

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

DOCKET

GE25-001 – 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

**REBUTTAL TESTIMONY OF RYAN PFAFF
ON BEHALF OF THE PUBLIC UTILITIES COMMISSION STAFF
June 5, 2026**

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EXHIBITS

Exhibit RPR-1 – Staff Set 1 Discovery and Attachment (Directed to LIUNA Intervenors)

1 **I. INTRODUCTION AND QUALIFICATIONS**

2
3 **Q. Please state your name and business address.**

4 A. My name is Ryan Pfaff. My business address is Polk & Vine, LLC, 11709 Roe Ave.,
5 Suite D #116, Leawood, Kansas 66211.

6
7 **Q. Are you the same Ryan Pfaff who submitted direct testimony on behalf of
8 Commission Staff in this docket?**

9 A. Yes. I submitted direct testimony on behalf of the Staff of the South Dakota Public
10 Utilities Commission (Staff) on May 15, 2026. My educational background, work
11 experience, and qualifications are described in that testimony, and a copy of my
12 curriculum vitae was also provided.

13
14 **Q. On whose behalf are you submitting this rebuttal testimony?**

15 A. I am submitting this rebuttal testimony on behalf of Staff.
16

17 **II. PURPOSE OF REBUTTAL TESTIMONY**

18
19 **Q. What is the purpose of your rebuttal testimony?**

20 A. The purpose of my rebuttal testimony is to respond to the prepared direct testimony of
21 Randall L. Harris, filed May 15, 2026 on behalf of the South Dakota Laborers Local 620,
22 the Great Plains Laborers' District Council, and the Laborers' International Union of
23 North America (collectively, the LIUNA Intervenors). Specifically, my rebuttal testimony:
24 (1) assesses Mr. Harris's description of the legal standard that governs the
25 Commission's review of the proposed merger; (2) explains that, measured against the
26 standard the South Dakota merger statute actually establishes, Mr. Harris's testimony
27 does not identify a likelihood of significant adverse impacts to South Dakota customers;
28 (3) describes the data requests Staff has served on the LIUNA Intervenors to test the
29 assertions in the Harris testimony; and (4) reaffirms Staff's position that the Settlement
30 Stipulation between Staff and the Joint Applicants satisfies the statutory standard, and
31 Staff's recommendation that the Commission approve it.
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1 **III. THE GOVERNING LEGAL STANDARD UNDER SDCL 49-34A-36**

2
3 **Q. What is the legal standard that governs the Commission’s review of the proposed**
4 **merger?**

5 A. As I explained in my direct testimony, the legal standard for approval of this merger is
6 SDCL 49-34A-36. The statute provides, in relevant part: “The [C]ommission shall act on
7 the application within one hundred eighty days and shall approve the proposed action
8 unless the commission finds that there is a likelihood of significant adverse impacts to
9 customers in this state.” The companion statute, SDCL 49-34A-35, requires Commission
10 authorization before a company may acquire or gain control of a public utility doing
11 business in South Dakota with a fair market value exceeding ten million dollars.
12

13 **Q. You have identified SDCL 49-34A-36 as the governing statute. Before you address**
14 **Mr. Harris's description of the standard, please clarify the capacity in which you**
15 **offer your understanding of that statute.**

16 A. I want to be clear that I am not an attorney, and I am not offering a legal opinion or a
17 legal conclusion. I am a regulatory analyst, and in that capacity I regularly work with the
18 statutes that govern utility regulation, including the standards that Commissions apply to
19 merger applications. What I provide in this testimony is my understanding of the
20 statutory language of SDCL 49-34A-36, offered for the benefit of the Commissioners as
21 they weigh the competing descriptions of the standard in this proceeding. The
22 interpretation and application of the statute are ultimately matters for the Commission
23 and its counsel. My purpose in this testimony is to explain why my understanding of the
24 standard differs from the standard Mr. Harris describes.
25

26 **Q. How does Mr. Harris describe the standard of review in his testimony?**

27 A. Mr. Harris describes the standard differently than what is provided in SDCL 49-34A-36.
28 On page 11 of his testimony, Mr. Harris states that the Commission “considers whether
29 the proposed merger is consistent with the public interest, will not adversely affect the
30 rates, terms, conditions, or quality of utility service...and will preserve the financial
31 integrity and operational capability of the affected utilities to continue providing safe and
32 reliable service.” On page 12, he states that “the Joint Applicants have not yet carried
33 their burden of demonstrating that the proposed merger is consistent with the public
34 interest with respect to the construction, maintenance, and reliability of the workforce.”

