

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

**IN THE MATTER OF THE SOUTH DAKOTA) SETTLEMENT STIPULATION
PUBLIC UTILITIES COMMISSION STAFF’S) AND AGREEMENT
COMPLAINT AGAINST BLACK HILLS)
POWER INC) PS25-003
)**

SETTLEMENT STIPULATION AND AGREEMENT

This Settlement Stipulation and Agreement (“Agreement:”) reflects the resolutions reached between the Staff of the Public Utilities Commission (“Staff”) and Black Hills Power, Inc., South Dakota (“BHP” or “Respondent”).

I. BACKGROUND

On November 5, 2025, Staff filed a Complaint in the above-referenced proceeding against Respondent. In its Complaint, Staff requested that the South Dakota Public Utilities Commission (“Commission”) issue a civil fine to Respondent for violations of the Administrative Rules of South Dakota (“ARSD”) § 20:10:37:18 and South Dakota Codified Law (“SDCL”) § 49-41B-4.

Staff’s Complaint encompassed three separate BHP projects spanning over 24 years in alleged violation of South Dakota statutes and regulations: (1) 2002 Lange I siting permit violation, (2) 2023 Ben French Meter Station relocation construction notice violation, and (3) 2025 Lange II pipeline siting permit and pipeline safety construction notice violations.

On November 25, 2025, Respondent filed a Motion to Dismiss or Alternatively, Answer to the Staff Complaint. BHP denied that it was in violation of either the South Dakota transmission pipeline permitting statutes or pipeline safety construction notice regulations.

On December 11, 2025, the Commission issued an Order For and Notice Of Hearing On BHP’s Motion to Dismiss. On January 2, 2026, Staff filed a Brief in Opposition to BHP’s Motion to Dismiss the Staff’s Complaint. On January 27, 2026, the Commission heard oral argument

related to Respondent's Motion to Dismiss and after further discussion and deliberation, denied BHP's Motion to Dismiss.

Staff and Black Hills Power representatives have been in contact with each other to work through these matters amicably. As a result of those discussions, Staff and BHP now agree on the acknowledgements, understandings, future commitments, and settlement stipulations and agreements set forth below.

II. SUMMARY OF ALLEGED VIOLATIONS

A. Pipeline Safety Violations

a. 2023 Ben French Meter Station Relocation Construction Notice Violation

BHP contracted to have a Meter Station relocated in 2023. As set forth in the Complaint, Staff alleges that BHP failed to provide formal notice of the construction as required in *ARSD* § 20:10:37:18. Staff state that the Commission may order BHP to pay a civil penalty of up to \$200,000 per day up to the statutory maximum of \$2,000,000. Staff bases this penalty on its allegation of two hundred and eight (208) days of violation from the time of construction to the time of construction notice.

b. 2025 Lange II Construction Notice Violation

BHP's Lange II natural gas pipeline is a 200-foot gas lateral pipeline that is currently under construction by BHP. The purpose of that lateral gas pipeline is to connect BHP's Lange II power generation facilities with BHP's existing natural gas supply pipeline serving Lange I.

Staff alleges that between May 28, 2025, and September 16, 2025, for one hundred and eleven (111) days in total, BHP failed to satisfy the requirements of *ARSD* § 20:10:37:18. Pursuant to *SDCL* § 49-34B-12, Staff's Complaint asserts that BHP could be subject to a civil penalty of up to \$200,000 per day of violations up to the statutory maximum of \$2,000,000.

B. SDCL Chapter 49-41B Violations

a. 2002 Lange I – Failure to Acquire a Permit

The Lange I natural gas pipeline was constructed by BHP in 2002 to provide gas to BHP's Lange I power generation facilities located near Rapid City, SD. Staff states that BHP did not obtain a pipeline permit for the Lange I pipeline as required by SDCL Chapter 49-41B. Staff's Complaint requests the Commission to order BHP to submit a pipeline permit application and comply with the requirements of SDCL Chapter 49-41B. Commission Staff also requests that the Commission order BHP to pay all costs associated with the Lange I siting application – even if those costs go above the statutory maximum allowed under *SDCL § 49-41B-12*.

b. Lange II – Failure to Acquire a Permit

Staff also requests that the Commission assess a civil penalty for BHP's alleged failure to obtain a permit prior to construction of the 200-foot Lange II gas pipeline. Staff states that the facts and circumstances of that line as known at the time of the complaint qualify it as a "Transmission facility" under the definition of transmission facility in *SDCL § 49-41B-2.1*. Staff states that BHP (through its Contractor, PSI) began construction of the Lange II transmission pipeline on July 28, 2025, without a permit. Construction of the Lange II line continued until September 17, 2025, after the construction was discovered by Staff. Staff alleges that BHP was in violation of *SDCL § 49-41B-34* for fifty-one (51) days, which means that BHP could be liable for up to \$510,000 and 51 Class 1 misdemeanors relating to the Lange II transmission pipeline.

