

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

**IN THE MATTER OF THE SOUTH DAKOTA)
PUBLIC UTILITIES COMMISSION STAFF’S)
COMPLAINT AGAINST BLACK HILLS)
POWER INC)**

**COMPLAINT

PS25-003**

COMES NOW, the Staff of the South Dakota Public Utilities Commission and hereby files this Complaint against Black Hills Power Inc., requesting the Commission issue a civil fine for violations of ARSD § 20:10:37:18 and SDCL § 49-41B-4.

In support of this Petition, Staff asserts as follows:

1. The South Dakota Public Utilities Commission (“SDPUC” or “the Commission”) is a regulatory body in charge of enforcing the provisions of SDCL Chapter 49-34B and SDCL Chapter 49-41B.
2. Pursuant to SDCL § 49-34B-4, the Commission has promulgated rules to establish safety standards for the intrastate transportation of gas and gas pipeline facilities.
3. SDPUC Staff (Staff) performs inspections and monitors compliance of pipelines under the Commission’s jurisdiction pursuant to SDCL Chapter 49-34B and SDCL Chapter 49-41B.
4. Black Hills Power Inc., (Respondent) is an investor-owned utility serving 1.35 million natural gas and electric utility customers in eight states including Arkansas, Colorado, Iowa, Kansas, Montana, Nebraska, South Dakota, and Wyoming.¹
5. Respondent operates an intrastate natural gas transmission pipeline system subject to SDCL Chapter 49-34B, 49 C.F.R. § 192, and SDCL Chapter 49-41B.

1st Failure to Notify Pursuant to ARSD § 20:10:37:18 – Ben French Pipeline

6. Respondent’s contractor contacted Pipeline Safety Staff on April 14, 2023, providing general information of a Ben French Pipeline relocation, and asking if there were any additional SD PUC requirements in addition to the federal requirements.
7. Pipeline Safety Staff responded and asked to be kept informed when construction was beginning, so that Pipeline Safety Staff could conduct a construction inspection.

¹ <https://ir.blackhillscorp.com/>

8. Respondent was included on the communications in Paragraphs 6 and 7.
9. Respondent failed to notify Pipeline Safety Staff with the date that construction was beginning.
10. ARSD § 20:10:37:18 requires transmission pipeline operators to notify and provide certain information to the commission's pipeline safety program no later than sixty days prior to construction of a new transmission line.
11. Respondent failed to provide the information required in ARSD § 20:10:37:18 to the pipeline safety administrators prior to the pipeline relocation at the Ben French location.
12. On November 8, 2023, Staff, during a routine field inspection, observed that Respondent was nearing the end of construction on the relocation project as Respondent was prepping the transmission pipeline for tie-in on the Ben French transmission line.
13. SDCL § 49-34B-12 states, "Any person who violates any provision of [Chapter 49-34B] or any rule promulgated pursuant to this chapter is subject to a civil penalty to be imposed by the commission, after notice and opportunity for hearing."
14. According to said statute, the "penalty may not exceed two hundred thousand dollars for each violation each day that the violation persists, except that the maximum civil penalty may not exceed two million dollars for any related series of violations." *Id.*
15. Between April 14, 2023, and November 8, 2023, two hundred and eight (208) days, Respondent failed to satisfy the requirements of ARSD § 20:10:37:18.
16. Pursuant to SDCL § 49-34B-12, Respondent is subject to a civil penalty of up to \$200,000 per day of violations up to the statutory maximum of \$2,000,000.

2nd Failure to Notify Pursuant to ARSD § 20:10:37:18 – Lange II Transmission Pipeline

17. As stated above, ARSD § 20:10:37:18 requires transmission pipeline operators to notify and provide certain information to the commission's pipeline safety program no later than sixty days prior to construction of a new transmission line.
18. During a routine inspection on or about September 10, 2025, SDPUC Pipeline Safety Staff observed a large trench upstream of the Lange I receiver station. The trench appeared to Staff to be excavated for the Lange II gas pipeline and tie-in. The trench location, size, and amount of Lange I's existing gas pipeline that was exposed caught

Staff's attention and raised questions as to how the Lange II gas pipeline would be classified according to statute.

