

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

**In the Matter of the Joint Application of)
Aquila, Inc., d/b/a Aquila Networks - KGO,)
Black Hills Corporation and Black)
Hills/Kansas Gas Utility Company, LLC)
("BH/Kansas Gas"), Joint Applicants, for an)
Order Approving the Transfer to BH/Kansas)
Gas of Aquila's Certificates of Convenience)
and Necessity and Franchises with Respect to)
all of Aquila's Kansas Natural Gas Business,)
Including its Transmission and Distribution)
Facilities Located in the State of Kansas, and)
for Other Related Relief.**

Docket No. 07-_____-_____-ACQ

STATE CORPORATION COMMISSION

APR 04 2007

 **Docket
Room**

DIRECT TESTIMONY OF MARK T. THIES

1 **I. INTRODUCTION AND QUALIFICATIONS**

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

3 A. My name is Mark T. Thies. My business address is 625 Ninth Street, P.O. Box 1400,
4 Rapid City, South Dakota 57709. I am the Executive Vice President and Chief
5 Financial Officer of Black Hills Corporation (“Black Hills”). I also serve as
6 Executive Vice President and Chief Financial Officer of Black Hills’ subsidiaries.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND BUSINESS**
8 **BACKGROUND.**

9 A. I have a B.A. in Accounting and a B.A. in Business Administration from Saint
10 Ambrose College and I am a Certified Public Accountant. From 1986 to 1990, I
11 worked in the utility practice section of Arthur Anderson’s office in Chicago. From
12 1990 to 1997, I served in a number of accounting positions with InterCoast Energy
13 Company, an unregulated energy company and a wholly owned subsidiary of
14 MidAmerican Energy Holdings Company. From May 1997 to March 2000, I was the
15 Controller for Black Hills. I became the Senior Vice President and Chief Financial
16 Officer in March of 2000. Since March of 2003, I have been Executive Vice
17 President and Chief Financial Officer of Black Hills.

18 **Q. WHAT ARE YOUR JOB RESPONSIBILITIES?**

19 A. As Chief Financial Officer, I am responsible for directing Black Hills’ financial
20 planning and reporting, accounting practices, information technology, risk
21 management, and treasury as well as its relationship with lending institutions,
22 shareholders, and the financial community. I develop and manage Black Hills’
23 commitment to quality by establishing, facilitating, and monitoring policies,
24 procedures, and programs in support of Black Hills’ objectives.

1 **II. PURPOSE OF TESTIMONY**

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

3 A. I will provide information regarding the corporate structure and financial condition of
4 Black Hills. I will also summarize the financing of the proposed transaction. I will
5 also discuss Black Hills' methodology for allocating common administrative costs. I
6 will testify as to the reasonableness of the purchase price paid to acquire Aquila's
7 utility assets. I will discuss the Black Hills Service Company services that will be
8 provided to the Aquila utilities, the acquired state utility structure, the acquisition
9 premium and transaction costs, and the pro forma financial information for Black
10 Hills and the state utility following the acquisition transaction. The testimony
11 relating to the acquisition premium, the pro forma financial information and the
12 allocation of acquisition premium and acquisition premium recovery plan will be
13 filed at a later date.

14 **III. CORPORATE STRUCTURE OF BLACK HILLS**

15 **Q. HOW IS BLACK HILLS STRUCTURED?**

16 A. Black Hills is a "holding company" under the Public Utility Holding Company Act of
17 2005 ("PUHCA 2005") and is the ultimate parent corporation of the Black Hills
18 organization.

19 **Q. WHAT IS THE ADVANTAGE OF THE HOLDING COMPANY
20 STRUCTURE?**

21 A. The holding company structure allows Black Hills to own each of its public utilities
22 as separate wholly-owned subsidiaries and this, in turn, allows each public utility
23 subsidiary to be operated as an independent company. The holding company
24 structure also allows Black Hills Energy, Inc., Black Hills' wholesale energy

1 production and marketing business, to be a wholly-owned subsidiary and to operate
2 as an independent company. These subsidiaries also benefit from the service
3 company service provided under the holding company structure.

4 **IV. FINANCIAL CONDITION OF BLACK HILLS**

5 **Q. PLEASE SUMMARIZE THE FINANCIAL CONDITION OF BLACK HILLS.**

6 A. Black Hills and its subsidiaries are financially strong. Black Hills' recently-reported
7 2006 consolidated financial results showed substantial growth reflecting solid utility
8 performance, improving power generation operations, and strong energy marketing
9 results. Black Hills reported that its retail utilities are in excellent operational and
10 strong financial condition. Black Hills has investment grade ratings from two major
11 rating agencies. Black Hills' credit rating is "Baa3" by Moody's Investors Service
12 and "BBB-" by Standard & Poor's. On February 22, 2007, Black Hills completed a
13 private placement offering to certain institutional investors of approximately 4.17
14 million shares of common stock at a price of \$36.00 per share, for a total of
15 approximately \$150 million. Black Hills used the net proceeds of approximately \$145
16 million from the offering for debt reduction. Although not directly related to the
17 acquisition, this placement demonstrates Black Hills' ready access to capital, and also
18 enhances its ability to finance and close the acquisition transaction.

19 During the 2001-02 national energy crisis, Black Hills maintained its
20 investment grade credit ratings while continuing its marketing and independent power
21 production businesses described in the testimony of Black Hills' witness Thomas M.
22 Ohlmacher, President and Chief Operating Officer for Black Hills Energy, Inc.

23 Black Hills' financial strength and stability is further evidenced by the fact
24 that its annual shareholder dividends have been increased each year for the past 37

1 years. A copy of Black Hills' 2006 Annual Report on Form 10-K to the Securities
2 and Exchange Commission ("SEC") is attached as a Schedule to the Joint
3 Application. Black Hills' Consolidated Statements of Income, Consolidated Balance
4 Sheets, Consolidated Statements of Cash Flows, and Consolidated Statements of
5 Common Stockholders' Equity and Comprehensive Income are included in Black
6 Hills' 2006 Annual Report attached as a Schedule to the Joint Application.

7 **Q. DESCRIBE BLACK HILLS' CORPORATE INVESTMENT PHILOSOPHY**
8 **AND HOW ACQUISITION OF AQUILA'S UTILITY ASSETS IS A GOOD**
9 **INVESTMENT FOR BLACK HILLS?**

10 A. Black Hills has a conservative management strategy consistent with values rooted in
11 its regulated utility origin. A typical Black Hills shareholder seeks a balance between
12 dividends and earnings growth, which is reflected in Black Hills' corporate
13 philosophy. The acquisition of Aquila's utility assets will significantly add to Black
14 Hills' regulated utility base, and improve the overall balance of its diversified energy
15 assets.

16 Black Hills' diversified non-utility energy businesses engage in relatively
17 conservative transactions compared to other industry participants. Black Hills has an
18 experienced and consolidated power generation team that serves both the utility and
19 non-utility segments. Existing non-regulated generation resources are pledged almost
20 exclusively to long term supply contracts with utilities that serve captive customers.
21 Black Hills Generation, Inc., Black Hills' independent power subsidiary, also has
22 energy contracts with other utilities such as Public Service Company of Colorado, the
23 Municipal Energy Agency of Nebraska, Southern California Edison, and Nevada
24 Power Company. Black Hills Exploration & Production, Inc. ("BHEP") produces

1 natural gas and crude oil. It employs risk management methods to mitigate
2 commodity price risk and preserve cash flows. These methods and guidelines have
3 been approved by Black Hills' Executive Risk Committee and are reviewed by the
4 Board of Directors. BHEP uses a strategy to expand its gas and oil reserves while
5 minimizing risk by focusing on lower-risk exploration and development drilling as
6 well as acquisitions of proven reserves. Substantially all of the coal production of
7 Wyodak Resources Development Corp. ("Wyodak Resources") is sold under long-
8 term contracts, including sales to Black Hills' regulated and non-regulated
9 companies. Wyodak Resources' primary strategy is to expand coal production
10 through the construction of mine-mouth coal-fired generation plants located adjacent
11 to the mine. Enserco Energy Inc. ("Enserco"), Black Hills' natural gas and oil
12 marketing division, has a stand-alone credit facility. Its business focuses on customer
13 service and physical delivery, rather than on speculative financial trades or strategies.
14 It works closely with both customers and producers and emphasizes short-term
15 transactions with over 90 percent of contracts being less than one year in term.
16 Enserco has implemented Black Hills' Risk Policies and Practices and receives
17 oversight from Black Hills' Executive Risk Committee. It also utilizes a strict
18 hedging policy to limit its overall market exposure. Enserco's marketing business has
19 been profitable each of its ten years of operation. As part of Black Hills' system,
20 these non-utility subsidiaries are operated more conservatively than they otherwise
21 might be as stand-alone companies.

1 **V. FINANCING THE PROPOSED TRANSACTION**

2 **Q. HOW WILL THE PROPOSED TRANSACTIONS BE FINANCED BY BLACK**
3 **HILLS?**

4 A. Black Hills has entered into an agreement with a group of lenders, including ABN
5 AMRO Bank, as administrative agent, for a committed acquisition credit facility to
6 finance the transaction. Attached as a Schedule to the Joint Application is a Letter of
7 Commitment from the ABN AMRO Bank. Black Hills expects the permanent
8 financing that will replace the bridge facility to be a combination of corporate debt,
9 mandatory convertible securities, common equity, and/or internally generated cash
10 resources. The contemplated permanent debt financing is expected to be deemed
11 investment grade by credit rating agencies. Some portion of the transaction financing
12 may be obtained through a public offering or additional private placement of common
13 stock prior to closing.

14 **VI. COMMON ADMINISTRATIVE COST CAUSATION**

15 **Q. DOES BLACK HILLS HAVE A SERVICE COMPANY AFFILIATE?**

16 A. Yes. Black Hills Service Company, LLC (“Black Hills Service”) is a direct
17 subsidiary of Black Hills.

18 **Q. WHY WAS THE SERVICE COMPANY FORMED?**

19 A. In January 2005 Black Hills became a registered holding company under the Public
20 Utility Holding Company Act 1935 (“PUHCA 1935”). Subsequent to that time
21 PUHCA 1935 was repealed and replaced by PUHCA 2005. Thus, Black Hills
22 Service was formed pursuant to PUHCA 1935, but became fully operational on
23 January 1, 2006. One of the many requirements of PUHCA 1935 was to form a
24 service company and transfer to the service company employees that perform

1 common administrative functions for the holding company's subsidiaries. A copy of
2 the order stating that requirement issued by the SEC is attached as Exhibit MTT-1.

3 **Q. WHAT SERVICES DOES BLACK HILLS SERVICE PROVIDE?**

4 A. Black Hills Service provides such services as accounting, finance, human resources,
5 information technology, risk management, regulatory affairs, governance, legal
6 services, and other corporate services to its affiliated companies in the Black Hills
7 system.

