

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

IN THE MATTER OF THE SOUTH DAKOTA)	MOTION TO DISMISS
PUBLIC UTILITIES COMMISSION STAFF’S)	ANSWER TO COMPLAINT
COMPLAINT AGAINST BLACK HILLS)	PS25-003
POWER, INC.)	

**BLACK HILLS POWER, INC.’S MOTION TO DISMISS OR
ALTERNATIVELY, ANSWER TO COMPLAINT**

COMES NOW Black Hills Power, Inc., d/b/a Black Hills Energy (“Black Hills Power”), by and through its counsel of record, submits its Motion to Dismiss or Alternatively, Answer to the Complaint dated November 4, 2025 filed by the Staff of the South Dakota Public Utilities Commission (“Staff”) with the South Dakota Public Utilities Commission (“Commission”) and the request for the Commission to issue a civil fine for the violations of ARSD § 20:10:37:18 and SDCL § 49-41B-4. Black Hills Power will address each of these valid reasons for dismissing Staff’s Complaint below:

MOTION TO DISMISS

1. 2002 Lange I Pipeline Permit Requirement – 2023 Plant Facility Relocation, and 2025 Lange II – Due Process Violations

Black Hills Power admits that it constructed the Lange I pipeline in 2002. However, because Staff did not issue any required warnings or notices pursuant to ARSD § 20:10:37:08 during or after annual routine Staff inspection of Black Hills Power’s Lange I pipeline since 2002, that action suggests that the Commission did not view this as a significant violation at the time or at any time since the pipeline was constructed in 2002. To now include the Lange I pipeline in Staff’s Complaint violates Black Hills Power’s procedural and substantive due process rights. The Commission must first follow its own regulations and issue a Notice of

Probable Violation, Warning, or Notice of Concern before simply filing a Complaint with the Commission and advocating for civil fines to be assessed, including a misdemeanor for Black Hills Power.

Accordingly, the Commission should dismiss the portion of Staff's Complaint related to the Lange I pipeline since Staff has failed to adhere to the Commission administrative requirements for notifying Black Hills Power of a possible violation of procedure.

Black Hills Power also contracted with PSI, LLC d/b/a Pipeline Strategies & Integrity, LLC ("PSI" or "Contractor") to design and manage the relocation of gas facilities in 2023. Prior to relocation construction, PSI representatives did attempt to notify Staff of construction and to seek guidance on Commission requirements that would be in addition to any federal requirements. This action demonstrates good faith and intent of Black Hills Power and PSI to comply with pipeline safety requirements.

Upon Staff's learning that construction of the relocation of gas facilities actually commenced prior to Black Hills Power, or its contractor providing a 60-day notice, Commission Staff did not issue any Notice of Probable Violation, Warning, or Notice of Concern. Staff has not raised any issue of permitting or construction notice since that time. Because Staff did not issue any required warnings or notices during or after Staff's November 8, 2023 routine inspection of Black Hills Power's facilities, that action suggests that the Commission did not view this as a violation invoking a civil fine at that time. To now include the 2023 facilities in Staff's Complaint violates Black Hills Power's procedural due process rights. The Commission must first follow its own regulations and issue a Notice of Probable Violation, Warning, or Notice of Concern before simply filing a Complaint with the Commission and advocating for civil fines to be assessed against Black Hills Power.

Accordingly, the Commission should dismiss the portion of Staff's Complaint related to the relocated gas facilities since Staff has failed to adhere to the Commission administrative requirements for notifying Black Hills Power of a possible violation of procedure.

Black Hills Power again contracted with PSI to construct a 200 foot lateral gas pipeline referred to as the Lange II pipeline. That gas pipeline will provide gas supply to Black Hills Power's Lange II generation facilities, which are currently under construction. Black Hills Power disputes Staff's interpretation and application of its construction plans and whether the interconnection of the Lange II pipeline is a "transmission line" or not. Black Hills Power contends that the Lange II pipeline is not a transmission line and therefore the Lange II pipeline is exempt from the Commission's permit and pre-construction notification requirements. The Commission could and should dismiss the Lange II pipeline construction from the Staff Complaint because the Lange II pipeline does not require a Commission permit or pre-construction notification.

