

Rebuttal Testimony
Michael A. Pogany

Before the South Dakota Public Utilities Commission
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

Docket No. GE25-001

**Rebuttal Testimony of Michael A. Pogany
on Behalf of Black Hills Corporation in
Support of the Joint Application**

June 5, 2026

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PURPOSE OF TESTIMONY..... 2

III. RESPONSE TO LIUNA TESTIMONY AND RECOMMENDATIONS 4

IV. CONCLUSION..... 13

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Michael A. Pogany and my business address is 409 Deadwood Avenue, Rapid
4 City, South Dakota, 57702.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Black Hills Power, Inc. d/b/a Black Hills Energy (“Black Hills Power”),
7 which is a subsidiary of Black Hills Corporation (“Black Hills”). I am the General Manager
8 of Electric Operations. I am responsible for electric operations for Black Hills Power,
9 which includes management of the electric distribution system, as well as our fleet
10 maintenance, engineering, and construction planning departments.

11 **Q. PLEASE SUMMARIZE YOUR PROFESSIONAL EXPERIENCE,
12 QUALIFICATIONS, AND EDUCATIONAL BACKGROUND.**

13 A. I have a Bachelor’s degree in Environmental Engineering from the South Dakota School
14 of Mines and Technology in Rapid City. I am a registered professional engineer in South
15 Dakota, Wyoming, and Colorado. I started at BHC in 2008 as an Environmental Engineer.
16 After nine years as an Environmental Engineer and manager, I became the Rapid City
17 Electric Operations Manager in 2017. In 2020, I was promoted to Director of Electric
18 Operations for Black Hills Power. In 2023, I was promoted to General Manager for Black
19 Hills Power. Prior to my 17 years at Black Hills, I spent six years as a water quality
20 regulator for the South Dakota Department of Environment and Natural Resources (now
21 the Department of Agriculture and Natural Resources).

22 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING.**

23 A. I am testifying on behalf of Black Hills in support of the Joint Application.

1 **II. PURPOSE OF TESTIMONY**

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

3 A. The purpose of my rebuttal testimony is to provide Black Hills' response to South Dakota
4 Laborers Local 620, the Great Plains Laborers' District Council, and the Laborers'
5 International Union of North America (together, "LIUNA") testimony. Specifically, I
6 respond to LIUNA's proposed merger conditions for external third-party contracting
7 activities. I explain why LIUNA's proposed commitments are unnecessary and should be
8 rejected by the Commission.

9 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF LIUNA'S RECOMMENDATIONS.**

10 A. LIUNA proposes a number of broad-based merger approval conditions, including
11 requirements related to continued prudent contracting, retaining LIUNA-signatory
12 contractors on bid lists, and continued investment in Black Hills Power's and
13 NorthWestern Energy Public Service Corporation's ("NorthWestern") electric and natural
14 gas infrastructure systems.¹ LIUNA also proposes that third-party contractor bid
15 evaluations be subject to a series of requirements, including operator qualification and
16 training, local hiring, contractor certification of workforce standards (wage minimums),
17 and workforce training and apprenticeship standards.

¹ Based on LIUNA's testimony, Black Hills understands LIUNA's reference to "electric and natural gas infrastructure systems" only includes "natural gas transmission and distribution facilities and ancillary structures, generating facilities and ancillary structures, but excludes transmission and distribution facilities for electricity." Randall Harris Direct Testimony at p. 26. Black Hills does not fully understand what "ancillary structures" are intended to be encompassed in this definition.

1 **Q. CAN YOU IDENTIFY ANY AREAS WHERE THE JOINT APPLICANTS AND**
2 **LIUNA ARE ALIGNED?**

3 A. Yes. The Joint Applicants and LIUNA agree that it is important to develop and maintain
4 a stable local workforce that is qualified and available to provide safe, reliable and cost-
5 effective service post-merger, just as it does today. Post-merger, Black Hills Power will
6 continue to prudently contract for outside services in a manner that continues to provide
7 safe, reliable, and cost-effective service.