8 **Q. HOW ARE BLACK HILLS SERVICE'S EXPENSES CHARGED TO THE**
9 **BLACK HILLS AFFILIATES?**

10 A. Black Hills Service charges its expenses of operation at cost to the Black Hills utility
11 and non-utility companies through direct charges and allocated charges. Costs that
12 can be specifically attributed to a particular company are directly charged to that
13 company. Costs that cannot be specifically attributed to a particular company, but
14 indirectly support all companies or directly support Black Hills Service, are allocated
15 among the Black Hills companies using an allocation methodology contained in the
16 Black Hills Service Company Cost Accounting Manual ("CAM"). The CAM has
17 been filed with the South Dakota Public Utilities Commission and the Wyoming
18 Public Service Commission. A copy of the current CAM is attached as a Schedule to
19 the Joint Application.

20 **Q. HOW WERE THE METHODS OF ALLOCATION USED BY BLACK HILLS**
21 **SERVICE ESTABLISHED?**

22 A. The methods of allocation used by Black Hills Service were established by reviewing
23 relevant cost factors and are consistent with industry practice in allocating common
24 costs. The methods of allocation used by Black Hills Service have been accepted by

1 the South Dakota Public Utilities Commission and have been filed with the Wyoming
2 Public Service Commission.

3 **Q. DO ANY OTHER BLACK HILLS AFFILIATES PROVIDE SERVICES TO**
4 **EACH OTHER?**

5 A. Yes. For example, Black Hills Power, Inc. (“Black Hills Power”), one of Black Hills’
6 retail electric utilities, provides engineering and operations support for affiliated
7 companies.

8 **Q. HOW ARE THESE SERVICES ACCOUNTED FOR?**

9 A. Black Hills Power bills its affiliates for services on an “at cost” basis. Using a work
10 order system, Black Hills Power is able to charge its material and labor costs to
11 affiliates for work performed on their behalf. Utilizing this system, Black Hills
12 Power does not recognize any expense for these services or materials as they are
13 charged directly to the affiliate.

14 **VII. THE PROVIDING OF SHARED SERVICES TO THE ACQUIRED UTILITIES**

15 **Q. WILL THE NEW BLACK HILLS UTILITIES CONTINUE TO SHARE**
16 **SERVICES THAT THEY ARE CURRENTLY SHARING?**

17 A. Yes. Among the services that the new Black Hills utilities will continue to share are
18 the customer call center located in Lincoln, Nebraska, the consolidated gas supply
19 center located in Omaha, Nebraska, and other shared physical assets or consolidated
20 services such as regulatory accounting, billing, meter repair, and other functions.
21 Black Hills will continue to provide those shared services in the same manner they
22 have been provided by Aquila while ensuring safe and reliable service. Black Hills is
23 presently reviewing its options for strengthening its various functions; however, it
24 will likely provide for additional employee talent in its Omaha, Nebraska, natural gas

1 operation headquarters, its Lincoln, Nebraska, call center, and in its Rapid City, South
2 Dakota headquarters.

3 **Q. HOW WILL SHARED SERVICES BE PROVIDED TO THE NEW BLACK
4 HILLS UTILITIES AFTER THE CLOSING OF THE TRANSACTION?**

5 A. Black Hills is reviewing its options on where to place the shared assets and shared
6 services. Regardless of whether the shared assets and services are ultimately located
7 in Black Hills Service or in, Black Hills Utility Holding Company, Inc. (“BH Utility
8 Holding”) which will hold all of the acquired utility assets, through direct and indirect
9 subsidiaries, each new Black Hills utility will become a party to its own Service
10 Agreement with Black Hills Service that establishes a reasonable allocation of assets
11 and governs the services and charges for the shared assets or service provided by
12 either BH Utility Holding or Black Hills Service. A sample of the Service Agreement
13 currently in use within the Black Hills system is attached as a Schedule to the Joint
14 Application. A detailed description of the services provided by Black Hills Service
15 is provided in Appendix 1 to the Service Agreement, and the cost allocation
16 methodology was discussed previously in my testimony. Black Hills will review and
17 adopt agreements to address the reasonable allocation of the other shared assets.
18 Those agreements will continue to allocate the shared assets consistent with existing
19 use, but will need to reflect the transition of those assets from Aquila to Black Hills.

20 **Q. DOES BLACK HILLS SERVICE PROVIDE ANY FINANCIAL SERVICES?**

21 A. Yes. Black Hills Service administers separate money pools: a utility money pool and
22 a non-utility money pool. Black Hills does not borrow from either pool. A non-utility
23 subsidiary can neither borrow from, nor make loans to, the utility money pool, and a
24 utility subsidiary can neither borrow from, nor make loans to, the non-utility money

1 pool. When making intra-company loans or extending intra-company credit, Black
2 Hills and its subsidiaries charge interest rates at the same effective rate of interest as
3 the daily weighted average of commercial paper, revolving credit and/or other short-
4 term borrowings, of the respective lending subsidiary, including an allocated share of
5 commitment fees and related expenses.

6 **Q. HOW DOES THE UTILITY MONEY POOL WORK?**

7 A. Black Hills Power and Cheyenne Light, Fuel and Power Company (“Cheyenne
8 Light”) have authority to make unsecured short-term borrowings from, and contribute
9 surplus funds to, the utility money pool. The funds in the Black Hills utility money
10 pool are comprised of surplus funds in the treasuries of Black Hills, Black Hills
11 Power, and Cheyenne Light, and proceeds from either bank borrowings by those
12 money pool participants, or the sale of commercial paper by the participants for loan
13 to the utility money pool. Money pool funds are made available to Black Hills Power
14 and Cheyenne Light as Black Hills Service determines would result in a lower cost of
15 borrowing, consistent with the individual borrowing needs and financial standings of
16 the utilities. The determination of whether the utilities at any time have surplus funds
17 to lend to the money pool or will lend funds to the money pool is made by Black
18 Hills’ chief financial officer or treasurer, or by their designees, on the basis of cash
19 flow projections and other relevant factors. The utility money pool agreement is on
20 file with the Federal Energy Regulatory Commission (“FERC”).

21 **Q. HOW DOES THE NON-UTILITY MONEY POOL WORK?**

22 A. The non-utility money pool is operated on the same terms and conditions as the utility
23 money pool, except that Black Hills funds made available to the money pools are

1 made available to the utility money pool first and only afterward to the non-utility
2 money pool.

3 **Q. WILL THE NEW BLACK HILLS UTILITIES HAVE THE OPPORTUNITY**
4 **TO PARTICIPATE IN THE UTILITY MONEY POOL AFTER THE**
5 **CLOSING OF THE PROPOSED TRANSACTION?**

6 A. Yes. As with Black Hills' other utility companies, each new Black Hills utility will
7 be able to participate in the utility money pool, access lower cost capital, and take
8 advantage of the other financial benefits associated with Black Hills' holding
9 company structure.

10 **Q. WHAT ARE BLACK HILLS' PLANS REGARDING THE COMMISSION'S**
11 **RULES CONCERNING AFFILIATE TRANSACTIONS AND SHARED**
12 **SERVICES?**

13 A. Black Hills and BH Kansas Gas will comply with the standards for affiliate
14 transactions set forth in K.S.A. 66-1213a, 66-1401 and 66-1402, and any Commission
15 order, rule, or regulation addressing affiliate transactions. Black Hills and BH Kansas
16 Gas will provide the Commission with a list of all documents that they must file with
17 the SEC or the FERC related to shared services. Finally, Black Hills and BH Kansas
18 Gas acknowledge that the Commission has regulatory jurisdiction over the recovery
19 by BH Kansas Gas of the costs for services provided by Black Hills Service to BH
20 Kansas Gas. Black Hills agrees to file the then current version of the CAM with the
21 Commission on an annual basis.

1 **VIII. ACQUIRED UTILITY STRUCTURE**

2 **Q. HOW WILL THE AQUILA ASSETS BE HELD IN THE BLACK HILLS**
3 **ORGANIZATION?**

4 A. BH Utility Holding was formed to hold all of the acquired utility assets, through
5 direct and indirect subsidiaries. Each new Black Hills utility in Iowa, Kansas and
6 Nebraska will operate as a separate subsidiary of BH Utility Holding and will own the
7 utility assets in its State and operate the natural gas utility business in its State.
8 Aquila's Colorado gas and electric utility businesses will be separated by Aquila into
9 two new limited partnerships and subsidiaries of BH Utility Holding will own the
10 general and limited partnership interests in those limited partnerships. A chart
11 showing the Black Hills family of companies within the holding company structure,
12 including the utilities to be acquired, is attached as a Schedule to the Joint
13 Application. Black Hills plans to physically segregate the assets and liabilities of
14 each new Black Hills utility and to assign those to the applicable utility. Each new
15 Black Hills utility will maintain separate books and records.

16 **Q. WHAT ARE THE ADVANTAGES OF THE HOLDING COMPANY**
17 **STRUCTURE?**

18 A. The financial benefits of having a diversified public utility form and operating under
19 a holding company structure include: (1) facilitating the ability of the regulator to
20 monitor and prevent, or detect and correct, subsidization of non-utility business
21 ventures; (2) limiting the public utility's exposure to legal liabilities created by non-
22 utility business ventures; and (3) providing for regulatory oversight and control of the
23 regulated public utility's relationship with non-utility business ventures and the
24 parent. Furthermore, as discussed above, Black Hills' structure will give the newly-

1 created utility subsidiaries access to the lower cost of borrowing available through the
2 utility money pool.

3 **Q. WILL THE COMMISSION RETAIN JURISDICTION OVER THE**
4 **ACQUIRED GAS UTILITY FOLLOWING THE ACQUISITION?**

5 A. Yes. Black Hills submits to the Commission that it will not lose any jurisdiction over
6 the former gas utility operations by said operations being operated under Black Hills'
7 holding company structure.

8 **IX. PURCHASE PRICE AND ANTICIPATED NET SAVINGS**

9 **Q. WHAT SUPPORT IS PROVIDED REGARDING THE FAIRNESS OF THE**
10 **PURCHASE PRICE FOR THE KANSAS GAS ASSETS?**

11 A. Black Hills retained the firm of Jefferies & Company, Inc. to render an opinion
12 regarding the fairness of the purchase price for the Kansas Assets. Confidential
13 Exhibit MTT-2 is a February 2, 2007, letter from Jefferies & Company, Inc. opining
14 as to the fairness of the consideration paid by Black Hills in the transaction.

15 **Q. WHAT ARE THE ANTICIPATED NET SAVINGS RESULTING FROM THE**
16 **ASSET PURCHASE TRANSACTION?**

17 A. The contemplated transaction is an asset acquisition, not a merger. Thus, certain
18 synergies and savings often associated with a merger are not present in this case (e.g.,
19 closing of redundant company headquarters, elimination of duplicate employment
20 positions). Nonetheless, important financial benefits will result from the transaction.
21 After closing, Black Hills expects to have a lower allocation of corporate and
22 common administrative costs to the new utility subsidiaries than currently exists.