STIPULATIONS AND AGREEMENTS

Staff and Respondent stipulate and agree to the following acknowledgements, admissions, and commitments.

A. Settlement of the 2002 Lange I Pipeline Violation (*SDCL § 49-41B-34*)

1. Staff and BHP acknowledge the importance of public safety, properly siting energy infrastructure, and following the requirements set forth in SDCL Chapter 49-41B for constructing, operating, and maintaining a transmission facility.
2. Staff and BHP acknowledge the importance of operating and maintaining a natural gas pipeline in compliance with statutes, rules and regulations related to pipeline safety, including but not limited to SDCL Chapter 49-41B and the associated implementing regulation.
3. Staff and BHP acknowledge and agree that BHP's Lange I natural gas pipeline was constructed, installed, and became operational in 2002, and has been inspected annually by Staff in compliance with *49 C.F.R. § 192* (i.e., PHMSA pipeline safety regulations).
4. Staff and BHP acknowledge and agree that BHP's Lange I natural gas pipeline has not encountered any significant pipeline safety violations related to its annual inspections or encountered any pipeline incidents.
5. Staff and BHP agree that the Lange I gas pipeline has been (a) in existence since 2002, (b) subject to annual Staff and PHMSA inspections commencing in 2003, (c) available for Commission and public review of the cost or operation of the Lange I gas pipeline in prior BHP rate proceedings and will continue to be available for Commission and public review in future BHP rate proceedings, (d) operating without impact to the public for the past 24 years, (e) operating without any objection or complaint from the public or affected land owners, (f) operating without complaint from federal government officials for the past 24-years, (g) operating subject to applicable state and federal taxation, and (h) operating without any natural gas incidents.

6. Staff and BHP agree that BHP will file a Petition for Declaratory Ruling with the Commission to determine whether a permit is required under SDCL Chapter 49-41B for the Lange I natural gas pipeline within 90 days of the Commission's Order approving this Stipulation and Settlement Agreement.
7. Staff and BHP agree that upon BHP's filing an application seeking a Commission Declaratory Ruling on this legal situation, it will resolve the Staff's issues raised in its Complaint with the Lange I pipeline, and that the Lange I permit issue will be addressed and guided by the Commission in a future Commission Declaratory Ruling Order.
8. In the future docket associated with the declaratory ruling, Staff will present its interpretation of the law to the Commission; however, Staff agrees it will not appeal a Declaratory Ruling Order issued by the Commission that waives, or otherwise limits, the requirements of SDCL Chapter 49-41B as applied to the Lange I pipeline .
9. If the Commission rejects or otherwise significantly modifies the agreements proposed for approval in this Stipulation and Settlement Agreement, then BHP reserves its right to assert possible defenses against imposing a pipeline permitting process. Those rights or defenses, include but are not limited to, asserting any statute of limitations, the doctrines of estoppel, laches, and other possible lawful defenses by BHP. Staff reserves its right to oppose those defenses, and to pursue any statutory requirements for a permit that are appropriate or necessary.
10. Staff and BHP agree that if the Commission determines through its Declaratory Ruling Order that BHP must file a siting permit application in accordance with SDCL Chapter 49-41B for the Lange I gas pipeline, then BHP will pay the required statutory application fee for a permit in accordance with the *SDCL § 49-41B-12*.

B. Settlement of the Ben French Meter Station Relocation Violation

11. Staff and BHP acknowledge the importance of pipeline safety and the requirement of providing notice of construction required under *ARSD § 20:10:37:18* for the construction of a jurisdictional natural gas pipeline.
12. Staff and BHP acknowledge the importance of operating and maintaining a natural gas line in compliance with statutes, rules and regulations related to pipeline safety, including but not limited to the federal Pipeline Safety Acts, South Dakota Public Utilities Commission pipeline safety laws and regulations, and applicable regulations of the Pipeline Hazardous Materials and Safety Administration (“PHMSA”).
13. Staff and BHP acknowledge and agree that the Ben French Meter Station and related jurisdictional pipeline facilities are currently subject to SD PUC Pipeline Safety and PHMSA laws and regulations, and is intended to continue under that jurisdiction into the future.
14. Respondent hereby acknowledges miscommunication and misinterpretation of existing regulations and apologizes for the lack of follow through by its Contractor, including not adhering to the applicable pipeline construction notification regulations, and in following up with Staff to provide actual notice of construction related to the relocation of the Ben French Meter Relocation.
15. BHP acknowledges that BHP and its Contractor are ultimately responsible for complying with all applicable pipeline safety regulations, including providing construction notice at least 60 days prior to the commencement of construction.
16. BHP acknowledges that BHP is ultimately responsible for ensuring and verifying that BHP’s contractors and agents, who are hired to perform pipeline construction, operation,