1 Throughout his testimony, Mr. Harris frames the question before the Commission as
2 whether the Joint Applicants have affirmatively demonstrated that the merger is
3 “consistent with the public interest.”¹
4

5 **Q. Does Mr. Harris provide an accurate description of the standard in SDCL 49-34A-**
6 **36?**

7 A. No. Mr. Harris’s description departs from the statute in two important respects.
8 First, the statute does not establish a “public interest” standard, and it does not require
9 the Joint Applicants to affirmatively demonstrate that the merger is “consistent with the
10 public interest.” The words “public interest” do not appear in SDCL 49-34A-36. Instead,
11 the statute directs that the Commission “shall approve” the proposed action “unless the
12 commission finds that there is a likelihood of significant adverse impacts to customers in
13 [South Dakota].” My understanding is that the statutory question is therefore not whether
14 the Joint Applicants have proven an affirmative public-interest benefit, but whether the
15 record establishes a likelihood of significant adverse impacts to customers that would
16 justify withholding approval of the merger. Second, because in my understanding the
17 statute requires approval unless the Commission makes an affirmative finding of a
18 likelihood of significant adverse impacts to customers, the relevant inquiry turns on
19 whether such impacts have been shown—not on whether the Joint Applicants have
20 carried a burden of proving the transaction is in the “public interest.”
21

22 **Q. Does the phrase “public interest” appear anywhere in this docket?**

23 A. The phrase appears in the Joint Applicants’ characterizations of the transaction, but it is
24 not the statutory test.² The statutory standard directs the Commission to approve the
25 transaction unless it affirmatively finds a likelihood of significant adverse impacts to
26 South Dakota customers.
27

28 **Q. In Staff’s opinion, why does the distinction between “public interest” and the**
29 **statutory standard matter to the Commission’s decision?**

30 A. It matters because it determines what the Commission must find, and as to whom.
31 Under SDCL 49-34A-36, the Commission may withhold its approval only on the basis of

¹ The words “public interest” are used nine times in Mr. Harris’s direct testimony.

² Mr. Bird states on page 2 of his direct testimony that the transaction “is in the public interest...” Similarly, Ms. Lail asserts that the transaction is “in the public interest from a financial perspective” on page 3 of her direct testimony.

1 a likelihood of “significant adverse impacts to customers in this state.” The statute is
2 concerned with impacts to South Dakota customers—the electric and natural gas
3 ratepayers served by NorthWestern and Black Hills Power. It is not a general mandate to
4 weigh and optimize outcomes for every constituency affected by a merger. A “public
5 interest” framing of the statute, by contrast, would require the Commission to consider
6 interests the statute does not make relevant to the approval decision and shift the inquiry
7 away from the specific finding the State Legislature mandated.
8

9 **IV. THE HARRIS TESTIMONY UNDER SDCL 49-34A-36**

10
11 **Q. Are the interests Mr. Harris advances the interests of “customers in this state”?**

12 A. No. The primary interests Mr. Harris advances are those of the construction workforce—
13 contractor employees who build, maintain, and replace utility infrastructure—and of the
14 LIUNA Intervenors who represent and train that workforce. Mr. Harris’s recommended
15 conditions concern contractor wages and benefits, contractor training and
16 apprenticeship, local hiring of construction workers, and reporting on those matters.³ The
17 only condition proposed by Mr. Harris that I identified as not directly focused on the
18 construction workforce is the “Continued Investment in Safety and System Growth”
19 commitment. However, that condition states no measurable standard and, by its own
20 terms, requires no more than what already binds the companies. It expressly states that
21 such investment activity is “subject to applicable state and federal law and regulations
22 and Commission rules,” and Mr. Harris identifies no merger-related reason those
23 existing obligations would lapse.⁴
24

25 **Q. Mr. Harris’s testimony is filed on behalf of the LIUNA Intervenors. Does the LIUNA**
26 **Intervenors’ own petition to intervene describe the interests they seek to protect**
27 **in this docket?**

28 A. Yes. In their Petition to Intervene, filed November 14, 2025, the LIUNA Intervenors
29 describe themselves as parties whose “pecuniary and other interests will be directly and
30 immediately affected” by the proposed merger.⁵ The petition explains that LIUNA
31 members and Laborers Local 620 members have a pecuniary interest in having the

³ Harris Direct at 26 – 29.