23 In order to facilitate the purchase due diligence process related to the sale of
24 Aquila, Aquila provided the interested parties with financial projections. Black Hills'

1 expectation of lower costs to BH Kansas Gas is based upon a preliminary analysis of
2 the most current Aquila financial presentation dated November 1, 2006. Confidential
3 Exhibit MTT-3 is a schedule showing the anticipated savings to BH Kansas Gas
4 resulting from the asset purchase transaction.

5 **X. ACQUISITION PREMIUM AND TRANSACTION COSTS**

6 **Q. HAS BLACK HILLS CALCULATED THE ACQUISITION PREMIUM AND**
7 **TRANSACTION COSTS?**

8 A. Black Hills will record an acquisition premium for accounting purposes as a result of
9 the proposed transaction. In a separate but related transaction, Gregory Acquisition
10 Corp., a wholly-owned subsidiary of Great Plains Energy Incorporated (“GPE”), will
11 merge with and into Aquila, with Aquila as the surviving entity (“Merger”). The
12 result of the Merger is that GPE will effectively acquire Aquila’s Missouri electric
13 operations. As Black Hills and GPE are still in the process of determining which of
14 the shared assets will be assigned to Black Hills, a final calculation of the acquisition
15 premium and transaction costs relating to this transaction cannot be finally
16 determined at this time. The estimated amounts of the acquisition premium and
17 transaction costs allocated to BH Kansas Gas will be filed as a Schedule to the Joint
18 Application when they become available.

19 **Q. DOES BLACK HILLS PLAN TO SEEK RECOVERY OF ANY PORTION OF**
20 **THE ACQUISITION PREMIUM OR TRANSACTION COSTS?**

21 A. Yes. Black Hills will submit an Acquisition Premium and Transaction Cost Recovery
22 Plan as a late-filed Schedule to the Joint Application.

1 **XI. PRO FORMA FINANCIAL INFORMATION AFTER ACQUISITION**

2 **Q. WILL THE FINANCIAL CONDITION OF EACH NEW BLACK HILLS**
3 **UTILITY BE STRONGER THAN THAT OF THE EXISTING UTILITY?**

4 A. Yes. The financial condition of each new Black Hills utility after the acquisition by
5 Black Hills will be stronger than the current financial condition of the existing utility.
6 Black Hills has an investment grade credit rating, access to lower cost capital, and a
7 solid capital structure. Although Aquila has been working to restore its credit rating
8 to investment grade, its credit rating currently is not investment grade.

9 Also, Black Hills' holding company structure provides significant financial
10 protections to its customers. Black Hills' utility companies are segregated and
11 insulated from the operating costs and liabilities of its non-utility companies. A non-
12 utility Black Hills company cannot borrow from the utility money pool, cannot
13 receive credit from a utility company, nor can it have its debts secured by a utility
14 company's assets. Black Hills expects to provide to its acquired utilities Black Hills'
15 investment grade rating and access to lower cost capital.

16 **Q. WILL THE PROPOSED TRANSACTION BE BENEFICIAL TO THE**
17 **SHAREHOLDERS OF BLACK HILLS, AQUILA AND GREAT PLAINS?**

18 A. The proposed transaction between Aquila and Black Hills, along with the transaction
19 between Aquila and GPE, are expected to be beneficial to the shareholders of those
20 companies. The two transactions will forge financially stronger regional utility
21 companies and provide both Black Hills and GPE with a solid foundation for future
22 growth in earnings per share and increased shareholder value. Aquila's shareholders
23 will receive a significant ownership interest in GPE and will once again be part of a
24 dividend paying company.

1 **Q. WILL PRO FORMA FINANCIAL STATEMENTS BE FILED TO REFLECT**
2 **THE FINANCIAL CONDITION OF BLACK HILLS AFTER THE CLOSING**
3 **OF THE PROPOSED TRANSACTION?**

4 A. Yes. The post-transaction pro forma financial information of Black Hills will be filed
5 as a Schedule to the Joint Application when they become available.

6 **Q. WILL PRO FORMA FINANCIAL STATEMENTS BE FILED TO REFLECT**
7 **THE FINANCIAL CONDITION OF THE NEW BLACK HILLS STATE**
8 **UTILITIES AFTER THE CLOSING OF THE PROPOSED TRANSACTION?**

9 A. Yes. The post-transaction pro forma financial balance sheet and income statement of
10 BH Kansas Gas will be filed as a Schedule to the Joint Application when they
11 become available.

12 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

13 A. Yes.

SECURITIES AND EXCHANGE COMMISSION

(Release No. 35-27931; 70-10237)

Black Hills Corporation, et al.

Order Authorizing Financing and Certain Related Transactions, Including Investment in Exempt Wholesale Generators and Foreign Utility Holding Companies; Approving Service Company and Intrasystem Transactions; and Reserving Jurisdiction

December 28, 2004

Black Hills Corporation (“Black Hills”), a public-utility holding company exempt from registration under section 3(a)(1) of the Public Utility Holding Company Act of 1935, as amended (“Act”), by rule 2, and its sole utility subsidiary, Black Hills Power, Inc. (“Black Hills Power” or “Utility Subsidiary”), both located in Rapid City, SD, and its nonutility subsidiaries (“Nonutility Subsidiaries”)¹ (collectively, “Applicants”), have filed with the Securities and Exchange Commission (“Commission”) an application-declaration, as amended (“Application”), under sections 6(a), 7, 9(a), 10, 11, 12(b) and (c), 13(b), 32, 33 and 34 of the Act and rules 42, 43, 45, 52, 53, 54, 58 and 88 through 92 under the Act. The Commission issued a notice of the Application on November 1, 2004 (Holding Co. Act Release No. 27907).

I. Background

Black Hills, a South Dakota corporation, is an energy company with three principal subsidiaries engaged in three major lines of business: (i) Black Hills Power, a subsidiary electric-utility company engaged in the generation, transmission, distribution and sale of electricity to customers in South Dakota, Wyoming and Montana and the

¹ See Appendix A for a complete listing of its Nonutility Subsidiaries.

wholesale sale of power in the western United States;² (ii) Black Hills Energy, Inc. (“Black Hills Energy”), a direct wholly owned subsidiary engaged, through subsidiaries, in the development, ownership and operation of exempt wholesale generators, as defined in section 32 of the Act (“EWGs”), and qualifying facilities as defined in the Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”) (“QFs”), the production, transportation and marketing of natural gas, oil, coal and other energy commodities, power marketing and other energy-related activities; and (iii) Black Hills FiberCom, LLC (“Black Hills FiberCom”), a subsidiary of Black Hills Energy engaged in telecommunications activities and which Applicants anticipate will become an exempt telecommunications company, as defined in section 34 of the Act (“ETC”). Black Hills Power is regulated as a public-utility company by the states of South Dakota, Wyoming and Montana, with these states regulating Black Hills Power’s retail electric rates and charges and most of its securities issuances. Black Hills Power is also subject to regulation, under the Federal Power Act, by the Federal Energy Regulatory Commission (“FERC”). Black Hills Energy, directly and indirectly, owns Black Hills’ interests in Nonutility Subsidiaries, all primarily engaged in energy-related or telecommunications activities. Black Hills states that it intends to register as a public-utility holding company under section 5 of the Act upon the issuance of the Commission’s order in this matter.

² Black Hills Power has approximately 60,000 retail customers in eleven counties throughout a 9,300 square-mile service territory in portions of western South Dakota, eastern Wyoming and southern Montana. It also sells bundled capacity and energy service to Gillette, Wyoming and wholesale capacity and energy to other wholesale customers; owns generating facilities in its South Dakota service area, in Wyoming’s Powder River Basin (just west of Black Hills Power’s service territory) and a small transmission system (consisting of 230 kV and smaller transmission facilities in southwest South Dakota and northeast Wyoming, with a 69 kV distribution extension into southeast Montana, totalling 2,195 miles of transmission facilities).

Black Hills also intends to purchase an additional electric-utility company, Cheyenne Light, Fuel & Power Company, which is currently a subsidiary of Xcel Energy, Inc., a registered holding company under the Act. The Commission issued a notice of the application-declaration in the proposed acquisition on November 19, 2004 (Holding Co. Act Release No. 27914).³

Black Hills proposes to continue developing generation projects, expanding its power marketing operations and pursuing additional, related growth opportunities. Black Hills seeks authorizations to enable it, and its Utility Subsidiary and Nonutility Subsidiaries (collectively, "Subsidiaries"), to operate and engage in financing and investment activities, intrasystem services and other related activities and transactions following its registration as a public-utility holding company under the Act. Black Hills also proposes to form Black Hills Services Company, Inc. ("Black Hills Services"), upon its registration, to provide centralized services (such as accounting, financial, human resources, information technology and legal services) to the companies in the Black Hills system ("Black Hills System"). Applicants request authority for various related affiliate transactions in connection with Black Hills' registration and the establishment of Black Hills Services.

II. Summary of Requested Authority

Applicants request the following financing authorizations, for the period beginning with the effective date of an order issued in this matter, through December 31, 2007 ("Authorization Period"), and authorizations for certain related actions, as described

³ See also Xcel Energy Inc., et al., Holding Co. Act Release No. 27914 (November 19, 2004 (SEC File No. 70-10229)).

further in subsequent sections of this order:

1. For Black Hills, directly or indirectly, to retain or refinance existing outstanding financing arrangements and debt issuances in the total amount of up to \$1.524 billion, consisting of approximately (a) \$798 million in utility and nonutility debt arrangements; (b) up to \$350 million in short-term debt and available credit lines ("Existing Short-Term Debt"); and (c) \$376.2 million in guarantees and other forms of credit support ("Existing Guarantees") (collectively, "Existing Financings");
2. For Black Hills and its Subsidiaries, to issue and sell securities, of up to an additional \$1 billion in securities outstanding at any one time ("Aggregate Additional Financing Limit") (subject to the Commission's reservation of jurisdiction over \$250 million, pending completion of the record), comprised of:
 - (a) For Black Hills, (i) common stock ("Common Stock," as defined below), (ii) preferred stock and preferred stock equivalent securities (collectively, "Preferred Securities," as defined below), (iii) unsecured short-term debt ("Short-Term Debt"), and (iv) unsecured long-term debt ("Long-Term Debt") (excluding the additional issuance of 2.7 million shares of common stock under various plans, described below); and
 - (b) For the Subsidiaries, (a) common stock ("Subsidiary Common Stock," as defined below) (b) preferred stock and preferred stock equivalent securities ("Subsidiary Preferred Securities," as defined below), (c) unsecured and secured short-term debt ("Subsidiary Short-Term Debt") and (d) unsecured and secured long-term debt ("Subsidiary Long-Term Debt") (and subject to a sublimit of \$350 million for the Utility Subsidiary);
3. For Black Hills and its Subsidiaries, to enter into transactions to manage interest rate risk, including anticipatory hedging transactions (together, "Interest Rate Hedging Transactions");
4. For Black Hills and its Subsidiaries, to issue guarantees and other credit support ("Guarantees") in an aggregate amount of up to \$400 million (excluding Existing Guarantees) ("Additional Guarantee Limit");
5. For Black Hills and its Subsidiaries, (a) to form financing entities ("Financing Subsidiaries," as defined below) and (b) to issue and sell securities through Financing Subsidiaries, subject to the Aggregate Additional Financing Limit;
6. For Black Hills and its Subsidiaries, to establish two money pools and enter into certain intrasystem financing arrangements (subject to the Commission's

reservation of jurisdiction over the addition of nonutility money pool participants and the use of certain instruments for short-term investment of money pools excess funds);