However, if the Commission determines that the Lange II pipeline is a "transmission" pipeline, Black Hills Power states that Staff did not issue any required warnings or notices during or after Staff's discovery and review of Black Hills Power's Lange II pipeline plans. Thus, the Commission must first issue a Notice of Probable Violation, Warning, or Notice of Concern to Black Hills Power. To include the Lange II pipeline facilities in Staff's Complaint violates Black Hills Power's procedural due process rights. The Commission must first follow its own regulations and issue a Notice of Probable Violation, warning, or Notice of Concern before simply filing a complaint with the Commission and advocating for civil fines to be assessed, including a misdemeanor for Black Hills Power.

Accordingly, the Commission should dismiss the portion of Staff's Complaint related to the Lange II as facilities since Staff has failed to adhere to the Commission administrative requirements for notifying Black Hills Power of a possible violation of procedure.

2. Lange I Pipeline Permit Requirement – Estoppel Applies

Black Hills Power admits that the Lange I pipeline, which provides gas supply to the Lange I power generation facility has been constructed and in service since 2002. That gas pipeline has been subject to annual reviews by Commission Pipeline Safety Staff during the time the gas pipeline was originally constructed and continues to be subject to Commission oversight today. To the best of the knowledge, understanding, and belief of Black Hills Power, at no time over the past twenty-three years has the Commission Staff issued a Notice of Probable Violation, a Warning, or Notice of Concern to Black Hills Power requiring a permit or other pre-construction information.

The business records of Black Hills Power for the construction of this gas pipeline are well past record retention requirements and therefore Black Hills Power is unable to present any documents or records to justify why no construction permit currently exists. At this point in time and given the continued review and inspection of the Lange I pipeline by Commission Pipeline Safety Staff, the portion of the Staff's Complaint related to the Lange I permit is subject to the doctrine of estoppel. The Commission does not need to waste valuable resources requiring Black Hills Power to prepare a permit application and for Commission Staff to invest time in reviewing that pipeline permit application. There is no public value or purpose in that administrative exercise. Black Hills Power submits that the Commission's long-standing acceptance of the Lange I pipeline without a permit implies waiver or estoppel against retroactive enforcement. Accordingly, the Commission should dismiss that portion of the Staff's Complaint.

3. Lange II Pipeline – No Commission Permit and Notice Required

As noted above, in addition to the procedural due process violation, Black Hills Power disputes Staff's interpretation and application of its construction plans and whether the interconnection of the Lange II pipeline is a "transmission line" or not. Black Hills Power contends that the Lange II pipeline is not a transmission line and therefore the Lange II pipeline is exempt from the Commission's permit and pre-construction notification requirements. Black Hills Power submits that the Lange II pipeline lateral was designed as plant piping based on operational specs and tie-in location. The design of the Lange II pipeline facilities and the location of the interconnection and tie-ins make this line non-jurisdictional to the pipeline safety regulations and statutes.¹ The Commission could and should dismiss the Lange II pipeline construction from the Staff Complaint because the Lange II pipeline does not require Commission permit and construction notification.

Upon Staff's inquiry on September 11, 2025, Black Hills Power representatives responded to Staff within five days and provided information requested by Staff to demonstrate its intent regarding the Lange II pipeline. In addition, Black Hills Power halted construction at Staff's request. This action further demonstrates a willingness of Black Hills Power to comply with Commission regulations once a classification concern is raised by Commission Staff. Although Black Hills Power acknowledges that its plans and testimony before the Wyoming Public Service Commission ("Wyoming PSC"), and follow up construction reports to the Wyoming PSC have led to further confusion, Black Hills Power asserts that its true intentions and design plans support that the Lange II pipeline is and was intended to tie into the Lange II flange that does not require a pipeline permit or prior construction notice because it would not be

¹ SDCL § 49-41B-2.1

qualified as a transmission line. Accordingly, the Commission should dismiss that portion of the Staff's Complaint.

ANSWER TO STAFF COMPLAINT

If the Commission does not dismiss the Staff Complaint for the reasons set forth above or on other grounds, then Black Hills Power, the Respondent to the Staff Complaint in this proceeding, hereby provides its Answer to the Complaint as required under ARSD § 20:10:01:09 as follows:

1. Black Hills Power denies each and every matter, allegation, claim, count, and thing contained in Staff's Complaint, except as admitted or otherwise qualified herein.

