the Joint Application, the Commission issued notice and an intervention deadline of November 14, 2025, was established. On December 3, 2025, the Laborers International Union of North America, Great Plains Laborer’s District Council, and South Dakota Laborers Local 620 (collectively, LIUNA Intervenors) were granted intervention in this proceeding. The parties engaged in extensive discovery, and Staff retained outside consultants to assist in its review of the Merger and the financial, operational, and ratemaking implications for South Dakota customers.

After review and analysis, Staff and the Joint Applicants (jointly, the Settling Parties) engaged in settlement discussions to arrive at a mutually acceptable resolution of the issues identified by Staff. The Settling Parties reached a comprehensive agreement memorialized in the Settlement Stipulation executed April 29, 2026. The Settlement is intended to address Staff’s concerns regarding potential adverse impacts to South Dakota customers and to ensure appropriate ratepayer protections, regulatory transparency, and continued local presence following the Merger. Staff notes that LIUNA Intervenors is not a party to this settlement. Staff reserves the right to review and object to any separate settlement stipulation between Joint Applicants and the LIUNA Intervenors.¹⁰

LEGAL STANDARD

SDCL § 49-34A-35 prohibits any person from acquiring or gaining control, directly or indirectly, of any public utility doing business in South Dakota with a fair market value exceeding ten million dollars without the Commission’s prior authorization. SDCL § 49-34A-36 directs the Commission to investigate the application and to approve the proposed action unless the Commission finds there is a likelihood of significant adverse impacts to customers in this state. Staff has analyzed the Merger under this standard, and the Settlement is designed to ensure the Merger satisfies the statutory test.

OVERVIEW OF SETTLEMENT

Staff’s review of the Joint Application focused on identifying any potential significant adverse impacts to NorthWestern’s South Dakota electric and natural gas customers and, given the inclusion of certain commitments affecting Black Hills Power, on protecting Black Hills Power’s South Dakota electric customers as well.

Through settlement discussions, the Settling Parties reached agreement on a comprehensive set of commitments that address Staff’s concerns and provide meaningful protections for South Dakota customers. The Settlement does not modify the rates, terms, or conditions under which NorthWestern or Black Hills Power currently provide service. Instead, the Settlement establishes ringfencing measures, cost allocation transparency requirements, restrictions on the recovery of merger-related transaction and integration costs, commitments regarding South Dakota corporate presence, capital investment

⁸See Application at 5–6.

⁹See Settlement at 2 and 10.

¹⁰As part of the Settlement, Staff reserved the right to review and object to any settlement stipulation between the Joint Applicants and LIUNA. Staff has reviewed the settlement stipulation agreed to by LIUNA and the Joint Applicants that was filed June 17, 2026. Staff has no objection to the LIUNA-Joint Applicants stipulation.

reporting obligations, base rate moratoriums for both NorthWestern and Black Hills Power, and ongoing reporting on merger integration.

Staff believes the Settlement is based on sound regulatory principles and satisfies the obligations of the statute while avoiding additional costly and unnecessary litigation. The discussion below describes the issues Staff identified during its review and Staff's view of the resulting settlement of each issue.

STAFF OVERVIEW OF SETTLEMENT ELEMENTS

Most Favored Nations Regarding Merger Costs – Joint Applicants are seeking approval of the Merger from the Montana Public Service Commission and the Nebraska Public Service Commission in addition to this Commission. Because the regulatory treatment of merger-related costs may differ across jurisdictions, Staff was concerned that South Dakota customers may be adversely impacted by conditions imposed in other jurisdictions. The Settlement addresses this concern through a most-favored-nations provision. If Joint Applicants agree to, or are ordered to forgo, recovery of any merger costs in either the Nebraska or Montana merger proceedings beyond those identified in the Settlement, then neither Black Hills Power nor NorthWestern will seek to recover those merger costs in South Dakota customer rates. Staff believes this provision provides important parity protection for South Dakota customers and ensures that South Dakota will receive the benefit of any more favorable cost treatment negotiated or ordered in the parallel proceedings.¹¹