⁴ Harris Direct at 27.

⁵ Petition to Intervene at 2.

1 emerging company continue to hire contractors that are signatory to the National
2 Pipeline and National Distribution Agreements and that employ union labor, and it states
3 that, "The income and livelihood of LIUNA members and Laborers Local 620 is
4 dependent thereon."⁶ By the Petitioners' own description, the interests they advance in
5 this proceeding are largely the pecuniary interests of the union and its members in the
6 continued engagement of union contractors.

7
8 **Q. The petition also contains a section titled "Position with respect to the proposed**
9 **merger." What does that section say, and why does it matter under SDCL 49-34A-**
10 **36?**

11 A. In that section, the LIUNA Intervenors state that they are still "evaluating whether they
12 will support the proposed merger," and that their support depends on whether they
13 receive assurances that the emerging company will "continue to engage union
14 contractors" for transmission and distribution construction and generation-facility
15 maintenance.⁷ That statement matters for two reasons. First, it confirms that the relief
16 the LIUNA Intervenors seek in this docket is a commitment to keep engaging union
17 contractors — a workforce and contracting objective, consistent with the pecuniary
18 interest described elsewhere in their petition. Second, it frames that commitment as the
19 condition of the Petitioners' support for the merger, not as a remedy for any identified
20 adverse impact to South Dakota customers. The statutory question under SDCL 49-34A-
21 36 is not whether a given intervenor supports the merger, or what assurances would
22 secure its support; it is whether the record establishes a likelihood of significant adverse
23 impacts to customers in this state. An intervenor's decision to condition its support on
24 workforce assurances does not, by itself, identify such an impact.

25
26 **Q. Mr. Harris suggests that lower construction labor standards could ultimately**
27 **affect safety, reliability, and rates. How do you respond?**

28 A. Mr. Harris does assert, in general terms, that infrastructure "built and maintained by an
29 under-trained, under-paid, or transient workforce poses risks to public safety, system
30 reliability, and ultimately to rates."⁸ But that is a generalized chain of inference, not
31 evidence of a likelihood of significant adverse impacts to South Dakota customers

⁶ Petition to Intervene at 3.

⁷ Petition to Intervene at 4.

⁸ Harris Direct at 19.

1 caused by this merger. Mr. Harris offers no specific analysis connecting the transaction
2 to any degradation in the safety or reliability of service to South Dakota customers. To
3 the contrary, the existing federal and state regulatory framework Mr. Harris describes
4 (such as the pipeline safety requirements of 49 C.F.R. Part 192 referenced on page 30
5 of Mr. Harris's direct testimony) will continue to apply after the merger.
6

7 **Q. Has Staff sought additional clarity regarding the standard Mr. Harris applied in his**
8 **direct testimony?**

9 A. Yes. In Staff's First Set of Data Requests to the LIUNA Intervenors, Staff Data Request
10 No. 1-1 asks Mr. Harris to confirm whether he agrees that the statutory standards
11 governing the Commission's review of utility mergers are contained in SDCL 49-34A-35
12 and 49-34A-36; if not, to identify the South Dakota statutes on which he relied; to provide
13 a direct quote of any South Dakota statute he relied upon in asserting that the standard
14 includes whether the merger is "consistent with the public interest"; and to define "public
15 interest" as he used that term. The LIUNA Intervenors' responses to Staff's data
16 requests have not yet become due, but the requests are provided as Exhibit RPR-1.
17 Once received, Staff plans to review the responses to these requests and, as
18 appropriate, introduce them as exhibits at the evidentiary hearing in this matter. The
19 responses may provide additional clarification regarding the statutory standard Mr.
20 Harris applied in developing his conclusions and the basis for his references to the
21 "public interest" throughout his testimony.
22