2. As to Paragraphs 1 and 2 of Staff's Complaint, Black Hills Power admits the allegations set forth therein.

3. As to Paragraph 3 of Commission Staff's Complaint, Black Hills Power admits the allegation but has no specific knowledge of the scope of Staff's inspection or monitoring of natural gas pipelines other than with direct interactions between Black Hills Power and Staff or as otherwise published by the Commission on its "Pipeline Safety Dockets" webpage.

4. As to Paragraph 4 of Staff's Complaint, Black Hills Power admits the allegations set forth therein.

5. As to Paragraph 5 of Staff's Complaint, Black Hills Power generally admits the allegations set forth therein except to the extent that the allegations set forth therein constitute legal conclusions to which no response is required.

I. STAFF'S COMPLAINT ALLEGATION: 1ST FAILURE TO NOTIFY PURSUANT TO ARSD § 20:10:37:18 – BEN FRENCH PIPELINE

6. As to Paragraphs 6, 7, and 8 of Staff's Complaint, Black Hills Power generally admits the allegations set forth therein except to the extent that Black Hills Power has no direct

knowledge of the actual communications of PSI, related to the communications between the Staff and the Contractor

7. As to Paragraph 9 of Staff's Complaint, Black Hills Power acknowledges that it now has an email discussion between PSI and Staff that requests guidance related to the construction requirements for the relocation construction that was issued in April 14, 2023 and construction was not commenced until November 2023. In addition, Staff was on the construction site conducting an annual inspection prior to the completion of that construction and did not issue any further official Notice of Probable Violations, Warnings, or Notice of Concerns.

8. As to Paragraph 10 of Staff's Complaint, the allegations set forth therein constitute legal conclusions to which no response is required.

9. As to Paragraph 11 of Staff's Complaint, Black Hills Power has no records demonstrating whether further information of pipeline construction related to the relocation of the natural gas pipeline for Black Hills Power's Ben French generation facilities was communicated or provided to Staff or not.

10. As to Paragraph 12 of Staff's Complaint, Black Hills Power has no direct knowledge or understanding of the scope of Staff's observations on November 8, 2023. In addition, Black Hills Power has no post-inspection records, warnings, notices, or documentation of any other concerns from Staff's November 8, 2023, field inspection related to Staff's observations of the natural gas pipeline for Black Hills Power's Ben French generation facilities.

11. As to Paragraphs 13, 14, 15, and 16 of Staff's Complaint, the allegations set forth therein constitute legal conclusions to which no response is required. The statutory language contained within SDCL § 49-34B-12 speaks for itself. In addition, Black Hills Power has no records demonstrating whether further information of pipeline construction related to the relocation of the natural gas pipeline for Black Hills Power's Ben French generation facilities

was communicated or provided to Staff or not. Moreover, even if the Commission finds that a violation of the pipeline safety laws or regulations have been violated in this instance, Black Hills Power contends the level of fine presented in Staff's Complaint is significantly disproportionate with any other fine imposed to date by the Commission for pipeline safety violations for a variety of different infractions.

II. STAFF'S COMPLAINT ALLEGATION: 2ND FAILURE TO NOTIFY PURSUANT TO ARSD § 20:10:37:18 LANGE II TRANSMISSION PIPELINE

12. As to Paragraphs 17 of Staff's Complaint, the allegations set forth therein constitute legal conclusions to which no response is required. The language contained within ARSD § 20:10:37:18 speaks for itself. Black Hills Power denies Staff's legal conclusion regarding whether the Lange II gas lateral pipeline is a "transmission" pipeline or not.