19. SDCL § 49-41B-4 requires that a permit from the SDPUC must be obtained prior to construction of a transmission pipeline. SDCL § 49-41B-2.1 defines a transmission pipeline as a "gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, hydrogen, liquid hydrocarbon products, or carbon dioxide"
20. Because the Lange II pipeline was located upstream of the Lange I receiver station, Pipeline Safety Staff determined that this pipeline would be properly classified as a transmission pipeline.
21. On or about September 11, 2025, SDPUC Pipeline Safety Program Manager sent an email to Respondent notifying Respondent that she was aware of construction starting for a new transmission line to serve a new generating facility and asking if Respondent was aware of the requirements of ARSD § 20:10:37:18.
22. On or about September 16, 2025, Respondent's Generation Compliance Manager replied to Staff's email stating that construction of the transmission line began on July 28, 2025. Respondent also provided information required by ARSD § 20:10:37:18. See Exhibit A.
23. Prior to September 16, 2025, the pipeline safety program did not receive notification or other information required by ARSD § 20:10:37:18 relating to construction of a new transmission line.
24. With construction of this pipeline beginning on July 28, 2025, Respondent was required by administrative rule to provide notice to Pipeline Safety Staff by May 28, 2025.
25. Respondent gave notice to Staff on September 16, 2025, 111 days past the required notification date.
26. Pursuant to SDCL § 49-34B-12, Respondent is subject to a civil penalty of up to \$200,000 per day of violations up to the statutory maximum of \$2,000,000.

Failures to Obtain Permits Prior to Construction Pursuant to SDCL § 49-41B-4

27. SDCL § 49-41B-4 requires that a permit from the SDPUC must be obtained prior to construction of a transmission pipeline. SDCL § 49-41B-2.1 defines a transmission

pipeline as a “gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, hydrogen, liquid hydrocarbon products, or carbon dioxide”

28. The information provided by Respondent in the September 16, 2025, email to Staff showed that the Lange II pipeline meets the definition of a transmission pipeline under SDCL § 49-41B-2.1, meaning that a permit is required prior to construction. *See Exhibit A.*
29. Respondent failed to obtain a permit before commencing construction of the Lange II transmission pipeline.
30. In Staff’s review of the Lange II transmission pipeline, Staff became aware that the transmission pipeline that was built in 2002 to feed Lange I also met the definition of a transmission pipeline and therefore requires a permit from the SDPUC.
31. Respondent never obtained a permit for the Lange I transmission pipeline.
32. Respondent and Staff met on September 26, 2025, per Staff’s request, to discuss the various issues alleged here in this complaint and attempt to find a resolution.
33. When discussing the trench that Pipeline Safety Staff observed during Staff’s inspection, Respondent’s Vice President of Power Delivery stated that what Staff observed in its inspection was not a trench for the gas line but instead was for the utilities to run to the Lange II plant.
34. Further, Respondent’s Vice President of Power Delivery stated that Respondent planned to tie-in to the existing gas pipeline at the Lange I receiver station and was not planning to tie-in to the existing Lange I pipeline at the trench excavated upstream of the Lange I receiver station.
35. In an attempt to corroborate Respondent’s explanation, Staff requested Respondent provide all plans for the gas pipeline.
36. Staff then discovered the following:
 - i. On April 3, 2025, Respondent entered a contract for the pipeline work with PSI, LLC. Figure 2 of the contract identified flanges on the Lange I Receiver that could be used as possible tie-in points. However, the contract did not specifically designate any particular tie-in point as the one that would be used. *See Exhibit B.*