Ring Fencing – An important element of Staff's review was ensuring that NorthWestern and Black Hills Power remain financially insulated from the broader holding company enterprise post-Merger so that the financial condition of the regulated South Dakota utilities is not adversely affected by activities at the parent or affiliate level. The Settlement establishes ring-fencing protections covering dividend restrictions, credit rating notification, and capital structure monitoring. Specifically, neither NorthWestern nor Black Hills Power will issue any dividends (special, one-time, or otherwise) if equity is 40 percent or below its total capital structure, determined at the end of the preceding calendar quarter. Each utility will make its secured credit rating (if then existing or applicable) available to the Commission and Staff upon request and will notify the Commission within 30 days of any downgrade in its secured credit rating. If equity falls below 40 percent of capital structure on a year-end basis, the affected utility will, within 90 days of the end of the quarter, notify the Commission and provide an explanation. Staff believes these provisions establish appropriate guardrails to protect the financial integrity of the regulated South Dakota utilities and provide the Commission with timely visibility into financial conditions that could affect ratepayers.¹²

Financing – Ms. Lail testified that NorthWestern may, post-Merger, transition from its current method of financing to participate in a utility money pool and receive an allocation of unsecured debt through an intercompany parent note, similar to the financing structure that Black Hills Power uses today and that was approved in Docket EL24-032.¹³ The Settlement preserves the Commission's oversight of any such change by confirming that NorthWestern's use of an intercompany parent note will remain subject to the securities filing requirements and approvals of the Commission pursuant to SDCL § 49-34A-29.¹⁴

¹¹Settlement at 4.

¹²Id.

¹³See Direct Testimony of Crystal D. Lail at 18–22; Settlement at 5.

¹⁴Settlement § III.2.c & n.2; see also In the Matter of the Application of Black Hills Power, Inc. for Authority to Issue Securities, Docket EL24-032.

Cost Allocation Information and Cost Allocation Manual (CAM) Filings – NorthWestern Group and Black Hills currently maintain separate cost allocation methodologies. Although the methodologies will not initially change at closing, the integration process described by Ms. Nooney is expected to result in modifications over time.¹⁵ To ensure transparency and Commission oversight, the Settlement requires NorthWestern and Black Hills Power to file the finalized CAM and any CAM changes resulting from the Merger, along with any related agreements changed as a result of the Merger (including revised intercompany service agreements or service level agreements with affiliates), in an informational filing with the Commission within 60 days after such CAMs are finalized. The filing must include a narrative description of the changes made. Within 60 days following closing, Joint Applicants shall informally provide Staff with an analysis of administrative and general costs, organized by FERC account, that were allocated to and from the South Dakota-jurisdictional utilities and their affiliates for the previous three completed calendar years. Going forward, NorthWestern and Black Hills Power will annually file CAMs and intercompany service agreements when there are changes in the types of costs allocated, allocation methods, allocation factors, or the composition of affiliates receiving an allocation. These annual filings continue until the later of the conclusion of the next general rate review of each utility or December 31, 2030 (unless an earlier date is mutually agreed upon by all parties). Staff views this provision as essential to monitoring potential cross-subsidization and ensuring that South Dakota ratepayers do not bear costs properly attributable to non-jurisdictional or non-regulated affiliates.¹⁶