13. As to Paragraph 18 of Staff's Complaint, Black Hills Power has no direct knowledge or understanding of the scope of Staff observations on September 10, 2025. In addition, Black Hills Power has no immediate post-inspection records, warnings, notices, or any documentation of other concerns from Staff's September 10, 2025, field inspection related to Staff's observations of the natural gas pipeline for Black Hills Power's Lange II generation facilities. Staff's concerns regarding the ongoing construction related to Black Hills Power's Lange II generation facilities were communicated to Black Hills Power after Staff's September 10, 2025 field inspection. In addition, Black Hills Power contends that its own practices and procedures are structured to avoid a tie-in with the Lange I pipeline. Thus, Black Hills Power would have been alerted of the potential tie-in by PSI at the wrong location, and revised the construction plans to tie-in at a location that was originally contracted, and therefore making this line non-jurisdictional.

14. As to Paragraphs 19 and 20 of Staff's Complaint, the allegations set forth therein constitute legal conclusions to which no response is required. The statutory language contained within SDCL § 49-41B-4 speaks for itself.

15. As to Paragraph 21 of Staff's Complaint, Black Hills Power admits that Staff sent an email dated September 11, 2025 to Black Hills Power. However, Black Hills Power denies Staff's legal conclusion contained within the email regarding whether the gas pipeline is a "transmission" pipeline or not.

16. As to Paragraph 22 of Staff's Complaint, Black Hills Power admits the allegations set forth therein.

17. As to Paragraph 23 of Staff's Complaint, Black Hills Power has no records demonstrating whether further information of pipeline construction related to the construction of a natural gas lateral pipeline for Black Hills Power's Lange II generation facilities was communicated or provided to Staff prior to September 16, 2025, or not. Black Hills Power denies Staff's legal conclusion regarding whether the Lange II gas lateral pipeline is a "transmission" pipeline or not.

18. As to Paragraphs 24 and 25 of Staff's Complaint, the allegations set forth therein constitute legal conclusions to which no response is required. Black Hills Power denies Staff's legal conclusion and Commission notice requirements regarding whether the Lange II gas lateral pipeline is a "transmission" pipeline or not.

19. As to Paragraph 26 of Staff's Complaint, the allegations set forth therein constitute legal conclusions to which no response is required. The statutory language contained within SDCL § 49-34B-12 speaks for itself. In addition, Black Hills Power has no records demonstrating Staff issued a Notice of Probable Violation, a warning or noted any other pipeline safety concerns related to the construction of the Lange I natural gas pipeline facilities for Black

Hills Power's generation facilities. Moreover, even if the Commission finds that a violation of the pipeline safety laws or regulations have been violated in this instance, Black Hills Power contends the level of fine presented in Staff's Complaint is significantly disproportionate with any other fine imposed to date by the Commission for pipeline safety violations for a variety of different infractions.

III. STAFF'S COMPLAINT ALLEGATION: FAILURES TO OBTAIN PERMITS PRIOR TO CONSTRUCTION PURSUANT TO SDCL § 49-41B-4

20. As to Paragraph 27 of Staff's Complaint, the allegations set forth therein constitute legal conclusions to which no response is required. The statutory language contained within SDCL § 49-34B-4 speaks for itself.

21. As to Paragraph 28 of Staff's Complaint, Black Hills Powers admits that it emailed Staff information about the Lange II gas lateral pipeline. However, Black Hills Power denies and asserts that the allegations set forth therein constitute legal conclusions to which no response is required. The statutory language contained within SDCL § 49-34B-12 speaks for itself.

22. As to Paragraphs 28 and 29 of Staff's Complaint, the allegations set forth therein constitute legal conclusions to which no response is required. Black Hills Power contends that the Lange II pipeline does not require a pipeline permit. Black Hills Power reserves its right to present further information and argument regarding Staff's assertions.

IV. STAFF'S COMPLAINT ALLEGATION: LANGE I PIPELINE PERMIT

23. As to Paragraph 30 of Staff's Complaint, Black Hills Power is without sufficient information to admit or deny the allegations regarding Staff's understanding or awareness of the Lange I gas pipeline constructed and operating since 2002. In addition, the allegations set forth

therein constitute legal conclusions to which no response is required. Black Hills Power reserves its right to present further information and argument regarding Staff's assertions.