7. For Black Hills, directly or indirectly through Nonutility Subsidiaries, to engage, and make investments, in nonutility activities (such as EWGs, FUCOs, energy-related activities or subsidiaries authorized under rule 58 (“Rule 58 Subsidiaries”) and other energy-related activities, assets or subsidiaries (collectively, “Permitted Nonutility Investments”)):
 - (a) to (i) engage in energy marketing and brokering (“Energy Marketing,” as further defined below) in Canada and Mexico and elsewhere in the world outside of the United States (subject to the Commission’s reservation of jurisdiction over these activities outside of the United States, Mexico and Canada), and (ii) render energy management services (“Energy Management Services,” as defined below) and consulting services (“Consulting Services,” as defined below) anywhere in the world outside of the United States (collectively “Non-U.S. Energy-Related Subsidiaries”);
 - (b) to invest in energy-related assets (“Energy-Related Assets,” as further defined below) in an amount of up to \$300 million (“Energy-Related Assets Financing Limit”);
 - (c) to invest in an aggregate amount of up to \$1.4 billion in EWGs and FUCOs (including its existing EWG investments) (“Aggregate EWG/FUCO Financing Limit”); and
 - (d) to engage, and invest an amount of up to \$100 million (on a revolving fund basis), in (i) preliminary development activities (“Development Activities,” as defined below) and (ii) administrative and management activities (“Administrative Activities,” as defined below) related to EWGs, FUCOs, Rule 58 Subsidiaries, Energy-Related Assets and Non-U.S. Energy-Related Subsidiaries;
8. For Black Hills and its Subsidiaries, to alter the capital stock of all wholly owned Subsidiaries (subject to the Commission’s reservation of jurisdiction over partially owned Subsidiaries, pending completion of the record);
9. For Nonutility Subsidiaries, to pay dividends out of capital and unearned surplus (including revaluation reserve);
10. For Black Hills, directly or through Nonutility Subsidiaries, to acquire the securities of one or more corporations, trusts, partnerships, limited liability companies or other entities organized exclusively for the purpose of acquiring,

holding and/or financing or facilitating the acquisition or disposition of Permitted Nonutility Investments (“Intermediate Subsidiaries”);

11. For Black Hills and its Nonutility Subsidiaries, to undertake internal reorganizations of subsidiaries and businesses;
12. For Black Hills, for the Commission to find, concerning the formation of a service company, that Black Hills Services will be so organized and so conducted as to meet the requirements of section 13(b) of the Act and that the filing of a Form U-13-1 is unnecessary; to be permitted an interim transition period after registration (no later than 12 months following the date of the Commission’s order in this matter), to implement fully the service company, provided that Black Hills establishes the service company and it begins operations within 60 days of Black Hills’ registration, as further described below; and to be exempted, among other things, from various at-cost rules applicable to transactions among Black Hills System companies; and
13. For Black Hills, to retain all of its existing investments in (a) EWGs and QFs, (b) energy-related exploration, production, transportation and marketing of energy commodities, power marketing and other activities; (c) telecommunications activities and (d) related businesses.

III. General Financing Parameters and Use of Proceeds

Black Hills proposes that the following general terms be applicable to the external financing transactions.

A. Effective Cost of Money

Applicants propose that the effective cost of capital on the proposed Preferred Securities, Short-Term Debt and Long-Term Debt and Black Hills’ Subsidiaries’ preferred securities, short-term debt and long-term debt will not exceed competitive market rates available at the time of the issuance of securities, having the same or reasonably similar terms and conditions issued by companies of reasonably comparable credit quality; provided that in no event will the effective cost of capital exceed, (1) on any series of Preferred Securities, Long-Term Debt or Subsidiary Preferred Securities or Subsidiary Long-Term Debt, 500 basis points over a U.S. Treasury security having a

remaining term equal to the term of the series; and (2) on Short-Term Debt, or Subsidiary Short-Term Debt, 300 basis points over the London Interbank Offered Rate ("LIBOR") for maturities of less than one year.

B. Maturity of Debt and Final Redemption of Preferred Securities

Applicants state that the maturity of the proposed long-term indebtedness will not exceed 50 years. In addition, they state that all preferred securities are to be redeemed no later than 50 years after their issuance.

C. Issuance Expenses

Applicants state that the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of a security that is the subject of this Application (not including any original issue discount) will not exceed 5% of the principal or total amount of the security being issued.

D. Common Equity Ratio and Investment Grade Condition

The consolidated common equity of Black Hills was 47.5% of total consolidated capitalization (all common stock equity (comprised of common stock, additional paid-in capital, retained earnings and/or treasury stock), minority interests, preferred stock, preferred securities, equity-linked securities and long-term and short-term debt and current maturities), as of September 30, 2004. Black Hills and its Utility Subsidiary commit that they will each maintain a common equity ratio (as reflected in the most recent Form 10-K or 10-Q (filed with the Commission as required by the Securities Exchange Act of 1934, as amended ("34 Act"), and as adjusted to reflect subsequent events that affect capitalization) of at least 30% of capitalization.

Applicants represent that, apart from securities issued for the purpose of funding money pool operations, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization to be granted by the Commission in this matter, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer, that are rated, are rated investment grade; and (iii) all outstanding securities of Black Hills, that will be registered, that are rated, are rated investment grade (“Investment Grade Condition”). For purposes of this Investment Grade Condition, a security will be deemed to be rated “investment grade,” if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3-1 under the 34 Act. The Investment Grade Condition ratings test will not apply to any issuance of common stock. Applicants request that the Commission reserve jurisdiction over the issuance of any of such securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

E. Use of Proceeds

Applicants state that proceeds from the sale of securities in external financing transactions will be used for general corporate purposes, including, in part, capital expenditures of the Black Hills System, working capital requirements of the Black Hills System, the acquisition, retirement or redemption under rule 42 of the securities previously issued by Black Hills or its Subsidiaries and other purposes, including direct or indirect investment in authorized assets and securities (i.e., energy-related assets and

companies, EWGs, FUCOs and ETCs).

IV. Retention and Refinancing of Existing Financing

Applicants request authorizations, during the Authorization Period, for Black Hills, directly or indirectly, to retain and refinance existing outstanding financing arrangements and debt issuances in the total amount of up to \$1.524 billion, consisting of, approximately, (a) \$798 million in Utility and Nonutility debt arrangements; (b) up to \$350 million in Existing Short-Term Debt; and (c) \$376.2 million in Existing Guarantees. With respect to its Existing Short-Term Debt, Black Hills requests that the Commission include in its approval the retention and refinancing of Black Hills' existing revolving credit facilities (up to \$350 million in borrowing ability at any one time on a short-term basis), although Black Hills may not draw down the full amount of its facilities at the time of a Commission order and, thus, not have actually incurred "short-term debt."⁴

V. Proposed Additional Financing and Other Related Authority

Applicants request authority to issue and sell additional equity and debt securities in an amount of up to \$1 billion (the Aggregate Additional Financing Limit) (subject to the Commission's reservation of jurisdiction over a \$250 million, pending completion of the record) and Additional Guarantees in an amount of up to \$400 million, among other things, in addition to the refinancing of its Existing Financings (described above), during the Authorization Period. Specifically, Black Hills requests authorization to issue, directly and indirectly, (a) common stock (other than 2.7 million shares for employee benefits plans or stock purchase and dividend reinvestment plans, discussed below), (b)

⁴ Applicants note that this request includes amounts that have been obtained through Financing Subsidiaries. Applicants also note that they are requesting authority to retain existing Financing Subsidiaries. See sections V.G. and VI, below.

preferred stock and preferred securities, (c) long-term debt and (d) short-term debt, in an aggregate amount of up to \$1 billion (the Aggregate Additional Financing Limit), and guarantees and other credit support in an aggregate amount of up to \$400 million (the Additional Guarantee Limit). Applicants also seek financing authority (a) for certain energy-related investments, in an aggregate amount of up to \$300 million (the Energy-Related Assets Financing Limit), and (b) for investments in EWGs and FUCOs, in an aggregate amount of up to \$1.4 billion (including existing EWG investments) (the Aggregate EWG/FUCO Financing Limit), during the Authorization Period and other related authority, described further below.

A. Common Stock

Black Hills requests authority to issue and sell its common stock, denominated as “common stock,” and including (unless the context indicates otherwise) outstanding options, warrants and other stock purchase rights exercisable for Black Hills’ common stock (but not Black Hills’ Preferred Stock that is convertible into its common stock, prior to conversion) (“Common Stock”), subject to the Aggregate Additional Financing Limit, during the Authorization Period.

In addition, Black Hills requests authority to issue up to 2.7 million additional shares of Common Stock through various plans, in accordance with the terms of the programs.⁵ Black Hills proposes in this regard, from time to time, to issue new shares

⁵ Black Hills maintains a dividend reinvestment plan (“DRP”) for shareholders and various employee stock-based plans (an employee stock purchase plan (the “ESPP”), a Short-Term Incentive Plan, a 1996 Stock Option Plan, a 1999 Stock Option Plan and a 2001 Omnibus Incentive Compensation Plan). The DRP enables shareholders to reinvest dividends and make optional cash investments to purchase additional shares of common stock. The ESPP sells Black Hills common stock to employees at 90% of the stock’s market price on the offering date. At September 30, 2004, 125,395 shares have been

and/or acquire in open market transactions, or by some other method, up to 400,000 additional shares of Black Hills Common Stock, during the Authorization Period. Black Hills also proposes to issue new shares and/or acquire in open market transactions, or by some other method, up to 2.3 million additional shares of Black Hills Common Stock under the employee stock-based plans (excluding shares that may be issued through the exercise of outstanding options and issuance of shares for outstanding restricted stock units and performance shares), from time to time, during the Authorization Period.⁶

B. Preferred Securities

Black Hills requests authority to issue additional shares of its authorized Preferred Stock, defined below, or other types of preferred securities of Black Hills Corporation (including trust-preferred securities, monthly income preferred securities and equity-linked securities) (together, "Preferred Securities"), directly or indirectly through one or more financing entities ("Financing Subsidiaries," as defined below), organized by Black Hills, subject to the Aggregate Additional Financing Limit. Preferred Stock is defined as

reserved and are available for issuance under the ESPP. Under the Short-Term Incentive Plan, certain key employees are awarded short-term incentive bonuses, a portion or all of which may be paid in common stock. The 1996 and 1999 Stock Option Plans permit Black Hills to grant stock options to its employees. The 2001 Omnibus Incentive Compensation Plan permits it to issue restricted stock, restricted stock units, performance shares, performance units, stock appreciation rights, stock options and other awards, as determined by the Compensation Committee of the Board of Directors.