Accounting Matters and Goodwill Recovery – Ms. Lail testified that, although the Merger is a merger of equals, generally accepted accounting principles require one company to be designated the acquirer and the other the acquiree for accounting purposes. Black Hills will be the accounting acquirer and NorthWestern Group the accounting acquiree, with incremental goodwill currently estimated at approximately \$700 million expected to be recorded on the renamed parent company's books.¹⁷ To address Staff's concern that South Dakota ratepayers be insulated from these acquisition-method accounting adjustments, the Settlement provides that to the extent acquisition-method accounting adjustments are recorded at the parent company, holding company, or any affiliate level, such adjustments shall not affect the assets, expenses, or other costs that are directly charged to, or allocated to, the Joint Applicants' South Dakota-jurisdictional utilities. The Settlement further provides that no merger-related purchase accounting adjustments, including goodwill or acquisition premium, and no "push-down" accounting, shall impact, either directly or indirectly, the rates charged to South Dakota customers, including through any effect on costs, expenses, revenues, or asset values used to establish such rates. Staff believes this provision is adequate to provide the necessary assurance that accounting-remeasurements resulting from the merger do not adversely impact South Dakota customers.¹⁸

Accumulated Deferred Income Tax – The Settlement confirms that the Merger will have no impact on the accounting and ratemaking treatment of accumulated deferred income taxes (ADIT) and accumulated deferred income tax credits of the Joint Applicants' South Dakota-jurisdictional utilities. Staff sought this confirmation to preserve the ratemaking benefits associated with existing ADIT balances, which represent timing differences between book and tax treatment that are reflected as a

¹⁵See Direct Testimony of Crystal D. Lail at 22–24; Direct Testimony of Marne M. Jones at 11; Direct Testimony of Kimberly F. Nooney at 4–6.

¹⁶Settlement § III.3.

¹⁷See Direct Testimony of Crystal D. Lail at 9–10.

¹⁸Settlement § III.4.

reduction to rate base and provide an ongoing benefit to ratepayers under existing methodologies. Staff accepts this provision.¹⁹

South Dakota Corporate Presence – An issue of significant importance to Staff was the continuity of South Dakota corporate presence and local management following the Merger. Mr. Bird testified that the combined company’s headquarters will be located in Rapid City, South Dakota, and that a corporate office will continue to be maintained in Sioux Falls.²⁰ The Settlement memorializes these commitments. For a period of at least ten years following the closing of the Merger, the combined company will maintain its corporate headquarters in Rapid City, South Dakota. For a period of at least five years following closing, the combined company will continue to operate a corporate office in Sioux Falls or the surrounding area. After expiration of either period, Joint Applicants must provide the Commission with at least 90 days’ prior written notice before closing, relocating, or otherwise discontinuing operations at the affected location. Staff believes these commitments are important because they help ensure that local management and decision-making will remain accessible to South Dakota customers, communities, and the Commission.²¹

Capital Investment Reporting – Because changes in capital spending could affect the assumptions underlying the rate moratoriums and could signal post-Merger reductions in infrastructure investment that might harm reliability, Staff sought ongoing visibility into actual capital expenditures. The Settlement requires Black Hills Power and NorthWestern to provide Capital Expenditure Reports comparing actual capital spending to the 2027 through 2029 pre-Merger capital plans previously provided to Staff. Reports will be filed after the close of each calendar year and will include an explanation of any variances greater or less than 10 percent for all projects greater than \$1 million. The last report will cover calendar year 2029. Staff believes this reporting commitment provides appropriate transparency without unduly burdening the utilities.²²

Transaction and Transition Costs – Consistent with Ms. Lail’s testimony that Joint Applicants will not seek recovery of Transaction Costs,²³ the Settlement establishes clear restrictions on the recovery of merger-related costs. Neither Joint Applicants nor their South Dakota-jurisdictional utilities will seek recovery of any Transaction Costs—defined to include, but not be limited to, legal fees, investment banking and advisory fees, accounting and tax due diligence services, valuation and fairness opinion costs, regulatory filing fees, pre-close fees for merger-related communication consultants, rating agency fees, travel directly associated with deal execution, and costs of obtaining shareholder approval. With respect to integration costs, the Settlement provides that costs incurred to integrate the operations of Black Hills and NorthWestern Group as a result of the Merger shall not be recorded as a regulatory asset or otherwise deferred for recovery from South Dakota customers. Such integration costs (e.g., IT system integration; rebranding; employee retention, relocation, or severance; training and onboarding; facility consolidation; integration-related travel; and costs to terminate duplicative leases or contracts) will instead be recognized in the period incurred. Finally, neither Black Hills Power nor NorthWestern will seek to recover “golden parachute,” change-in-control, or severance costs of named executives listed in the most recent individual proxy statements of Black Hills and NorthWestern Group filed with the Securities and Exchange Commission prior to closing. Staff believes these provisions strike an appropriate balance of fully insulating ratepayers from the costs of completing the transaction itself,

¹⁹Settlement at 6.