8 **Q. PLEASE PROVIDE AN OVERVIEW OF THE AREAS WHERE LIUNA AND**
9 **JOINT APPLICANTS DO NOT AGREE.**

10 A. The Joint Applicants do not agree that LIUNA's proposed conditions, particularly those
11 that would impose prescriptive external workforce requirements for third-party contracts,
12 are necessary or appropriate in this merger proceeding. These types of conditions are not
13 necessary as LIUNA has failed to raise any concerns that Black Hills Power's current or
14 post-merger level of service quality is or will be inadequate. Black Hills is concerned that
15 LIUNA's proposals would diminish the flexibility we currently have in making operational
16 and third-party labor decisions and could result in increased costs or project delay that
17 could impact South Dakota customers. Finally, as I discuss below, LIUNA's proposals are
18 unnecessary to meet South Dakota's merger approval standard.

19 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS WITH RESPECT TO**
20 **LIUNA.**

21 A. I recommend the Commission reject LIUNA's recommendations in full for the reasons set
22 forth in my testimony.

1 **III. RESPONSE TO LIUNA TESTIMONY AND RECOMMENDATIONS**

2 **Q. WHAT IS YOUR UNDERSTANDING OF SOUTH DAKOTA’S MERGER**
3 **APPROVAL STANDARD?**

4 A. As set forth in the Joint Application, I understand that the Commission assesses whether
5 there is a likelihood of significant adverse impacts to customers. This standard is
6 established under SDCL § 49-34A-36, which states, in relevant part, that the Commission
7 “shall approve the proposed action unless the commission finds that there is a likelihood
8 of significant adverse impacts to customers in this state.”

9 **Q. WHY ARE LIUNA’S PROPOSED COMMITMENTS UNNECESSARY TO MEET**
10 **THE STANDARD FOR MERGER APPROVAL?**

11 A. LIUNA presents no facts demonstrating or even suggesting that Black Hills Power’s
12 service quality is not adequate today, or that Black Hills Power is, or will be, somehow
13 deficient in its third-party contracting practices after the merger closes. Black Hills
14 Power’s existing labor procurement and contracting practices promote a skilled, qualified,
15 and safe contractor workforce that is consistent with South Dakota’s applicable labor
16 standards and the utility’s obligation to provide safe, reliable, and cost-effective service.
17 Black Hills will continue to ensure that its contracting decisions, workforce standards, and
18 operational integrity remain aligned with our core values and regulatory obligations. These
19 are all values that align with our existing corporate and regulatory standards. In sum,
20 LIUNA has put forward no evidence demonstrating that Black Hills Power’s existing or
21 future contracted labor practices will harm customers. Consequently, modifying Black
22 Hills’ contracting practices in a way that limits existing flexibility and optionality is
23 unwarranted here.

1 **Q. CAN YOU EXPAND ON BLACK HILLS’ OPPOSITION TO LIUNA’S PROPOSED**
2 **COMMITMENTS?**

3 A. Yes. LIUNA’s proposed contract labor requirements appear to be focused on serving its
4 members’ interests rather than any theoretical adverse impact the merger could have on
5 customers. In addition, their proposals would add additional administrative burden, reduce
6 flexibility in selecting contractors, and impose new and unnecessary compliance burdens.
7 Black Hills already makes third-party contracting decisions in a manner that supports equal
8 opportunity, operational integrity and safety, and the delivery of reliable service to our
9 customers. Further, LIUNA’s proposals would go above and beyond what South Dakota
10 requires and the Commission’s merger approval standard. While LIUNA witness Mr.
11 Randall suggests that “[t]he standards governing how projects are bid, qualified, supervised
12 and reported on are squarely within the scope of this docket,”² I disagree. The only
13 question at issue is whether “there is a likelihood of significant adverse impacts to
14 customers.” Here, LIUNA has raised no credible concerns of adverse impact to customers.
15 In another instance, on page 20 of his testimony, Mr. Harris points to several large
16 generation projects, which he alludes should be subject to LIUNA’s proposed conditions.
17 For Black Hills Power’s project, we remain committed to, and in fact are obligated, to
18 construct and operate that project in a safe, reliable and prudent fashion. Mr. Harris
19 provides no evidence that Black Hills Power has done otherwise.