24. As to Paragraph 31 of Staff's Complaint, Black Hills Power admits it does not have records specifically showing that a permit application or other approval of the Lange I gas pipeline was required by Staff in 2002, and therefore remits Staff to strict proof thereof. Black Hills Power affirmatively asserts that it completes annual inspections as required by applicable rules and regulations, including Staff field inspections, and that it has done so for each of the years for which Black Hills Power retains its business records, and that it documents the date, time, and participants for such inspections. In addition, the allegations set forth therein constitute legal conclusions to which no response is required. Black Hills Power reserves its right to present further information and argument regarding Staff's assertions.

25. As to Paragraph 32 of Staff's Complaint, Black Hills Power admits the allegations set forth therein.

26. As to Paragraph 33 of Staff's Complaint, Black Hills Power is without sufficient information to admit or deny the allegations regarding Staff's understanding or awareness of the Lange II gas pipeline lateral. However, Black Hills Power does acknowledge and admit that its Vice President of Power Delivery stated during the September 26, 2025 meeting between Black Hills Power and Staff that what Staff observed in its inspection of Black Hills Powers generation site field inspection was not a trench for the Lange II gas lateral pipeline, but instead was a trench for the utilities to run to the Lange II plant.

27. As to Paragraph 34 of Staff's Complaint, Black Hills Power admits the allegations set forth therein.

28. As to Paragraph 35 of Staff's Complaint, Black Hills Power is without sufficient information to admit or deny the allegations regarding Staff's intent regarding the construction

plans. However, Black Hills Power acknowledges Staff's request for Black Hills Power to provide its construction plans for the Lange II gas lateral pipeline.

29. As to Paragraph 36 of Staff's Complaint, Black Hills Power is without sufficient information to admit or deny the allegations regarding Staff's findings of fact or conclusions of law regarding the construction plans provided by Black Hills Power to Staff. Black Hills Power contends that the Lange II pipeline does not require a pipeline permit. Black Hills Power reserves its right to present further information and argument regarding Staff's assertions.

30. As to Paragraph 37 of Staff's Complaint, Black Hills Power admits the allegations set forth therein. Black Hills Power acknowledges and admits that Staff and Black Hills Power met on October 16, 2025 to discuss these matters further and attempted to find a resolution to Staff's concerns regarding the various subject matters now contained with Staff's Complaint.

31. As to Paragraph 38(i) through 38(v) of Staff's Complaint, Black Hills Power admits the allegations set forth therein.

32. As to Paragraphs 38(vi)(1) through Paragraph 38(vi)(4) of Staff's Complaint. Black Hills Power contends that the Lange II pipeline does not require a pipeline permit. Black Hills Power reserves its right to present further information and argument regarding Staff's assertions.

33. As to Paragraph 38(vii) of Staff's Complaint, Black Hills Power is without sufficient information to specifically admit or deny the allegations regarding Staff's findings, facts, or conclusions of law, or awareness of the Lange II Wyoming Certificate of Public Convenience and Necessity ("CPCN") application and related documents. Black Hills Power does specifically acknowledge and admit that it filed a Construction Report dated August 2025 with the Wyoming Public Service Commission. Black Hills Power reserves its right to present further information and argument regarding Staff's assertions.

34. As to Paragraph 38(viii) of Staff's Complaint, Black Hills Power denies the allegation of Staff that Black Hills Power's explanation of the facts and intentions contradict all available evidence.

35. As to Paragraph 38(viii)(5) of Staff's Complaint, Black Hills Power generally admits to the Staff allegations contained therein. However, Black Hills Power denies the Staff's legal arguments or that Black Hills Power's Wyoming CPCN testimony does not support the facts and explanations of Black Hills Power to Staff regarding the Lange II gas lateral pipeline. Black Hills and reserves its right to present further information and argument regarding Staff's assertions.

36. As to Paragraph 38(viii)(6) of Staff's Complaint, Black Hills Power generally admits to the Staff allegations contained therein. However, Black Hills Power denies the Staff's legal arguments or allegations of facts that Black Hills Power's maps do not support the actual representation of facts and explanations of Black Hills Power to Staff regarding the Lange II gas lateral pipeline. Black Hills Power reserves its right to present further information and argument regarding Staff's assertions.