or maintenance for BHP, comply with applicable pipeline safety laws and regulations when performing contractual obligations under service or other agreements between BHP and the contractor or agent.

17. BHP acknowledges that it has taken action within its organization to exercise more oversight and review of the regulatory and legal compliance of its contractors and agents with which it contracts for infrastructure design, permitting, and construction.
18. BHP hereby also commits to meeting periodically with SD PUC Pipeline Safety Staff to inform Staff of significant changes, extensions, or new construction of natural gas pipelines that may be deemed subject to the Pipeline Safety Act or PHMSA Transmission regulations. The primary purpose of those informal meetings is to strengthen the relationship between representatives of BHP and Staff and to better understand any pipeline safety design and regulation related to significant natural gas pipeline projects.
19. Staff and BHP agree that resolution of this complaint will avoid the time and expense associated with litigation of the allegations set forth in the complaint related to the Ben French Meter Station relocation.
20. BHP and Staff agree that any fines or penalties related to the Ben French Meter Station relocation as set forth in the Settlement and Fines and Recommended Penalties section of this Settlement Stipulation Agreement below fully resolve and address the fines and penalties recommended by Staff in its Complaint filed in this proceeding.

C. Settlement of Lange II Pipeline Construction Notice Violation

21. Staff and BHP acknowledge the importance of pipeline safety and the requirement of providing notice of construction required under *ARSD § 20:10:37:18* for the construction of a jurisdictional natural gas pipeline.

22. Staff and BHP acknowledge the importance of operating and maintaining a natural gas line in compliance with statutes, rules and regulations related to pipeline safety, including but not limited to the federal Pipeline Safety Acts, South Dakota Public Utilities Commission pipeline safety laws and regulations, and applicable regulations of the Pipeline Hazardous Materials and Safety Administration (“PHMSA”).
23. To date, Staff and BHP have disagreed whether the Lange II gas pipeline and related Lange II pipeline facilities are subject to South Dakota statutory pipeline safety construction notification requirements and other applicable laws and regulations.
24. However, in the spirit of compromise and resolution of the disagreements presented in this proceeding, BHP is willing to make the following admissions:
- i. BHP and its Lange II pipeline installation Contractor were not fully aware of the Commission’s construction notice requirements at the time of the initial design of the Lange II pipeline;
 - ii. BHP’s Contractor had prepared an initial design proposal for the Lange II pipeline interconnection “tie-in” location without fully consulting the specific South Dakota construction notice requirements;
 - iii. BHP acknowledges and admits that both BHP and its Lange II Contractor had a responsibility to understand the scope of the South Dakota construction notification regulations;
 - iv. BHP acknowledges and admits that BHP’s Lange II Contractor revised the planned Lange II pipeline tie-in location in a manner that both BHP and Staff agree would

- qualify the Lange II pipeline as a “transmission” line, and thereby require compliance with the Commission’s construction notification regulations if completed in accordance with that revised pipeline design;
- v. BHP acknowledges and admits that the Commission’s Pipeline Safety Staff alerted BHP about South Dakota’s pipeline construction notification concerning the Lange II pipeline, and thereafter sought further explanation and documentation to verify information that BHP provided to Staff;
 - vi. BHP acknowledges and admits that after being contacted by the Commission’s Pipeline Safety Staff, BHP’s Lange II Contractor revised the Lange II pipeline tie-in location in a manner that both BHP and Staff agree would remove the Lange II pipeline from the Commission’s pipeline safety jurisdiction.
25. Respondent hereby acknowledges miscommunication and misinterpretation of existing regulations by BHP and its Contractor, including but not limited to, failing to fully understand the applicable pipeline construction notification regulations, and in following up with Staff to provide the Staff with actual notice of construction related to the design and construction of the Lange II pipeline as initially engineered by BHP’s Contractor.
26. BHP acknowledges that it is ultimately responsible for complying with all applicable pipeline safety regulations, including providing construction notice at least sixty (60) days prior to the commencement of construction of gas pipelines subject to those Commission requirements.
27. BHP acknowledges that BHP is ultimately responsible for ensuring and verifying that BHP’s contractors and agents, who are hired to perform pipeline construction, operation,

or maintenance for BHP, comply with applicable pipeline safety laws and regulations when performing contractual obligations under service or other agreements between BHP and the contractor or agent.