- ii. On May 20, 2025, Respondent considered tying the Lange II gas pipeline upstream of the Lange I receiver station rather than at the flanges identified in the contract with PSI, LLC. *See* Exhibit C.
 - iii. On July 2, 2025, Respondent issued the first set of drawings for construction for the Lange II gas pipeline extension. These drawings align with the plan set forth on May 20, 2025, and show the tie-in point for the Lange II pipeline as being upstream of the Lange I receiver station in an underground trench that also contains other piping and utilities. *See* Exhibit D at BH-LANGEX-PIP-002 Rev 0, BH-LANGEX-PIP-002A Rev 0, and BH-LANGEX-PIP-002B Rev 0.
 - iv. The pipeline was to connect to the Lange I transmission pipeline upstream of the Lange I receiver station, making the Lange II pipeline a transmission pipeline. *Id.*
 - v. Respondent changed the connection point and had a new drawing issued on September 24, 2025. *See* Exhibit E.
 - vi. This new connection point found in Exhibit E would make the Lange II pipeline ‘plant piping’ rather than a transmission pipeline, meaning the pipeline would not fall under the Commission’s pipeline safety or permitting jurisdiction.
 - vii. These plans for the new connection point were issued 7 days after the initial inquiry from Staff into this matter.
 - viii. Despite the plans, and the transmission pipeline itself that is constructed in the trench, Respondent maintains that it was never their intention to tie in the Lange II gas pipeline into the existing Lange I 10” transmission Pipeline upstream of the receiver station. *See* Exhibit F.
37. Respondent and Staff met again on October 16, 2025, per Staff’s request, to discuss these matters further and again attempt to find a resolution.
38. In this meeting:
- i. Respondent stated that Respondent never would have purposely tied into the location where the Lange II gas pipeline currently sits constructed in the trench. *Id.*

- ii. Respondent stated that, in order to tie-in at that location, there would need to be an approved outage of the Lange I plant, and such an outage would not have been approved.
- iii. Respondent stated that it was the contractor PSI, LLC who made the mistake of issuing drawings and constructing the pipeline to tie-in at the location upstream of the Lange I receiver station, and that Respondent would not have approved tying in at that location. *Id.*
- iv. Respondent stated that they should have caught the mistake of the REV-0 construction plans, but had not, and would have caught the mistake when an outage was requested. Respondent claims such a request would be denied.
- v. In this meeting, Respondent's Vice President of Power Delivery mentioned that he testified about the tie-in location in a Wyoming docket.
- vi. To verify this information, Staff found Respondent's Vice President of Power Delivery's testimony in Wyoming Docket no. 17781 and found the following:
 - 1. Respondent's Vice President of Power Delivery stated "The Lange II Project will utilize a natural gas supply pipeline interconnected to a 10-inch gas line that currently supplies gas to the existing Lange combustion turbine, adjacent to the Lange II site, through an approximately 200-foot pipeline tie-in." *See* Exhibit G at 8.
 - 2. This statement does not mention a flange, Lange I receiver station, or a tie-in other than tying into the existing 10-inch gas line, which aligns with how the pipeline is currently constructed and aligns with the REV-0 plans.
 - 3. Respondent's Vice President of Power Delivery further stated in his testimony, "As mentioned above, the natural gas supply will be interconnected with approximately 200 feet of natural gas pipeline. This interconnection feed will be located on the east side of Lange II connecting to an existing 10-inch gas line that provides natural gas fuel to the existing Lange combustion turbine, also owned by

Black Hills Power.” *Id.* at 9-10.

4. Once again, this statement does not mention a flange, Lange I receiver station, or a tie-in other than tying into the existing 10-inch gas line, which aligns with how the pipeline is currently built in the ground and aligns with the REV-0 plans. *See* Exhibit H.
- vii. While looking at the Wyoming docket on October 16, 2025, Staff also discovered Respondent’s August 2025 Construction Report, which states the following: “The gas-tie in will be planned and executed with an approved outage.” *See* Exhibit I at 2.
- viii. Rather than admitting to any facts that Staff presented in this meeting or the prior meeting, Respondent presented a story to Staff that contradicts all available evidence:
 5. Respondent claimed the plan was never to build a transmission pipeline; rather, the plan was always to interconnect at the Lange I receiver station. Respondent points to the original PSI LLC, contract which stated that flanges on the Lange I receiver station was a possible tie-in site, but did not specifically name a tie-in point. Respondent also points to Respondent’s Vice President of Power Delivery’s Wyoming testimony despite the fact that the testimony does not mention a receiver station or flanges being part of the tie-in.
 6. Regarding the REV-0 plans/drawings, Respondent claimed that these plans were never approved/issued by Black Hills. This is claimed despite the fact that Respondent’s logo is found on each page of the plans/drawings and, even more critically, the pipe in the ground is constructed in accordance with these drawings on Respondent’s property less than twenty minutes from Respondent’s headquarters. *See* Exhibit D and Exhibit F.
 7. Respondent is implicitly making several claims: first, Respondent’s contractor made errors in the drafting of these plans/drawings. The error was never caught by Respondent;

second, Respondent's contractor was allowed to carry out these incorrect plans without oversight from Respondent.