37. As to Paragraph 38(viii)(7) of Staff's Complaint, Black Hills Power generally admits to the Staff allegations contained therein. However, Black Hills Power denies the Staff's legal arguments or allegations of facts that Black Hills Power's contractor, PSI, altered the original plan understood by Black Hills Power, or that the other statements by Black Hills Power do not support the actual representation of facts and explanations of Black Hills Power to Staff regarding the Lange II gas lateral pipeline. Contrary to the allegations of Staff, Black Hills Power contends that it operated under the understanding that the Lange II pipeline does not require a pipeline permit. Thus, any oversight of Black Hills Power's contractor or other managers not intimately familiar with South Dakota pipeline safety statutes and South Dakota

Commission pipeline permitting requirements could lead to misinterpretation and miscommunication. Black Hills Power reserves its right to present further information and argument regarding Staff's assertions.

38. As to Paragraph 39 of Staff's Complaint, Black Hills Power denies the allegations regarding Staff's findings, facts or conclusions of law, or awareness of the Lange II gas lateral pipeline. Black Hills Power does acknowledge and admit that it stopped construction of the Lange II gas lateral pipeline at the request of Staff as alleged in Paragraph 39(iii) of the Complaint.

39. As to Paragraphs 40 and 41 of Staff's Complaint, the allegations set forth therein constitute legal conclusions to which no response is required. The language contained within SDCL § 49-41B-34 speaks for itself. Black Hills Power reserves its right to present further information and argument regarding Staff's assertions.

40. As to Paragraph 42 of Staff's Complaint, Black Hills Power generally admits the allegations set forth therein except to the extent that the allegations set forth therein constitute legal conclusions to which no response is required. Black Hills Power contends that the Lange II gas lateral pipeline does not require a pipeline permit. Black Hills Power reserves its right to present further information and argument regarding Staff's assertions.

41. As to Paragraph 43 of Staff's Complaint, Black Hills Power generally admits the allegations set forth therein except to the extent that the allegations set forth therein constitute legal conclusions to which no response is required. Black Hills Power contends that the Lange II gas lateral pipeline does not require a pipeline permit. Black Hills Power reserves its right to present further information and argument regarding Staff's assertions.

42. As to Paragraph 44 of Staff's Complaint, Black Hills Power denies the allegations set forth therein except to the extent that the allegations set forth therein constitute legal

conclusions to which no response is required. Black Hills Power contends that the Lange II gas lateral pipeline does not require a pipeline permit. Moreover, even if the Commission finds that a violation of the pipeline safety laws or regulations have been violated in this instance, Black Hills Power contends the level of fine presented in Staff's Complaint is significantly disproportionate with any other fine imposed to date by the Commission for pipeline safety violations for a variety of different infractions. Black Hills Power reserves its right to present further information and argument regarding Staff's assertions.

43. As to Paragraphs 45 and 46 of Staff's Complaint, Black Hills Power generally admits the allegations set forth therein except to the extent that the allegations set forth therein constitute legal conclusions to which no response is required. Black Hills Power reserves its right to present further information and arguments regarding Staff's assertions on the Lange I pipeline.

44. As to Paragraph 47 through Paragraph 51 of Staff's Complaint, Black Hills Power generally admits the allegations set forth therein. Black Hills Power notes that it has cooperated in good faith with Staff and attempted to address each of Staff's questions and concerns regarding Lange I and Lange II pipeline construction projects. Black Hills Power contends that the Lange II gas lateral pipeline does not require a pipeline permit. Black Hills Power further admits that it has no records related to the construction of the Lange I gas pipeline as that line has been in existence and operation, subject to numerous filed inspections by Staff since 2002.²

² ARSD § 20:10:37:06. **Inspector's reporting requirements.** Regardless of the inspection type, the inspector shall complete a post inspection report within 90 days upon completion of the inspection itself. The report shall include a summary of probable noncompliance issues if any exist. As applicable, the inspection report may include a remediation plan wherein specific corrective action and a time frame for completion shall be stated when probable noncompliance issues exist.

Black Hills Power has not received any of the following notifications regarding either Lange I or Lange II pipelines: (1) Notice of Probable Violation, (2) a Warning, or (3) a Notice of Concern. Black Hills Power reserves its right to present further information and arguments regarding Staff's assertions.³

45. As to the section of Staff's Complaint labeled "Request for Relief," Black Hills Power asserts that the Commission should deny Staff's request for the Commission to issue an order finding Black Hills Power 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. Alternatively, the Commission should waive those penalties or otherwise assess penalties conforming to the level of penalties approved by the Commission in other pipeline safety proceedings.