28. BHP acknowledges that it has taken action within its organization to exercise more oversight and review the regulatory and legal compliance of its contractors and agents with which it contracts for infrastructure design, permitting, and construction. For example, BHP acknowledges that it will review and improve BHP's "Management of Change Process," which is designed for BHP to exercise more oversight over construction and maintenance of both jurisdictional and non-jurisdictional pipelines.
29. BHP hereby agrees to exercise more contractor oversight for the completion of the Lange II gas line to ensure that it is completed in full compliance with South Dakota laws and regulations.
30. BHP further agrees to exercising more contractor oversight for any future changes to the Lange II gas line.
31. BHP hereby agrees to meet with the Commission's Pipeline Safety Staff, wherein BHP will present and discuss any Staff concerns with the final design plans stamped by a Professional Engineer validating the technical specifications for the Lange II gas lateral.
32. BHP hereby also commits to meeting periodically with Pipeline Safety Staff to inform Staff of significant changes, extensions, or new construction of natural gas pipelines that may be deemed subject to the Pipeline Safety Act or PHMSA Transmission regulations. The primary purpose of those informal meetings is to strengthen the relationship between representatives of BHP and Staff and to better understand any pipeline safety design and regulation related to significant natural gas pipeline projects.

33. Staff and BHP agree that resolution of this complaint will avoid the time and expense associated with litigation of the allegations set forth in the complaint and jurisdictional status related to the Lange II pipeline.
34. Staff and BHP further agree that BHP shall complete its construction of the Lange II gas pipeline in conformance with a Professional Engineer-stamped pipeline and interconnection design, as verified by Staff, to interconnect the Lange II pipeline to BHP generation facilities in a location that both BHP and Staff agree will qualify the Lange II gas pipeline as a non-jurisdictional gas pipeline.
35. BHP agrees to provide records or allow the Commission's Pipeline Safety Staff to inspect or review the operation, books, and records of the non-jurisdictional Lange II gas line for at least the next five years, upon request of Pipeline Safety Staff.
36. BHP and Staff agree that any fines or penalties related to the Lange II pipeline as set forth in the Settlement and Fines and Recommended Penalties section of this Settlement Stipulation Agreement below fully resolve and address the fines and penalties recommended by Staff in its Complaint filed in this proceeding.

D. Settlement of Lange II Pipeline Violation (*SDCL § 49-41B-34*)

37. Staff and BHP acknowledge the importance of siting and obtaining a permit pursuant to SDCL Chapter 49-41B and the Commission's implementing regulations prior to the construction of a transmission facility.
38. To date, Staff and BHP have disagreed whether the Lange II gas pipeline is a transmission facility that requires a permit under SDCL Chapter 49-41B.
39. However, in the spirit of compromise and resolution of the disagreements presented in this proceeding, BHP is willing to make the following admissions:

- i. BHP and its Lange II pipeline installation Contractor were not fully aware of the definition of “transmission facility” in SDCL Chapter 49-41B during the initial design of the Lange II pipeline;
- ii. BHP acknowledges and admits that both BHP and its Lange II Contractor had a responsibility to understand the scope of SDCL Chapter 49-41B;
- iii. BHP acknowledges and admits that BHP’s Lange II Contractor revised the planned Lange II pipeline tie-in location during initial engineering in a manner that led Staff to question whether the pipeline would qualify as a “transmission facility”, and thereby require compliance with SDCL Chapter 49-41B;
- iv. BHP acknowledges and admits that BHP further confused Staff by providing documentation and explanation during Staff’s investigation of the facts related to the Lange II pipeline design that were inconsistent as to whether the Lange II pipeline would fall under the definition of “transmission facility” in *SDCL § 49-41B-2.1*;
- v. BHP acknowledges and admits that upon further investigation and review after Staff raised the matter, BHP corrected the Contractor’s initial Lange II pipeline design in a manner that would tie-in the Lange II gas pipeline to the BHP generation facilities at a location that would clearly disqualify the Lange II pipeline as a “transmission facility”; and
- vi. BHP and Staff agree that the Lange II alternate pipeline design presented to Staff on and after September 25, 2025, would not meet the definition of a “transmission facility.”