² Randall Harris Direct Testimony at p. 20.

1 **Q. DOES THE SETTLEMENT AGREEMENT WITH STAFF CONTAIN ANY**
2 **PROVISIONS THAT WILL SUPPORT BLACK HILLS' CONTINUED**
3 **INVESTMENT IN SOUTH DAKOTA?**

4 A. Yes. While Black Hills does not anticipate the merger will materially impact our South
5 Dakota investment strategy, under the Settlement between Commission Staff (“Staff”) and
6 the Joint Applicants filed in this docket on April 29, 2026 (“Settlement”), Black Hills
7 Power committed to providing reporting on its South Dakota capital expenditures. This
8 will provide the Commission with added transparency into our capital spending.

9 **Q. HOW DO YOU RESPOND TO LIUNA’S CONCERN THAT THE VALUE**
10 **CREATION OPPORTUNITIES, SCALE, AND GREATER PURCHASING**
11 **POWER PROVIDED BY THE MERGER MAY CREATE DOWNWARD**
12 **PRESSURE ON CONSTRUCTION LABOR STANDARDS?**³

13 A. I disagree. Mr. Harris provides no facts or analysis to support this conclusion and instead
14 simply claims that “without appropriate conditions, those pressures *can* translate into work
15 being shifted to less-qualified, lower-wage, lower-trained, or transient out-of-state
16 contractor crews.”⁴ This assertion ignores many of the practicalities of running a complex
17 utility operation, particularly given the unique local and regional characteristics of the areas
18 we serve. Black Hills Power is already obligated to provide safe, reliable, and cost-
19 effective service to our customers. Even though we operate across many rural areas where
20 it can be challenging to find a qualified workforce, Black Hills Power has been able to do
21 so successfully with its current practices. Maintaining flexibility over our third-party

³ Randall Harris Direct Testimony at p. 20.

⁴ Randall Harris Direct Testimony at p. 21. (Emphasis added.)

1 contracting practices is important in this regard as it allows us to consider who the most
2 qualified and cost-effective vendors are to complete the work at hand. For example, there
3 may be scenarios where local contract labor is the best resource, but there may be other
4 scenarios where a different contract crew, for example, located in Black Hills Power's
5 Wyoming footprint, is more experienced and cost-effective. If there is an opportunity to
6 leverage scale to reduce costs while still maintaining the same safe, reliable service, then
7 the prudent choice is to do just that. This does not mean, however, that a decision of this
8 nature would be made in isolation without considering things like the contractor's
9 workforce qualifications, safety record, or demonstrated performance on comparable work.

10 **Q. DO YOU ANTICIPATE THE MERGER WILL SIGNIFICANTLY CHANGE**
11 **BLACK HILLS' APPROACH TO THIRD-PARTY LABOR CONTRACTING IN**
12 **SOUTH DAKOTA?**

13 A. No. After the merger closes, Black Hills anticipates that it will continue to use outside
14 contractors for the same categories of work as it does today for Black Hills Power in South
15 Dakota. Notably, the majority of work that Black Hills Power uses contractors for is
16 electric transmission and distribution work, which is outside the scope of LIUNA's
17 requested commitments. Thus, LIUNA's emphasis on third-party contractor spend and
18 potential labor spend reductions as a basis for its proposed commitments is misaligned.

1 **Q. LIUNA WITNESS MR. HARRIS CRITICIZES JOINT APPLICANTS FOR NOT**
2 **CURRENTLY TRACKING CONTRACTOR WAGES, BENEFITS, HOURS,**
3 **TRAINING, OR LOCAL HIRING METRICS IN SOUTH DAKOTA.⁵ HOW DO**
4 **YOU RESPOND?**

5 A. In my professional experience and judgment, this is not at all unusual with a utility's use of
6 outside contractors versus internal employees. Indeed, one of the benefits of using contract
7 labor is that it enhances our ability to cost-effectively manage outside labor for targeted
8 projects that require a unique skillset. Use of contract labor also allows us to better manage
9 the ebb and flow of work volumes without the prospect of increased hiring and firing of
10 employees.