- a. Alternatively, Respondent was overseeing the construction but was not aware of the errors unfolding before it.

39. Staff presents a simpler version of events:

- i. Based on the drawings and the pipe constructed in the trench, Respondent was constructing a transmission line until Staff questioned Respondent about construction notice requirements and the need for a permit.
- ii. Respondent then stopped construction at Staff's request.
- iii. After this point, Respondent revised the interconnection point so that the project would fall outside of the definition of a transmission pipeline. *See Exhibit E.*
- iv. Up until September 24, 2025, Respondent's plan was to build a transmission pipeline.

40. SDCL § 49-41B-34 states:

Any person required by this chapter to have a permit who begins construction of a facility without previously securing a permit as prescribed by this chapter, or who constructs, operates, or maintains a facility other than in compliance with the permit and any terms, conditions, and modifications contained therein is guilty of a Class 1 misdemeanor and is subject to a civil penalty of not more than ten thousand dollars. Each day of violation shall constitute a separate offense. The civil penalty provided for in this section shall be recoverable by suit filed by the Public Utilities Commission and shall be deposited into the permanent school fund.

41. The 10" Lange II gas pipeline, currently constructed to interconnect upstream, of the Lange I receiver station, with plans to be operated at 26 percent SMYS, is a transmission pipeline for which a permit is required before construction may begin.

42. Respondent began construction of the Lange II transmission pipeline on July 28, 2025, without a permit.

43. Construction continued until September 17, 2025, after the problem was discovered by Staff.

44. This constitutes 51 days in violation of SDCL § 49-41B-34, meaning

Respondent is liable for up to \$510,000 and 51 Class 1 Misdemeanors relating to the Lange II transmission pipeline.

45. The currently operating Lange I pipeline, installed in 2002, is a 10-inch diameter pipe that carries gas at a hoop stress of over 20% SMYS, therefore meeting the definition of a transmission pipeline under SDCL § 49-41B-2.1.
46. Respondent never obtained a permit for the Lange I pipeline, meaning each day that passes constitutes a violation. 2,555 days and counting have passed in violation of SDCL § 49-41B-3.
47. Staff began reaching out and communicating with Respondent beginning September 11, 2025, and has contacted Respondent on a weekly basis since then to seek a resolution.
48. At the date of this filing there has been around twenty-four emails sent between Staff and Respondent, three group meetings with Staff and Respondent, one attorney meeting with Staff and Respondent, and at least four attorney calls between Staff and Respondent.
49. Staff has also agreed to hold off on filing the complaint on four different occasions in order to give Respondent time and attempt to resolve the matter.
50. Staff agreed to hold off of its planned filing of the complaint on October 24, 2025, at the request of the Respondent for approximately two weeks in order to meet on November 4, 2025, to discuss settlement.
51. At the November 4, 2025, meeting, Staff and Respondent were not able to reach a settlement.

Request for Relief

WHEREFORE, the Staff respectfully requests the Commission issue an order finding Black Hills Power Inc. to have been in violation of ARSD § 20:10:37:18 on two occasions and SDCL 49-41B-4 regarding two transmission pipelines and issue a civil penalty pursuant to SDCL § 49-34B-12 and SDCL § 49-41B-34.

That the Commission order Respondent to submit an application to site the Lange I pipeline; AND

That the Commission order Respondent to pay all reasonable fees associated with the Lange I siting application even if they go above the statutory maximum allowed in SDCL § 49-41B-12; AND

That the Commission order that this fine cannot be recovered from rate payers in any future rate case.

Dated this 04th day of November 2025.

A handwritten signature in cursive script, reading "Jennie L. Fuerst", written in dark ink.

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