23 **V. THE SETTLEMENT STIPULATION SATISFIES THE STATUTORY STANDARD**
24

25 **Q. Does the Settlement Stipulation between Staff and the Joint Applicants address**
26 **the matters relevant under SDCL 49-34A-36?**

27 A. Yes. As I explained in my direct testimony, Staff's review focused on identifying any
28 potential significant adverse impacts to NorthWestern's and Black Hills Power's South
29 Dakota customers, and the Settlement Stipulation is designed to address those potential
30 impacts. The Settlement Stipulation provides, among other protections: a most-favored-
31 nations provision on merger-cost recovery relative to the Montana and Nebraska
32 proceedings; ring-fencing protections, including dividend restrictions and credit-rating
33 notification requirements; cost-allocation transparency through Cost Allocation Manual
34 filings; insulation of South Dakota ratepayers from acquisition-method accounting

1 adjustments, goodwill, and push-down accounting; preservation of the existing
2 ratemaking treatment of accumulated deferred income taxes; commitments to maintain a
3 South Dakota corporate presence; capital-expenditure reporting; prohibitions on the
4 recovery of transaction costs and on the deferral of integration costs for future recovery
5 from customers; annual merger-integration reporting; and rate moratoriums for the South
6 Dakota utilities of both NorthWestern and Black Hills Power. These commitments
7 address the categories of risk that bear on South Dakota customers under the statute
8 and, in Staff's view, support the conclusion that the merger will not result in a likelihood
9 of significant adverse impacts to South Dakota customers.

10
11 **Q. Mr. Harris observes that the Staff Stipulation “does not address” the workforce,
12 safety, and contracting concerns he raises. Is that observation correct?**

13 A. Mr. Harris is correct that the Settlement Stipulation between Staff and the Joint
14 Applicants does not contain the contractor-workforce conditions he recommends. But
15 that observation does not undermine the Settlement Stipulation. The Settlement
16 Stipulation addresses the matters relevant to the statutory standard—the protection of
17 South Dakota customers from a likelihood of significant adverse impacts. The contractor-
18 workforce matters Mr. Harris raises fall outside that standard, for the reasons I have
19 described. The absence of workforce conditions from the Staff Settlement reflects the
20 appropriate scope of statutory inquiry, not a gap in the protections the Settlement
21 provides to South Dakota customers.

22
23 **Q. Mr. Harris notes that the Staff Stipulation reserves Staff's right to review and
24 object to a separate LIUNA settlement. Is that significant?**

25 A. That reservation is exactly what it appears to be. As I explained in my direct testimony,
26 Staff is not a party to any settlement between the Joint Applicants and the LIUNA
27 Intervenors, and Staff has reserved the right to review and object to any such settlement
28 when (and if) it is presented to the Commission for approval. The reservation does not
29 endorse the conditions Mr. Harris recommends, and it does not suggest that those
30 conditions are necessary to satisfy SDCL 49-34A-36. It simply preserves Staff's ability to
31 evaluate any negotiated agreement between the Joint Applicants and the LIUNA
32 Intervenors, including its potential effects on South Dakota customers.

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34 **VI. CONCLUSION AND RECOMMENDATION**

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Q. Does the Harris testimony change Staff’s recommendation in this proceeding?

A. No. Staff’s recommendation is unchanged. For the reasons stated in my direct testimony, Staff recommends that the Commission approve the Settlement Stipulation between Staff and the Joint Applicants. If the Settlement Stipulation is not approved, Staff recommends that the Commission impose the same or materially similar conditions in any order granting approval of the merger.⁹

Q. Should the Commission adopt the conditions Mr. Harris recommends?

A. No. Staff does not believe the evidence presented by the LIUNA Intervenors adequately supports imposing the conditions recommended by Mr. Harris.

Q. Does this conclude your rebuttal testimony?

A. Yes. However, as this is an ongoing proceeding, and because the LIUNA Intervenors’ responses to Staff’s First Set of Data Requests are not yet due, I reserve the right to amend my testimony through supplemental testimony or at the evidentiary hearing as necessary.

⁹ Staff-Joint Applicants Settlement Stipulation, at 4-10.