⁶ Black Hills proposes that its common stock financings be effected by underwriting agreements customary in the industry and public distributions effected by private negotiation with underwriters, dealers or agents, as described below, or through competitive bidding among underwriters. In addition, Applicants propose that sales may be made through private placements or other non-public offerings to one or more persons. Black Hills states that all common stock sales would be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets. Black Hills may also buy back shares of its stock or options during the Authorization Period in accordance with rule 42.

stock of Black Hills Corporation denominated as “preferred stock” and having preference rights with respect to payment of dividends and other benefits, which may include, in certain circumstances, the right of conversion into Common Stock.⁷

C. Debt Securities

1. Long-Term Debt

Black Hills requests authority to issue and sell unsecured long-term debt securities, comprised of notes and debentures and other forms of unsecured indebtedness having maturities of one year or longer (“Long-Term Debt”), up to the Aggregate Additional Financing Limit (which excludes renewals of Existing Financings).⁸

⁷ Preferred Securities may be issued in one or more series with rights, preferences and priorities, as may be determined by Black Hills’ Board of Directors. Dividends or distributions on Preferred Securities will be made periodically, but may be made subject to terms, which allow the issuer to defer dividend payments for specified periods. Preferred Securities may be convertible or exchangeable into shares of Black Hills common stock or indebtedness. Preferred Securities may be sold directly through underwriters or dealers in connection with an acquisition in a manner similar to that described for common stock.

⁸ Any long-term debt may: (a) be convertible into any other securities of Black Hills; (b) will have maturities ranging from one to 50 years; (c) be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount; (d) be entitled to mandatory or optional sinking fund provisions; (e) provide for reset of the coupon as required by a remarketing arrangement; (f) be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event; (g) be called from existing investors by a third party; and (h) be entitled to the benefit of positive or negative financial or other covenant.

Maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if any, with respect to the long-term securities of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding. Borrowings from the banks and other financial institutions may be unsecured and pari passu with debt securities issued under the Black Hills Indenture and the short-term credit facilities. Specific terms of any borrowings will be determined by Black Hills at the time of issuance and will comply in all regards with the parameters of the financing authorization described in section III, above.

2. Short-Term Debt

Black Hills seeks authority to issue unsecured short-term debt securities, comprised of commercial paper, promissory notes and other forms of indebtedness having maturities of less than one year (“Short-Term Debt”), up to the Aggregate Additional Financing Limit (which excludes renewals of Existing Financings).⁹

D. Subsidiary Financings

Applicants also request that Black Hills’ Subsidiaries be authorized to issue and sell Subsidiary Common Stock and Subsidiary Preferred Securities, Subsidiary Long-Term Debt and Subsidiary Short-Term Debt, subject to the Aggregate Additional Financing Limit and the parameters described in section III, above, during the Authorization Period. Black Hills’ Utility Subsidiary and its Nonutility Subsidiaries request this financing authority to the extent that Subsidiaries may require financing that is outside rule 52 exempt financing.¹⁰ The Utility Subsidiary specifically requests authority to issue unsecured and secured short-term debt securities, including commercial paper and credit lines, subject to the Aggregate Additional Financing Limit and the parameters described in section III, above, during the Authorization Period. Black Hills and Black Hills Power state, in addition, that Black Hills Power’s borrowings (whether

⁹ Commercial paper may be sold in established domestic and European commercial markets. Commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from Black Hills will offer the paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, and finance companies.

¹⁰ Applicants anticipate that the majority of the financings will be exempt from prior Commission authorization under rule 52(b).

through external or internal financings, including the Utility Money Pool) will not exceed a sublimit of \$350 million.

E. Financing Risk Management Devices

Black Hills, directly or indirectly through its Subsidiaries, requests authority to enter into interest rate hedging transactions with respect to outstanding indebtedness utilizing various financial instruments (collectively, "Interest Rate Hedges"), subject to certain limitations and restrictions, in order to reduce or manage interest rate costs.

Applicants state that Interest Rate Hedges (other than exchange-traded interest rate futures or options contracts)¹¹ will only be entered into with counterparties whose senior debt ratings, or the senior debt ratings of any credit support providers who have guaranteed the obligations of such counterparties, as published by Standard and Poor's Ratings ("Standard and Poor's"), are equal to or greater than BBB, or an equivalent rating from Moody's Investor Service ("Moody's"), Fitch Investor Service ("Fitch") or Duff and Phelps ("Approved Counterparties"). Applicants also state that fees, commissions and other amounts payable to an Approved Counterparty or exchange or other party (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge, will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Applicants also request authority to enter into interest rate hedging transactions for anticipated debt offerings ("Anticipatory Hedges"). Black Hills states that

¹¹ Interest Rate Hedges will include the use of financial instruments commonly used in today's capital markets, such as interest rate forwards, futures, swaps, caps, collars, floors and structured notes (i.e., a debt instrument in which the principal and/or interest payments are linked to the value of an underlying asset or index), or transactions

Anticipatory Hedges would be utilized to fix and/or limit the interest rate risk associated with any new issuance.¹² Anticipatory Hedges may be executed on-exchange (“On-Exchange Trades”), through brokers by the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more Approved Counterparties (“Off-Exchange Trades”) or a combination of On-Exchange Trades and Off-Exchange Trades.

Black Hills states that Applicants will not engage in speculative transactions. Applicants state that they will comply with Statement of Financial Accounting Standards No. 133 (“SFAS 133”), “Accounting for Derivatives Instruments and Hedging Activities” or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board (“FASB”). The Interest Rate Hedges and Anticipatory Hedges will qualify for hedge accounting treatment under the FASB standards in effect and as determined at the date Interest Rate Hedges or Anticipatory Hedges are entered into.

F. Additional Guarantees (\$400 Million)

Applicants request authority to guarantee performance, and provide other forms of credit support, of Subsidiaries (“Guarantees”) in an aggregate principal amount not to exceed \$400 million outstanding at any one time, the Additional Guarantee Limit, during

involving the purchase or sale, including short sales, of government or agency (e.g., Fannie Mae) obligations or LIBOR-based swap instruments.

¹² Anticipatory Hedges may be implemented through: (a) a forward sale of exchange-traded Interest Rate Hedges (“Forward Sale”); (b) the purchase of put options on Interest Rate Hedges (“Put Options Purchase”); (c) a Put Options Purchase in combination with the sale of call options Interest Rate Hedges (“Zero Cost Collar”); (d) transactions involving the purchase or sale, including short sales, of Interest Rate Hedges; or (e) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other

the Authorization Period. Applicants also request authority to charge each Subsidiary a guarantee fee that is comparable to those fees charged by third parties. Black Hills further requests that any Guarantees outstanding at the end of the Authorization Period be permitted to continue until expiration or termination in accordance with their terms.¹³

G. Financing Subsidiaries

Applicants request authority to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships, limited liability companies, or other entities, created specifically for the purpose of facilitating the financing of authorized and exempt activities (including authorized and exempt acquisitions) (“Financing Subsidiaries”), through the issuance of Subsidiary Common Stock or Subsidiary Preferred Securities, or Subsidiary Long-Term Debt, and to transfer of the proceeds to the Black Hills System company involved.¹⁴ Applicants also request authority to issue Guarantees for the Financing Subsidiaries, subject to the Additional Guarantee Limit. Applicants further request authority to enter into support, servicing or expense agreements (“Expense Agreements”) for obligations of Financing Subsidiaries.¹⁵ Applicants request authority for Financing Subsidiaries to pledge revenues or other assets

derivative or cash transactions, including, but not limited to, appropriate structured notes, caps or collars.

¹³ Certain Guarantees may be for obligations not susceptible of exact quantification. For measuring compliance with the \$400 million limitation appropriate means will be utilized, including estimation of exposure based on loss experience or projected potential payment amounts. If appropriate, estimates will in be accordance with GAAP. Estimates will be reevaluated periodically.

¹⁴ Applicants are also requesting authority to retain existing Financing Subsidiaries. See section VI, below.

¹⁵ In an Expense Agreement, an Applicant would provide financial support and pay necessary operating expenses of a Financing Subsidiary to facilitate the subsidiary’s agreements with third parties in financing activities approved through this Application.

or grant security interests solely to accommodate the intrasystem mirror structure of the financings; provided that the security pledged will not consist of the assets (other than an income stream in support of the financing) or stock of any Black Hills Utility Subsidiary or nonutility entity dedicated to serving a Utility Subsidiary.¹⁶

Black Hills and its Subsidiaries also request authority to issue and sell to any Financing Subsidiary, from time to time, in one or more series, unsecured debentures, unsecured promissory notes, or other unsecured debt instruments (“Notes”).¹⁷

Applicants further request authority for the Financing Subsidiaries to apply the proceeds of any external financing by a Financing Subsidiary, plus the amount of any equity contribution made to it, from time to time, by its parent corporation and other funds that may be available, or obtained in an exempt financing transaction, to purchase Notes.

Applicants state that amounts issued by Financing Subsidiaries to third parties will be subject to the Aggregate Additional Financing Limit. However, Applicants request that the underlying intrasystem mirror debt (including Notes), and parent guarantee, not be so included, so as to avoid double counting.

H. Money Pools

Black Hills and its Utility Subsidiary request authorization to establish a utility money pool (“Utility Money Pool”) and Black Hills and its Nonutility Subsidiaries

¹⁶ See section V.N., below. Applicants also request approval under section 13(b) of the Act and rules 87 and 90 to provide these services at market prices but only so long as an Expense Agreement is in place. Applicants explain that, to have ratings agencies recognize Financing Subsidiaries as separate from their parents or affiliates, Expense Agreements must be at market prices (i.e., the contracts would be assumable by a successor without interruption or an increase of fees).

¹⁷ The terms (e.g., interest rate, maturity, amortization, prepayment terms, default provisions, etc.) of the Notes would be designed to parallel the terms of the securities issued by the Financing Subsidiary to which the Notes relate.

request authority to establish a nonutility money pool (“Nonutility Money Pool”), separate from the Utility Money Pool. Black Hills represents that it will not borrow from either of the money pools. Black Hills also asks the Commission to reserve jurisdiction over the addition of other participants to the Nonutility Money Pool in the future.¹⁸

Black Hills states that it will form and operate the Utility and Nonutility Money Pools by July 1, 2005. The Utility Subsidiary, to the extent not exempted under rule 52, requests authority to make unsecured short-term borrowings from, contribute surplus funds to, and to lend and extend credit to (and acquire promissory notes from) other participants in the Utility Money Pool, through the Utility Money Pool.¹⁹ The Utility Subsidiary also will be subject to a financing sublimit, described in section V.D. above.

