BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE 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 A MERGER	)))))))	**Docket No. GE25-001** **UNOPPOSED MOTION FOR APPROVAL OF STIPULATED PROTECTIVE ORDER AND WAIVER OF RESPONSE TIME, NOTICE, AND HEARING**

Black Hills Corporation ("Black Hills") and NorthWestern Energy Group, Inc. ("NorthWestern Group" and collectively, the "Merger Parties"), and NorthWestern Energy Public Service Corporation d/b/a NorthWestern Energy ("NorthWestern") (together the "Joint Applicants") respectfully move the Commission to enter a Stipulated Protective Order granting protection for Confidential and Highly Confidential Information exchanged through the course of this proceeding. Joint Applicants have conferred with counsel for Staff of the South Dakota Public Utilities Commission ("Staff"), and counsel for the Laborers' International Union of North America, South Dakota Laborers Local 620, and the Great Plains Laborer's District Council. Joint Applicants are authorized to state that this Motion is unopposed, including Joint Applicants' request for waiver of: (i) response time, (ii) notice of hearing, and (iii) hearing on this Motion.[1] Accordingly, Joint Applicants request the Commission approve the Stipulated Protective Order as expeditiously as possible so Joint Applicants can serve confidential and highly confidential discovery responses on authorized individuals.

Among other things, the Stipulated Protective Order provides protection for highly sensitive forecasted financial information, and non-public commercial information exchanged

[1] In stipulating to the Protective Order, no party waives any protections set forth in the applicable Rules of Civil Procedure, including the work product doctrine.

between the Merger Parties and credit rating agencies about the Merger and other materials presented to or discussed by the boards of directors of either party related to the Merger, including board of director minutes ("Highly Confidential Information"). The Highly Confidential Information is confidential, proprietary, commercially sensitive, or trade-secret, is treated as confidential and highly sensitive by the Merger Parties, and may contain corporate strategy, and/or forward-looking financial data that could be used for competitive harm and/or insider trading purposes. It therefore warrants a heightened degree of confidential protection than is afforded to other Confidential Information exchanged in this proceeding. As such, Joint Applicants request that access to the Highly Confidential Information be limited to certain individuals on a need-to-know basis consistent with the Stipulated Protective Order provided in **Attachment A** and Non-Disclosure Agreement provided in **Attachment B**.

Trade secret and other confidential commercial information is protected from public inspection by South Dakota statute.[2] The Highly Confidential Information warrants treatment above and beyond that afforded Confidential Information, as it has a heightened degree of commercial sensitivity or trade-secret status, and public disclosure would result in material damage to Joint Applicants' financial or competitive position, impair the public interest, and could be used for insider trading purposes.[3] Notably, Joint Applicants obtain both economic value and a competitive advantage from keeping the Highly Confidential Information secret. Third parties, including institutional investors and venture capitalists, could obtain economic advantage if this information were to become public. Thus, disclosure of the Highly Confidential Information could give other parties material information to project Joint Applicants' financial results and conditions

[2] *See* SDCL 15-6-26(c).

[3] *See* ARSD 20:10:01:42.

in future years, enabling them to make strategic stock purchases or gain economic advantage by anticipating Joint Applicants' future business decisions, potentially to the detriment of any of the Joint Applicants and their customers.

Furthermore, disclosure of the Highly Confidential Information could expose to public view material non-public information that may contain forward-looking statements for the Joint Applicants as defined and regulated by the United States Securities and Exchange Commission. For example, if Highly Confidential Information were disclosed, it could put one or more Joint Applicants at risk of defending themselves in litigation either for not making a general disclosure in an 8-K or for providing too much speculative information to the public in its 8-K disclosures. Joint Applicants and their South Dakota customers could be harmed by public disclosure as this would undermine the extreme confidentiality Joint Applicants expect when they discuss non-public financial and business information with financial institutions. Similarly, Joint Applicants do not typically disclose information that would publicize the nature and content of discussions and deliberations of their boards of directors unless legally required and beyond what is legally required. To do otherwise could put Joint Applicants at a competitive disadvantage and may also jeopardize each board's ability to engage in robust strategic dialogue. For these reasons, the Highly Confidential Information is extremely sensitive, and as such, this information has been closely held and maintained by each Joint Applicant as Highly Confidential.[4]