40. Staff and BHP agree that resolution of this complaint will avoid the time and expense associated with litigation of the allegations set forth in the complaint and jurisdictional status related to the Lange II pipeline.
41. Staff and BHP further agree that BHP shall complete its construction of the Lange II gas pipeline in conformance with a Professional Engineer-stamped pipeline and interconnection design, as verified by Staff, to interconnect the Lange II pipeline to BHP generation facilities in a location that both BHP and Staff agree will clearly exclude the pipeline from the definition of “transmission facility.”
42. BHP and Staff agree that any fines or penalties related to the Lange II pipeline as set forth in the Settlement and Fines and Recommended Penalties section of this Settlement Stipulation Agreement below fully resolve and address the fines and penalties recommended by Staff in its Complaint filed in this proceeding.

IV. SETTLEMENT OF FINES AND RECOMMENDED PENALTIES

43. Staff and BHP agree that the Lange I alleged SDCL Chapter 49-41B siting violation is hereby dismissed pending the filing of a declaratory ruling on the matter.
44. Staff and BHP agree that the Lange II alleged SDCL Chapter 49-41B siting violation is hereby dismissed with no financial penalty as long as it is constructed in accordance with this settlement.
45. BHP shall pay a total of \$40,000 in settlement and full resolution of all pipeline safety violations, recommended fines, recommended misdemeanors or other concerns related to the pipeline safety construction notice as alleged by Staff and set forth in Staff’s Complaint in this proceeding.

46. Staff and BHP agree that BHP shall deposit with the Commission \$40,000 as set forth herein within 90 days of the approval by the Commission of this Settlement Stipulation and Agreement to be deposited into the Pipeline Safety Account per *SDCL § 49-34B-12*.
47. In addition to the fine agreed upon above, Staff and BHP agree that if the Commission determines through its Declaratory Ruling Order that BHP must file a siting permit application for the Lange I gas pipeline, then BHP will pay the required statutory application fee for a permit in accordance with *SDCL § 49-41B-12*.

V. **GENERAL TERMS AND CONDITIONS AND RESERVATIONS**

48. This Settlement is submitted pursuant to the requirements set forth in the South Dakota natural gas pipeline safety laws and the Commission's rules and regulations. The Parties agree that, unless this Settlement becomes effective as provided herein, this Settlement and all discussions related hereto shall be privileged and shall not be admissible as evidence or in any way used, described or discussed in any future proceeding.
49. The Parties understand and agree that this Settlement represents a negotiated settlement of the issues in this proceeding, settled in a manner that is not contrary to the public interest. The provisions of this Settlement are for purposes of settlement only and shall have no precedential effect.
50. The Parties further understand and agree that the provisions of this Settlement relate only to the specific matters referred to in this Settlement and no party or person waives any claim or right which it otherwise may have with respect to any matters not expressly provided for in this Settlement.
51. This Settlement is not severable. Each provision of the Settlement is dependent upon all other provisions of the Settlement. The Parties further reserve the right to withdraw their

support for this Settlement if the Commission modifies the Settlement in any manner which is materially adverse to the Party withdrawing its support; and, further, the Parties reserve the right to contest any such Commission order modifying the Settlement in a manner which is materially adverse to the Party contesting such Commission order.

52. The Parties agree that all prior pleadings and supporting documentation should be admitted as full exhibits for the purpose of consideration of this Settlement and be given whatever weight the Commission deems appropriate. Consent by the Parties to admit all prior pleadings without challenge does not constitute agreement by any of the Parties that the content of the pleading is accurate or that the views of the Party's pleading should be assigned any particular weight by the Commission. The pleadings and supporting documentation previously provided in this proceeding are not expected to be subject to further examination or contest by the Parties, which would normally occur in a fully litigated case. Except for the resolutions of the specific disputes set forth in Staff's Complaint in this proceeding, the resolution of any specific issue in this Settlement does not indicate the Parties' agreement to resolution of new pipeline safety violations that may be raised in any future proceedings.

VI. SETTLEMENT EXECUTION, DATE, AND AUTHORIZED PARTIES

53. The Parties agree that the execution of this Settlement by each Party possesses the requisite power and authority to conduct business and to execute, deliver, and perform the Settlement. Each Party further warrants that the individuals who sign this Settlement have the legal power, right, and authority to enter into this Settlement and to bind each respective party.
54. Staff and BHP acknowledge and agree that the South Dakota Public Utilities Commission must approve this Settlement Stipulation and Agreement prior to it becoming effective.

Each party hereby agrees to support approval of this Settlement Stipulation and Agreement before the Commission.

Dated: February 25, 2026

THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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