11 **Q. HOW DOES BLACK HILLS CONTRACT AND PROCURE THIRD-PARTY**
12 **RESOURCES IN SOUTH DAKOTA TODAY?**

13 A. Black Hills Power's labor contracting and procurement practices are designed to prioritize
14 safe operations and the delivery of reliable and cost-effective service to our customers.
15 Outside contractor decisions are driven by operational needs, safety considerations,
16 workforce availability, and cost-effectiveness with the objective of making sure that work
17 is performed safely and efficiently for the benefit of customers. The goal of any labor
18 contracting decisions we make for contracted labor is to ensure construction standards are
19 satisfied and that, as a result of the work, we can continue to serve customers safely and
20 reliably consistent with our core values and regulatory obligations. To this end, Black Hills
21 Power considers factors like demonstrated safety performance, resource availability,

⁵ Randall Harris Direct Testimony at pp. 21-22.

1 project timing, cost, and experience. While Black Hills Power understands there can be
2 benefits to hiring locally, when possible, there are multiple factors that may influence this.
3 For example, given the specialized type of work associated with generation projects, there
4 are not always qualified third-party labor resources “locally” available. Moreover, local
5 contracted labor resources may not always be available as quickly, or at the same cost,
6 particularly if there are qualified contractors already doing the same or similar work. From
7 a cost and prudence perspective, we have an obligation to our customers to consider cost
8 and the value that economies of scale can provide when operating a multi-state enterprise.
9 These are all factors that play into our decisions with respect to hiring contract labor.

10 **Q. HOW DO YOU RESPOND TO LIUNA’S CLAIM THAT IT IS ONLY**
11 **REQUESTING WHAT JOINT APPLICANTS HAVE ALREADY AGREED TO IN**
12 **SETTLEMENTS IN OTHER JURISDICTIONS?⁶**

13 A. I suggest LIUNA’s proposed justification should be rejected. While I am not a lawyer, each
14 case and each jurisdiction is operationally distinct and is subject to each state’s unique legal
15 and regulatory structure, including policies on labor and employment. Operational
16 decisions must be made with the needs of the utility, existing contractor relationships, and
17 unique local concerns in mind. In the context of this merger, what may have resulted from
18 the give and take of negotiations in one state does not necessarily apply here. For example,
19 in Nebraska, both Black Hills and NorthWestern only operate gas utility systems. In
20 Montana, Black Hills Power only has a *de minimis* presence with approximately 45
21 customers, and the terms agreed upon in the Montana settlement are largely consistent with
22 or reflect NorthWestern’s current operations and labor practices in Montana. By way of

⁶ Direct Testimony of Randall L. Harris at p. 33.

1 comparison, in South Dakota, Black Hills Power’s activities are almost exclusively in the
2 electric space and include a geographically proximate and interconnected service territory
3 in Wyoming. Generally speaking, all of these types of factors would need to be considered
4 in a negotiated settlement relative to third-party contracting. Here, the lens through which
5 we would evaluate any third-party labor conditions for Black Hills Power in South Dakota
6 includes whether those conditions are necessary to protect customers, whether they are
7 consistent with the Commission’s merger approval standard, and whether they will impact
8 our ability to deliver safe, reliable, and cost-effective service.