¹⁸ Black Hills states that initial participants in the Nonutility Money Pool will be BHFC Publishing, Inc.; Black Hills Cabresto Pipeline, LLC; Black Hills Colorado, LLC; Black Hills Energy, Pipeline, LLC; Black Hills Energy Resources, Inc.; Black Hills Energy Terminal, LLC; Black Hills Energy, Inc.; Black Hills Exploration and Production, Inc.; Black Hills Fiber Systems, Inc.; Black Hills FiberCom, LLC; Fountain Valley II, LLC; Black Hills Fountain Valley, LLC; Black Hills Gas Holdings Corp.; Black Hills Gas Resources, Inc.; Black Hills Generation, Inc.; Black Hills Idaho Operations, LLC; Black Hills Ivanpah GP, LLC; Black Hills Ivanpah, LLC; Black Hills Kilgore Energy Pipeline, LLC; Black Hills Kilgore Pipeline Company, LP; Black Hills Kilgore Pipeline, Inc.; Black Hills Millennium Pipeline, Inc.; Black Hills Millennium Terminal, Inc.; Black Hills Montana Publishing, LLC; Black Hills Nevada Operations, LLC; Black Hills Nevada, LLC; Black Hills Ontario, LLC; Black Hills Operating Company, LLC; Black Hills Pepperell Power Associates, Inc.; Black Hills Southwest, LLC; Black Hills Wyoming, LLC; Desert Arc I, LLC; Desert Arc II, LLC; EIF Investors, Inc.; Enserco Energy Inc.; Fountain Valley Power, LLC; Harbor Cogeneration Company, LLC; Las Vegas Cogeneration II, LLC; Las Vegas Cogeneration Limited Partnership; Millennium Pipeline Company, LP; Millennium Terminal Company, LP; Sunco, Ltd.; West Cascade Energy, LLC; and Wyodak Resources Development Corporation.

¹⁹ Under the proposed Utility Money Pool terms, short-term funds would be available from: (1) surplus funds in the treasuries of Utility Money Pool participants other than Black Hills, (2) surplus funds in the treasury of Black Hills, and (3) proceeds from bank borrowings by Utility Money Pool participants or the sale of commercial paper by Black Hills or the Utility Subsidiary for loan to the Utility Money Pool. Funds would be made available as Black Hills Services may determine would result in a lower cost of

Applicants propose that the Nonutility Money Pool would be operated on the same terms and conditions as the Utility Money Pool, except that Black Hills' funds made available to Money Pools will be made available to the Utility Money Pool first and only afterward to the Nonutility Money Pool. No loans would be made to, and no borrowings from, the Nonutility Money Pool by a Utility Subsidiary.

Black Hills requests authorization to contribute surplus funds and to lend and extend credit to: (1) the Utility Subsidiary through the Utility Money Pool and (2) the Nonutility Subsidiaries through the Nonutility Money Pool. Black Hills and the Utility Subsidiary may contribute funds from the issuance of short-term debt to the Utility Money Pool. Black Hills and the Nonutility Subsidiaries may contribute funds from the issuance of short-term debt to the Nonutility Money Pool.²⁰ Black Hills also requests authority, for both the Utility Money Pool and the Nonutility Money Pool, to make certain short-term investments with funds not required by the respective money pool to make loans (with the exception of funds required to satisfy the money pool's liquidity requirements).²¹ In addition, Black Hills requests the Commission to reserve jurisdiction

borrowing, consistent with the individual borrowing needs and financial standing of pool participants.

²⁰ Applicants state that Black Hills Services will operate the Money Pools on an at-cost basis and separate records will be maintained for each pool. Surplus funds of the Utility Money Pool and the Nonutility Money Pool may be combined in common short-term investments, but separate records will be maintained and interest will be allocated separately, on a daily basis, to each money pool in the proportion that the amount of each money pool's surplus funds bears to the total amount of surplus funds available for investment from both money pools.

²¹ Applicants state that these short-term investments would include: (1) interest-bearing accounts with banks; (2) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (3) obligations issued or guaranteed by any state or political subdivision, provided that the obligations are rated not less than "A" by a nationally recognized rating agency; (4) commercial paper rated not less than "A-1" or "P-1" or their equivalent by a nationally

over these investments in (a) short-term debt securities rated AAA by Standard and Poor's, Aaa by Moody's, or AAA by Fitch and (b) short-term debt securities issued or guaranteed by an entity rated AAA by Standard and Poor's, AAa or by Moody's, or AAA by Fitch, pending completion of the record.

I. Intrasystem Financing

Black Hills and the Subsidiaries request that they be permitted, when making intrasystem loans or extending intrasystem credit (in the event a loan or an extension of credit is not exempt under rules 45(b) or 52), to charge interest at the same effective rate of interest as the daily weighted average of commercial paper, revolving credit and/or other short-term borrowings of the respective lending Subsidiary, including an allocated share of commitment fees and related expenses.²²

Applicants also request authority for Black Hills, directly or indirectly through a Nonutility Subsidiary, to make loans to partially owned Subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital.²³

recognized rating agency; (5) money market funds; (6) bank certificates of deposit; (7) Eurodollar funds; and (8) other investments permitted under section 9(c) of the Act and rule 40.

²² Applicants state that, if no borrowings are outstanding, then the interest rate will be predicated on the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York.

²³ Similar authority has been granted to other registered holding companies. See Emera, Inc., Holding Co. Act Release No. 27445 (October 1, 2001); Progress Energy, Inc., Holding Co. Act Release No. 27297 (December 12, 2000); Entergy Corporation, Holding Co. Act Release No. 27039 (June 22, 1999). Black Hills states that, generally, loans to, and purchases of capital stock from, Subsidiaries will be exempt under rule 52 and capital contributions and open account advances without interest will be exempt under rule 45(b). Loans by Black Hills or a Nonutility Subsidiary to a Nonutility Subsidiary will have interest rates and maturity dates that are designed to parallel the lending company's effective cost of capital, in accordance with rule 52(b).

J. Energy-Related Activities and Other Additional Nonutility Investments

Applicants seek authorization for certain activities related to nonutility investments in EWGs, FUCOs and other energy-related investments permitted under rule 58, as well as investments in Energy-Related Assets and Non-U.S. Energy Related Subsidiaries, for the duration of the Authorization Period, i.e., Permitted Nonutility Investments, as discussed below.

I. Certain Energy-Related Activities

Black Hills requests authority, directly or indirectly through Nonutility Subsidiaries, to (a) engage in Energy Marketing²⁴ in Canada and Mexico and elsewhere in the world outside of the United States, subject to the Commission's reservation of jurisdiction over these activities outside of the United States, Mexico and Canada, and (b) render Energy Management Services²⁵ and Consulting Services²⁶ anywhere in the world

²⁴ Black Hills defines Energy Marketing to consist of the brokering and marketing of electricity, natural gas and other energy commodities, as well as incidental related services, such as fuel management, storage and procurement.

²⁵ Black Hills defines Energy Management Services to include the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand-side management, including energy and efficiency audits; meter data management, facility design and process control and enhancements; construction, installation, testing, sales and maintenance of (and training client personnel to operate) energy conservation equipment; design implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment and general advice on programs; the design, construction, installation, testing, sales, operation and maintenance of new and retrofit heating, ventilating, and air conditioning, electrical and power systems, alarm, security, access control and warning systems, motors, pumps, lighting, water, water-purification and plumbing systems, building automation and temperature controls, installation and maintenance of refrigeration systems, building infrastructure wiring supporting voice, video, data and controls networks, environmental monitoring and control, ventilation system calibration and maintenance, piping and fire protection systems, and design, sale, engineering, installation, operation and maintenance of emergency or distributed power generation systems, and related structures, in connection with energy-related needs; and

outside of the United States. To the extent that operations outside the U.S. involve additional or different risks than U.S. operations, Black Hills states that it will evaluate and seek to mitigate those risks in a manner similar to the manner in which it evaluates and addresses EWG and FUCO investments, described below. The Commission has authorized these activities in other recent instances.²⁷

2. Additional Investments in Energy-Related Assets (\$300 Million)

Black Hills also requests authority, directly or indirectly through Nonutility Subsidiaries, to invest in nonutility energy assets that are incidental and related to its business as an electricity and energy commodities marketer and broker²⁸ (“Energy-

the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer’s electrical systems. Black Hills states that, in the event it proposes to acquire an Energy Management Services business that owns distribution power generation systems that would constitute “utility assets” under the Act, Black Hills will, as necessary, seek any required approvals from the Commission.

²⁶ Applicants define Consulting Services to include technical and consulting services involving technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation or centralized billing, bill desegregation tools and bill inserts), risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, general management consulting including training activities, feasibility studies, and other similar related services.

²⁷ See, e.g., Exelon Corporation, Holding Co. Act Release No. 27545 (June 27, 2002); Emera, Inc., Holding Co. Act Release No. 27445 (October 1, 2001); Progress Energy, Inc., Holding Co. Act Release No. 27297 (December 12, 2000).

²⁸ Black Hills defines Energy-Related Assets to include oil and natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities that will be incidental to and assist Black Hills’ Nonutility Subsidiaries in connection with their marketing, brokering and trading activities. American Electric Power Company, Inc., *et al.*, Holding Co. Act Release Nos. 27842 (April 30, 2004) and 26933 (November 2, 1998). Black Hills further defines Energy-Related Assets to exclude additional investments in EWGs or FUCOs. Black Hills also states that Energy-Related Assets will not include the acquisition and ownership of any assets that would cause any subsidiary to be or become an “electric-

Related Assets”) in an amount of up to \$300 million (“Energy-Related Assets Financing Limit”). We have concluded, as Black Hills requests, that Black Hills’ existing investments in Energy-Related Assets should be disregarded for purposes of calculating the dollar limitation upon investment in energy-related companies under rule 58.²⁹

3. Additional Investment in EWGs and FUCOs (\$1.4 Billion)

Applicants also seek financing authority in an aggregate amount of up to \$1.4 billion for investments in EWGs and FUCOs (including Black Hills existing EWG investments as of September 30, 2004, of \$718 million) during the Authorization Period (“Aggregate EWG/FUCO Investment Limit”).³⁰ The proposed investment limit represents approximately 448% of Black Hills’ “average consolidated retained earnings,” as defined in rule 53(a)(1), for the four quarterly periods ending September 30, 2004.

Black Hills states that it is able to satisfy Commission requirements for its proposed Aggregate EWG/FUCO Investment Limit by meeting the statutory requirements of sections 32 and 33 of the Act, as well as standards provided by rule 53(c).³¹ In addition, Black Hills states that the proposed Aggregate EWG/FUCO

utility company” or “gas-utility company,” as defined in sections 2(a)(3) and 2(a)(4) of the Act.

²⁹ Rule 58(a)(1)(ii) provides that investments by a registered holding company in energy-related companies, as defined in rule 58(b)(1), may not exceed 15% of the consolidated capitalization of the registered holding company. The Commission has reached this conclusion in previous similar matters involving exempt holding companies (which are not subject to the same restrictions on nonutility activities as registered holding companies are) that were to become registered. See CP&L Energy, Inc., Holding Co. Act Release No. 27874 (November 27, 2000); Exelon Corporation, Holding Co. Act Release No. 27256 (October 19, 2000).