²⁰See Direct Testimony of Brian B. Bird at 19.

²¹Settlement at 7.

²²Id.

²³See Direct Testimony of Crystal D. Lail at 24–25.

while preserving the possibility of cost recovery for integration expenditures in future rate cases if those costs are separately identified and quantified, and the utility satisfies its burden to demonstrate that the costs are reasonable, prudent, and not otherwise prohibited by the Settlement.²⁴

Merger Integration Status Reporting – Ms. Nooney testified that integration will proceed in three phases—Plan, Implement, and Optimize—and is expected to take multiple years.²⁵ To allow Staff to monitor integration progress and to identify any concerns at an early stage, the Settlement requires Joint Applicants to provide an annual report each year through December 31, 2029, to Staff that discusses the progress of the Merger integration activities. At the request of Staff, Joint Applicants will also meet with Staff at a mutually agreed time, upon request, to discuss any questions or concerns relating to integration. Staff believes this commitment provides an appropriate mechanism for ongoing dialogue and oversight throughout the multi-year integration period.²⁶

NorthWestern Rate Moratoriums – To provide rate stability for South Dakota customers during the post-Merger transition, the Settlement extends NorthWestern’s existing electric and natural gas rate moratoriums by one year each. NorthWestern shall not file any application for an increase in electric base rates that would result in new electric base rates becoming effective prior to January 1, 2028, and shall not file any application for an increase in natural gas base rates that would result in new natural gas base rates becoming effective prior to January 1, 2029. The moratoriums are limited to general base rates and do not apply to changes in rates through previously authorized trackers or riders. The moratoriums also do not apply if there are unforeseen investments or expenses (or other extraordinary events) beyond NorthWestern’s control that impact the cost of service by more than \$1 million. Staff believes these moratoriums provide meaningful rate stability for NorthWestern’s South Dakota customers while preserving necessary flexibility to address truly extraordinary circumstances.²⁷

Black Hills Power Rate Moratorium – Although Black Hills Power is not a Joint Applicant in this proceeding, Staff sought a corresponding rate moratorium for Black Hills Power’s South Dakota electric customers given the integrated nature of the post-Merger enterprise. The Settlement provides that, with the exception of Docket EL26-003, which is currently pending and is expressly exempt, Black Hills Power shall not file any application for an increase in electric base rates that would result in new electric base rates becoming effective prior to September 1, 2028. The moratorium is limited to general base rates and does not apply to changes in rates through previously authorized trackers or riders, or the planned proposed implementation of a phase-in plan rate rider for the recovery of the investment in the Lange II generating facility. The moratorium also does not apply if there are unforeseen investments or expenses (or other extraordinary events) beyond Black Hills Power’s control that impact the cost of service by more than \$1 million. Staff believes the inclusion of a Black Hills Power moratorium provides important rate stability for Black Hills Power’s South Dakota customers.²⁸

²⁴Settlement at 7-9.

²⁵See Direct Testimony of Kimberly F. Nooney at 7–10.

²⁶Settlement at 9.

²⁷Settlement at 9-10.

²⁸Settlement at 10.

CONCLUSION

The Settlement provides South Dakota customers with substantial protections that, together with the structural features of the Merger itself, support the conclusion that the Merger will not result in a likelihood of significant adverse impacts to South Dakota customers under SDCL § 49-34A-36.

RECOMMENDATION

Staff recommends the Commission approve the Settlement Stipulation in its entirety, without modification, for the reasons stated above.