While certain discovery requests served by Staff precipitated the filing of this Motion, Joint Applicants are seeking protection for any Highly Confidential Information that previously has been produced or that is produced during the course of this proceeding. It is imperative that any

[4] Thus far, Joint Applicants have only shared "Confidential Information" with Commission Staff pursuant to their data requests. Assuming this Motion is granted, the Joint Applicants will re-designate any information now considered "Highly Confidential Information" under the protective order as appropriate.

and all Highly Confidential Information produced or otherwise exchanged in this proceeding and designated as "Highly Confidential" be subject to limited disclosure to protect the Joint Applicants. To date, Joint Applicants have identified several attachments provided in response to Staff discovery requests, that they seek to re-designate as Highly Confidential Information. Specifically, these include:[5]

1. Confidential Attachments Staff 1.16(a), (b), (c), (d), (e), and (f), which are presentations, analyses, and communications exchanged with financial ratings agencies, and which include forecast financial information; and, Confidential Attachments Staff 1.18, 1.29(a) and (b), 1.32(a) and (b) which include various financial and capital planning forecast data for Joint Applicants.

2. Confidential Attachments provided in response to Staff 1.10 and 1.19.

Should Joint Applicants identify any additional documents previously produced that warrant re-designation, they will promptly notify Staff and/or any other intervenors of the need to re-designate such information as Highly Confidential Information.

Specifically, by this Motion, Joint Applicants request that access to Highly Confidential Information be limited as follows:

a. the attorneys of record for the parties;

b. the Commission and their assigned advisors;

c. any experts, or consultants who are employed or retained by counsel for the parties for assistance in this matter, including third-party consultants retained by Staff;

d. a reasonable number of employee experts and/or employee analysts of the parties, consistent with the terms, conditions, and process set forth in the Stipulated Protective Order, and,

[5] The Joint Applicants similarly request the ability to re-designate any discovery responses as Highly Confidential Information that cross-reference information re-designated as Highly Confidential Information.

e. stenographic reporters, engaging in proceedings as are necessarily incident to the preparation for hearing (*e.g.*, depositions) and/or hearing of this matter.

The limited disclosure protections listed in the previous paragraph include the requests identified in items 1-2 above (and which Joint Applicants will re-designate as "Highly Confidential" (or "Highly Confidential Information") with specific markings and any materials subsequently designated as "Highly Confidential"). Other items marked "Confidential" will remain subject to the Protective Order below but will not have the same recipient disclosure limitations.

Joint Applicants have attached the Stipulated Protective Order as **Attachment A**, in addition to a Stipulated Nondisclosure Agreement as **Attachment B**. Joint Applicants request that the Commission limit access to the Highly Confidential Information to the parties and individuals as set forth above (and as also identified in the Stipulated Protective Order) who have executed the Nondisclosure Agreement and filed it with the Commission. At the conclusion of this matter, Joint Applicants request that the Commission and parties provided access to Highly Confidential Information return these materials to Joint Applicants' counsel or provide certification to the Joint Applicants that all such materials have been destroyed, as provided for in the Stipulated Protective Order. Because this Motion is unopposed, Joint Applicants respectfully request the Commission waive: (i) response time, (ii) notice of hearing, and (iii) hearing on this Motion. Accordingly, Joint Applicants request the Commission approve the Stipulated Protective Order as expeditiously as possible.

Respectfully submitted this 6th day of January 2026

BLACK HILLS CORPORATION

By: <u>/s/ *Catherine M. Sabers*</u>____________

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