³⁰ Black Hills has no FUCOs at this time.

³¹ Rule 53(a) provides a partial safe harbor, which Applicants are not able to utilize with this request and rule 53(b) is not relevant.

Investment Limit compares favorably with other EWG/FUCO investment limits authorized by the Commission.³²

Black Hills states that there have been significant changes to the electric utility industry in recent years and, further, that one profound change has been the divestiture by many traditional vertically integrated utilities of their generation assets. Generation has developed as a viable business, which may, but need not be, associated with transmission and distribution companies. Key to Black Hills' overall business strategy is the continued growth of its generation business through additional investment in EWGs and large dollar investments are required to participate in larger, more energy-efficient operating projects, as compared to the investment capacity available under rule 53. Black Hills is of the view that the ability to bid on the full range of available opportunities in both regulated and deregulated generation markets, especially in the larger, more significant transactions, is vital to Black Hills' growth strategies, just as it is for Black Hills' competitors. In order to compete effectively, Black Hills states that it must be on an equal footing with its competitors with authority well in excess of the rule 53(a) partial

³² More recently the Commission has authorized EWG and FUCO investment in amounts greater than 400% of consolidated retained earnings. *See, e.g.,* Dominion Resources, Inc., Holding Co. Act Release No. 27630 (December 30, 2002) (authority to invest up to 475% of consolidated retained earnings); E.ON AG, Holding Co. Act Release No. 27539 (June 14, 2002) (authority to invest up to 619% of consolidated retained earnings); Emera, Inc., Holding Co. Act Release No. 27445 (October 1, 2001) (authority to invest up to 1000% of consolidated retained earnings). Initially addressing similar facts, in a series of earlier cases, the Commission authorized aggregate investments in EWGs and FUCOs of up to 100% of consolidated retained earnings (sometimes referred to as the "100% orders"). *See, e.g.,* The Southern Company, Holding Co. Act Release No. 26501 (April 1, 1996).

safe harbor.

3.a. Rule 53 Analysis of Black Hills' Proposed EWG/FUCO Investments

EWG and FUCO investments by a registered holding company are subject to, among other things, rule 53 and sections 32 and 33 of the Act. Rule 53(c) provides standards to consider in connection with a proposal by a registered holding company that is unable to satisfy the requirements of rule 53(a) and to which rule 53(b) does not apply, to issue and sell securities to finance an investment in any EWG, or to guarantee the securities of any EWG. Rule 53(c) states, among other things, that a registered holding company must “affirmatively demonstrate” that the proposal to issue securities to finance the acquisition of an EWG or the guarantee of a security of an EWG: “(1) will not have a substantial adverse impact upon the financial integrity of the registered holding company system; and (2) will not have an adverse impact on any utility subsidiary of the registered holding company, or its customers, or on the ability of state commissions to protect such subsidiary or customers.” As discussed below, Black Hills states that it satisfies each of these prongs of the rule 53(c) standard.

3.a.1. Impact of Investments in EWGs and FUCOs on Financial Integrity of Black Hills Holding Company System

Black Hills states that additional investments in EWGs and FUCOs, and financing for that purpose, will not have a substantial adverse impact on the financial integrity of the Black Hills System. The lack of any “substantial adverse impact” on Black Hills’ financial integrity can be demonstrated in several ways, including an analysis of historic trends in Black Hills existing EWG investment, its consolidated capitalization ratios and retained earnings and the market view of Black Hills’ securities.

(a) Black Hills' Existing EWG Investment. Black Hills made its existing investments in EWGs when it was not subject to the Act and its existing investments in EWGs, as of September 30, 2004, exceed 229% of its retained earnings. Black Hills states that its EWG investments have a history of positively affecting Black Hills' operating results. From January 1, 2003, to December 31, 2003, Black Hills' EWG investments produced operating earnings of \$69,129,000, and from January 1, 2004, to September 30, 2004, Black Hills' EWG investments produced earnings of \$36,766,000. Black Hills also states that it has a low risk profile when considering investments in EWGs because Black Hills typically will consider investments only in EWGs that have long-term off-take agreements for the capacity and output of the facility with creditworthy counterparties or load-serving utilities with state utility commission-approved contracts.

(b) Size of Black Hills' Proposed EWG Investment. Black Hills states that its proposed Aggregate EWG/FUCO Investment Limit would represent a reasonable commitment of capital for a company the size of Black Hills, particularly in light of the Commission's recent approval of EWG and FUCO investment authority of over 400% of consolidated retained earnings for other holding companies.³³ The Aggregate EWG/FUCO Investment Limit sought by Black Hills, as noted previously, would be equal to approximately 448% of Black Hills' year-to-date September 30, 2004, consolidated retained earnings, which falls within the range of investment authority granted by the Commission in the recent past. \$1.4 billion would equal 92%, 344%,

³³ See, e.g., Dominion Resources, Inc., Holding Co. Act Release No. 27630 (December 30, 2002) (authorizing investment up to 475% of consolidated retained earnings).

69%, and 145%, respectively, of Black Hills' consolidated capitalization, consolidated net utility plant, total consolidated assets and market value of outstanding stock as of September 30, 2004.³⁴

(c) Black Hills' Consolidated Capitalization Ratio. Black Hills' consolidated capitalization ratio, as of September 30, 2004, was 47.5% equity and 52.5% debt. This ratio exceeds the Commission's 30% common equity ratio requirement.

(d) Black Hills' Credit Ratings. Black Hills has investment grade credit ratings from Moody's and Standard and Poor's, both nationally recognized rating agencies. The Black Hills Corporation Issuer rating from Moody's is Baa3 and Standard and Poor's is BBB-.

(e) Black Hills' Retained Earnings Growth. Black Hills states that its consolidated retained earnings have grown steadily over the past three years. Black Hills Corporation's consolidated retained earnings in 2001 were \$250.5 million; in 2002 were \$280.6 million and in 2003 were \$304.6 million.

Black Hills' consolidated retained earnings at September 30, 2004, were approximately \$313 million, and Black Hills' expects that its retained earnings will continue to increase steadily during the Authorization Period as a result of a conservative payout ratio.

(f) Other Financial Ratios. Black Hills states that its financial strength is further reflected in its current price/earnings ("P/E") ratio and market to book ratio. Black Hills'

³⁴ Black Hills states that these percentages are generally comparable to the percentages recently permitted other holding companies, which requested authority levels in excess of the rule 53(a) partial safe harbor. See, e.g., E. ON AG, Holding Co. Act Release No. 27539 (June 14, 2002) (authorizing EWG/FUCO investments of 114%, 63%, and 182%

P/E ratio, as of December 6, 2004, was 21.8 compared to the average for utilities in the Standard and Poor's Electric Utility Index of 15.3. Black Hills' market to book ratio is currently 1.39, based on a pro forma book value of \$21.90 per share, as of September 30, 2004, and, as of December 23, 2004, an assumed market price is \$30.39 per share.

(g) Black Hills Management Controls and Investment Review Process. Black Hills' Board of Directors has established oversight levels for its investment in capital expenditures, mergers, acquisitions, new businesses, divestitures and contracts. Black Hills states that it has a comprehensive development, review and approval process for investments, including specific review and approval by the Board of certain investments and certain delegations from the Board to specified corporate officers, which it refers to as its "Investment Review Process." The Investment Review Process requires potential investments in projects to be reviewed by the senior management team, including, among others, Black Hills' Chief Risk Officer, General Counsel and Senior Vice President of Corporate Development. Black Hills indicates that the senior management review is intended to ensure completeness of the analysis and adherence to corporate valuation standards in advance of presentation of a project to the Board of Directors.³⁵ The process requires development of a business case. A committee reviews the assumptions, analysis and strategic fit of each proposal several times. A committee (with representatives from various functional areas (i.e., legal, tax, accounting, treasury, corporate development and

of E. ON AG's consolidated capitalization, total consolidated assets and market value of outstanding stock).

³⁵ The Investment Review Process requires acquisitions above \$30 million to be reviewed and approved by the Board. Those below \$30 million are reviewed by senior management and approved by Black Hills' Chief Executive Officer under Board-delegated authority (they also may be brought to the Board in senior management's discretion).

information systems)) provides a report to senior management indicating any open issues or areas of concern regarding the investment. When considering potential investments in FUCOs, the Investment Committee will consider additional relevant factors, including currency risk and country-specific risk (such as political risk or economic performance risk).

3.a.2. Rule 53(c)(2) - Impact of Investments in EWGs and FUCOs on Black Hills' Utility Subsidiary, Customers and on the Ability of State Commissions to Protect Them

The second prong of rule 53(c) requires that the investments “not have an adverse impact on any utility subsidiary of the registered holding company, or its customers, or on the ability of state commissions to protect such subsidiary or customers.” Black Hills states that its proposed Aggregate EWG/FUCO Investment Limit will not have an adverse impact on Black Hills Power or its customers, or on the ability of the South Dakota Commission, the Wyoming Commission, or the Montana Commission to protect Black Hills Power and its customers because of the insulation of (1) Black Hills Power and its customers from potential direct adverse effects of Black Hills' investments in EWGs and FUCOs; (2) Black Hills Power's current financial health, and (3) the proven effectiveness of state commission oversight over Black Hills Power.

(a) Insulation from Risk. All of Black Hills' investments in EWGs and FUCOs are, and will remain, segregated from Black Hills Power and any future Utility Subsidiary of Black Hills by, among other things, being held in separate corporate entities within the Black Hills System. In addition, Black Hills commits that no Black Hills Utility Subsidiary will provide financing for, extend credit to, or sell or pledge its assets directly or indirectly to any EWG in which Black Hills owns any interest; the indebtedness of any

Black Hills EWG project will not otherwise be recourse to any Black Hills Utility Subsidiary; and there will be no contractual relationship between any Black Hills EWG and any Black Hills Utility Subsidiary other than as permitted by law. Black Hills acknowledges that rules 46(a) and 42 limit Black Hills' ability to make equity distributions from capital surplus without Commission approval.

Moreover, to the extent that EWG and FUCO investments may have an indirect effect on Black Hills (for example, on Black Hills' cost of capital), Black Hills states that the state commissions have broad discretion to set the cost of capital for any utility subject to their jurisdiction, with a variety of means available to them, and are able to exclude costs caused by EWGs and FUCOs and prevent those costs from being passed on to utility customers. Black Hills commits that it will not seek recovery in retail rates of any Black Hills Utility Subsidiary for any failed investment in, or inadequate returns from, an EWG or FUCO investment.

Black Hills also states that no Utility Subsidiary will increase staffing levels to support the operations of any EWG or FUCO. Development of new EWG or FUCO projects will be conducted through Black Hills Energy or one or more of its Subsidiaries.³⁶

(b) Financial Health of Black Hills Power. Black Hills states that its Utility Subsidiary, Black Hills Power, has stable earnings and cash flows and sound investment grade ratings from the major nationally recognized rating agencies. At September 30,

³⁶ Black Hills also states that it will comply with the other conditions of rule 53(a) that provide specific protections to customers of utilities, including those of rule 53(a)(2) regarding preparation and making available of books, records and financial reports regarding EWGs and FUCOs, and of rule 53(a)(4) requiring filing of copies of applications and reports with other regulatory commissions.