9 **Q. PLEASE ELABORATE ON HOW THE NEBRASKA AND MONTANA**
10 **SETTLEMENTS ARE DISTINCT FROM WHAT LIUNA PROPOSES HERE.**

11 A. First, the Nebraska settlement is specific to Joint Applicants’ Nebraska natural gas
12 operating utilities, and only apply to specific operations of the natural gas operating
13 utilities’ business areas. For example, under the Nebraska settlement, Joint Applicants
14 agreed to a prudent contracting provision for “pipeline construction, repair, maintenance,
15 and related infrastructure work.” Similarly, BH Nebraska Gas agreed to certain safety
16 commitments for third-party pipeline project contract bid evaluations. The Montana
17 settlement was similarly specific, contemplating operator qualifications for contractors
18 selected to perform “pipeline construction and repair” only. Further, the Montana
19 settlement involved terms that were acceptable to the Joint Applicants because they
20 memorialized NorthWestern’s current labor contracting practices in Montana. As is clear
21 from the four corners of the settlement, the provisions do not apply to Black Hills Power
22 today.

1 **Q. HOW DO YOU RESPOND TO LIUNA’S CLAIM THAT CONSTRUCTION OF**
2 **MAJOR CAPITAL PROJECTS MAY OVERLAP WITH MERGER**
3 **INTEGRATION?**

4 A. As I mentioned earlier, Mr. Harris claims that the “standards governing how projects are
5 bid, qualified, supervised, and reported on” fall within the scope of this merger docket
6 based on capital projects that are underway.⁷ Specifically, he highlights three projects:
7 Black Hills Power Lange II RICE Generation Addition (“Lange II”), NorthWestern
8 Aberdeen Units 3 and 4, and NorthWestern Aberdeen Plant 2. With respect to Black Hills’
9 Lange II plant, Black Hills has already secured all construction contracts. Commitments
10 to comply with additional standards for contracting labor at this time would be unnecessary,
11 and potentially disruptive, as the construction workforce has already been assembled and
12 construction is well underway. Additionally, operations and maintenance work will be
13 completed with internal labor, along with a service agreement that can only be supplied by
14 Wartsila, the manufacturer. Future commitments based on ongoing and planned projects
15 are not appropriate, or in the best interests of customers as it could result in higher costs or
16 delay.

17 **Q. WILL JOINT APPLICANTS EVALUATE THEIR LABOR PROCUREMENT AND**
18 **CONTRACTING PRACTICES AS PART OF THE MERGER INTEGRATION**
19 **PROCESS?**

20 A. Yes. As the Joint Applicants have discussed through discovery with LIUNA and our
21 testimony, we anticipate evaluating labor procurement and contracting processes as part of
22 the systems integration planning process with input from senior management, integration

⁷ Direct Testimony of Randall L. Harris at pp. 19-20.

1 leads, and subject matter experts of both companies.⁸ Integration planning will consider
2 impacts on all stakeholders, including customers, which is the appropriate context for Joint
3 Applicants to evaluate labor procurement. While these and other practices are still under
4 evaluation, especially as cost-saving opportunities, there are no current plans to materially
5 modify existing labor contracting practices. Furthermore, given our responsibility to
6 reliably serve customers, we will not implement practices that would degrade service to
7 customers or impact the safety of our employees or facilities. As with other operational
8 benefits of the merger, we expect to improve, wherever possible, upon existing labor and
9 contracting practices through the integration process. As described in Joint Applicants’
10 direct case, the collective experience of these two utility operators will give us the
11 opportunity to leverage the knowledge and capabilities of our combined teams to evaluate
12 and implement best practices from both companies.⁹ We will be able to collectively
13 enhance and streamline processes, procedures and systems, and provide professional
14 development to our employee teams. This optimization may include labor procurement and
15 contracting.

16 **Q. DOES BLACK HILLS POWER VALUE ITS OUTSIDE CONTRACTOR**
17 **REALATIONSHIPS?**

18 A. Yes. Black Hills Power has long worked with contractors operating in South Dakota and
19 surrounding regions and values those relationships. Black Hills remains committed to
20 responsible external contracting practices that benefit our communities and customers after
21 the merger.

⁸ See Discovery Request LIUNA 1.34.

⁹ See Direct Testimony of Kimberly Nooney at p. 3.

1

IV. CONCLUSION

2 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

3 **A. Yes, it does.**

VERIFICATION

This Rebuttal Testimony of Michael Pogany is true and accurate to the best of my knowledge, information, and belief.

/s/ Michael A. Pogany

Michael A. Pogany