46. Black Hills Power asserts that the Commission should also deny Staff's request that the Commission order Black Hills Power to submit an application to site the Lange I pipeline. The Commission could also waive any requirements perceived to be violations

³ **ARSD § 20:10:37:08. Probable non-compliance inspection results.** The inspector shall categorize potential noncompliance in one of the following three categories to be specified in the inspection report:

(1) A notice of probable violation may be issued if the inspector has good cause to believe a serious or repeat violation of applicable pipeline safety standards has occurred. The written notice of violation shall include a statement of the statute, rule, or regulation allegedly violated by the pipeline operator and a description of the factual basis on which the allegation is based. If a civil penalty is proposed, the report shall state the amount of the proposed civil penalty. A warning in subdivision (2) may be elevated to a notice of probable violation by the pipeline safety program manager if warning items are not remedied in a timely fashion;

(2) A warning may be issued for a probable violation of a less serious nature or a first time violation. The warning may include specific corrective actions that must be taken to correct the situation and the time frame within which such actions shall be completed; and

(3) A notice of concern may be used to inform the pipeline operator where best industry practices are not being followed but no direct code violation exists. The notice of concern designation shall be used for informational purposes only to aid the pipeline operator in managing as safe and effective pipeline as possible. No pipeline operator action is required.

associated with the Lange I pipeline as pursuant to SDCL § 49-34B-24 or other applicable statutes.

47. Black Hills Power states that Staff's requests within the Complaint consists of incorrect findings of fact and legal conclusions. The Commission possesses the power to deny Staff's request. Moreover, even if the Commission finds that a violation of the pipeline safety laws or regulations have been violated in this instance, Black Hills Power contends the level of fine presented in Staff's Complaint is significantly disproportionate with any other fine imposed to date by the Commission for pipeline safety violations for a variety of different infractions. Black Hills Power reserves its right to present further information and argument regarding Staff's requested relief of an order of violation and fine.

V. REQUEST FOR HEARING

48. As noted above, Black Hills Power believes that the Commission could and should dismiss the Staff's Complaint for the reasons set forth above. Nevertheless, Black Hills Power will also attempt to resolve and settle the disputes raised by Staff in the Complaint as required by the Commission rules of practice and procedure. However, if Black Hills Power is unsuccessful in that effort, then Black Hills Power requests that the Commission establish a procedural schedule and schedule a hearing to provide for procedural and substantive due process of Black Hills Power on the issues presented in the Staff's Complaint.

VI. CONCLUSION AND PRAYER FOR RELIEF

49. Black Hills Power respectfully requests that the Commission dismiss the Staff Complaint.

50. If the Commission does not dismiss Staff's Complaint, then Black Hills Power submits its Answer to each and every allegation contained in the Staff's Complaint.

51. Black Hills Power affirms that it will attempt to settle the issues raised by Staff and disputed by Black Hills Power.

52. If settlement of some or all of the disputes between Black Hills Power and the Commission Staff is not successful, then Black Hills Power requests that the Commission establish a procedural schedule and conduct an evidentiary hearing on the unsettled procedural and substantive issues raised by the Staff Complaint.

53. If the Commission finds that any civil penalty is applicable, then Black Hills Power requests that the Commission apply a civil penalty similar to the penalties approved and assessed by the Commission in other Commission proceedings. Black Hills Power notes that the maximum penalties set forth and advocated in Staff's Complaint are significantly disproportionate to other Commission proceedings. The Commission can waive penalties and should do so in this proceeding based on Black Hills Power's cooperation and the lack of prior enforcement as set forth herein. Imposing maximum penalties in this case is unwarranted and unnecessary given the long-standing cooperation and corrective actions taken by Black Hills Power to address Staff's pipeline safety concerns.

54. Black Hills Power reserves its right to present further evidence and to submit additional legal arguments in this proceeding in accordance with the laws and regulations of South Dakota and this Commission.

Respectfully submitted this 25th day of November, 2025.



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