2004, Black Hills Power's common equity ratio was 45%. In addition, Black Hills has committed that it will, and it will cause its Utility Subsidiary to, adhere to the Commission's 30% common equity ratio requirement. See section III.D., above.

Black Hills also states that its current and proposed investments in EWGs and FUCOs will not have any negative impact on Black Hills Power's ability to fund operations and growth. It states that current projections indicate that Black Hills Power will continue to fund operations and construction expenditures primarily from internal sources of cash and credit facilities. Moreover, Black Hills states that Black Hills Power can access capital markets as needed, although its ability to issue debt and preferred equity securities in the future depends upon market factors at the time such securities are issued.

(b) Utility Subsidiary Credit Ratings. Black Hills Power's Issuer ratings are: Baa2 (Moody's) and BBB- (Standard and Poor's). Its senior secured debt ratings are: Baa1 (Moody's) and BBB (Standard and Poor's). Black Hills Power's pollution control revenue bond ratings are: Baa2 (Moody's) and No Rating (Standard and Poor's).

(c) Adequacy of State Commission Oversight. Three state commissions have jurisdiction over the operations of the Black Hills Power -- the South Dakota Commission, the Wyoming Commission and the Montana Commission. Black Hills believes that these state commissions are able to protect utility customers of their states. The Commission solicited the views of each of the state commissions regarding their ability to protect the ratepayers of their states from the proposed transactions and none of

the state commissions opposed the proposal.

4. Investment in Development Activities and Administrative Activities

Black Hills and its Subsidiaries also request authority to invest, using a “revolving fund” concept described below, an amount of up to \$100 million, in (i) Development Activities³⁷ and (ii) Administrative Activities³⁸ related to EWGs, FUCOs, Rule 58 Subsidiaries, Energy-Related Assets and Non-U.S. Energy-Related Subsidiaries. Development Activities will be designed to result in nonutility investments, eventually, such as EWGs, FUCOs, Rule 58 Subsidiaries, Energy-Related Assets or Non-U.S. Energy-Related Subsidiaries.

Black Hills proposes a “revolving fund,” which would provide that, to the extent that funds are expended for Development Activities (or Administrative Activities, as the case may be) and result in an EWG, FUCO, or a Rule 58 Subsidiary, or other authorized investment, the amount will cease to be allocable to the Development Activities financing limit of \$100 million, but will then be allocable to the particular, applicable investment limit related to the investment. For example, Development Activities expenditures that

³⁷ Development Activities will include due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection with these activities, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal “hosts,” fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of, or interests in, new businesses. See Scottish Power plc, et al., Holding Co. Act Release No. 27831 (April 1, 2004).

³⁸ Administrative Activities will include personnel, accounting, engineering, legal, finance and other support activities necessary to manage Black Hills and its Subsidiaries’ investments in nonutility subsidiaries. See Scottish Power plc, et al., Holding Co. Act Release No. 27831 (April 1, 2004).

result in an EWG would count against the Aggregate EWG/FUCO Financing Limit (described in section V.J.3., above) and expenditures resulting in a Rule 58 Subsidiary would count against the limitation on investment in rule 58, or expenditures resulting in an Energy-Related Asset would count against the Energy-Related Assets Financing Limit (described in section V.J.2., above), or any other applicable limitation.³⁹

J. Changes in Capital Stock of Subsidiaries

Applicants request authority to change the terms of any wholly owned Subsidiary's authorized capital stock capitalization or other equity interests by an amount deemed appropriate by Black Hills or another intermediate parent company, as needed to accommodate transactions and future issuances. Applicants propose that a wholly owned Subsidiary be able to change the par value, or change between par value and no-par stock, without additional Commission approval.⁴⁰

Black Hills also states that the Utility Subsidiary would only take this action upon receipt of necessary approvals from interested state commissions. Black Hills also requests that the Commission reserve jurisdiction over these transactions by partially owned Subsidiaries, pending completion of the record.

K. Nonutilities' Payment of Dividends Out of Capital and Unearned Surplus

Black Hills Energy and Black Hills FiberCom also request that they be permitted, directly or indirectly through their Nonutility Subsidiaries, to pay dividends, from time to

³⁹ See also Exelon Corporation, Holding Co. Act Release No. 27545 (June 27, 2002); Progress Energy, Inc., Holding Co. Act Release No. 27297 (December 12, 2000); AGL Resources, Inc., Holding Co. Act Release No. 27243 (October 5, 2000).

⁴⁰ Applicants state that they cannot ascertain at this time how a Subsidiary's financing may be effected under rule 52, including, for example, what portion may be a sale of capital securities (i.e., common or preferred stock) to Black Hills or an intermediate

time, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable state corporate law, during the Authorization Period.

Applicants state that Black Hills and its Nonutility Subsidiaries will not declare or pay any dividend out of capital or unearned surplus unless it: (1) has received excess cash as a result of the sale of some or all of its assets; (2) has engaged in a restructuring or reorganization and/or (3) is returning capital to an associate company.

L. Intermediate Subsidiaries

Black Hills requests authority to acquire, directly or indirectly through Nonutility Subsidiaries, the securities of one or more corporations, trusts, partnerships, limited liability companies or other entities to be created and organized exclusively for the purpose of acquiring, holding and/or financing or facilitating the acquisition or disposition of investments (“Intermediate Subsidiaries”).⁴¹ Black Hills states that, to the extent that it provides funds to an Intermediate Subsidiary for investment in an EWG, FUCO or a Rule 58 Subsidiary or other investment, the amount will be included in Black Hills’ Aggregate EWG/FUCO Financing Limit or other applicable financing limit, as the case may be. Black Hills states that the transactions will not involve the sale, transfer, or other disposition of any utility assets of any Utility Subsidiary to any other person. The

parent or whether it may exceed then-authorized capital stock or whether capital stock with no par value may be used.

⁴¹ Black Hills states that there are various legal and business reasons for using Intermediate Subsidiaries. Limited purpose subsidiaries are often necessary or desirable to facilitate financing the acquisition and ownership of a FUCO, an EWG or other enterprise. The laws of some foreign countries may require that a bidder in a privatization program be organized in that country. Using one or more Intermediate Subsidiaries may allow Black Hills to secure more favorable U.S. and foreign tax treatment and achieve tax efficient corporate structures, minimizing state or federal taxes. Intermediate Subsidiaries may also isolate business risks and facilitate adjustments to ownership interests or raising debt or equity capital in domestic or foreign markets.

transactions will also not involve any change in the corporate ownership of, or involve any restructuring of, the Utility Subsidiaries.

M. Internal Corporate Reorganizations

Applicants request authority to undertake internal reorganizations of Nonutility Subsidiaries and businesses. Internal reorganizations may be accomplished through a contribution, sale, distribution, assignment or other transfer from one entity, and the acquisition by another entity, of the securities, assets or interests in an entity.

To effect a consolidation or other reorganization, Black Hills or a Nonutility Subsidiary may wish to either contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary (including a newly formed Intermediate Subsidiary) or sell (or cause a Nonutility Subsidiary to sell) the equity securities or all or part of the assets of one Nonutility Subsidiary to another one. These transactions may also take the form of a Nonutility Subsidiary selling or transferring the equity securities of a subsidiary or all or part of that subsidiary's assets as a dividend to an Intermediate Subsidiary or to another Nonutility Subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of that subsidiary, either by purchase or by receipt of a dividend. The purchasing Nonutility Subsidiary in any transaction structured as an intrasystem sale of equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Black Hills also requests that it be permitted, following direct or indirect acquisition of securities of Nonutility Subsidiaries, to transfer securities or assets of Nonutility Subsidiaries to other Subsidiaries using any

of these methods or to liquidate or merge Nonutility Subsidiaries.

N. Proposed Service Company and Certain Intrasystem Transactions

The companies will engage in a variety of affiliate transactions for the provision of goods, services and construction. Certain of these intrasystem transactions are described below. The transactions will be carried out in accordance with the requirements of rules 87, 90 and 91 under section 13(b) of the Act, unless otherwise authorized by the Commission by order or rule. With respect to the requested exemptions to the at-cost requirement, described below, for an interim period following Black Hills registration, Black Hills commits that within 12 months of its receipt of an order in connection with this Application, all transactions subject to the requested interim exemptions will be priced at cost in accordance with the requirements of section 13(b) of the Act and rules 90 and 91.

1. Black Hills Services

Following the registration, Black Hills Services will provide to Black Hills Subsidiaries various corporate, administrative, management and support services, including services relating to electric and gas plant operations.⁴² Black Hills requests the Commission to find under rule 88(b) that Black Hills Services “is so organized and conducted, or to be so conducted, as to meet the requirements of section 13(b) of the Act with respect to reasonable assurance of efficient and economical performance of services

⁴² These operations may include, e.g., management of bulk power and natural gas supply, fuels procurement, coordination of electric and natural gas distribution systems, maintenance, construction and engineering work; customer bills and related matters; materials management; facilities; real estate; rights of way; human resources; finance; accounting; internal auditing; information systems; corporate planning and research; public affairs; corporate communications; legal; environmental matters; and executive services. Black Hills Services will have total equity capital of not more than \$10,000.

or construction or sale of goods for the benefit of associate companies, at cost fairly and equitably allocated among them (or as permitted by [rule] 90).”

Black Hills Services proposes to enter into a Services Agreement with its Utility Subsidiary and one with its Nonutility Subsidiaries. The proposed Services Agreements are structured to comply with the requirements of section 13 of the Act and related rules. Charges for services provided by Black Hills Services to system utilities will be at cost, in compliance with rules 90 and 91 under the Act. Except for certain exceptions discussed below, services to associate nonutilities will be at cost.

Black Hills states that no change in the organization of Black Hills Services, the type and character of the companies that will receive services, the factors for allocating costs to associate companies, or the broad categories of services to be rendered shall be made unless and until Black Hills Services has first given the Commission written notice of the proposed change not less than 60 days prior to the proposed effective date of the change. If, upon the receipt of any such notice, the Commission shall notify Black Hills Services within the 60-day period that a question exists whether the proposed change is consistent with the provisions of section 13 of the Act and related rules or orders, the proposed change shall not become effective unless and until Black Hills Services shall have filed an appropriate declaration regarding the proposed change and the Commission shall have permitted the declaration to become effective.

Black Hills anticipates that Black Hills Services will be formed and partially operational within 60 days after Black Hills’ receipt of an order in connection with this Application. However, to allow time for the development of all required systems, Applicant requests authority to delay the full implementation of all services and systems that are

relevant under the Act for an interim period of not longer than 12 months following receipt of an order in connection with this Application.⁴³ No later than October 1, 2005, Black Hills will file a post-effective amendment in this filing describing the required accounting systems and cost allocation methodologies and requesting a supplemental order of the Commission. Black Hills will file as exhibits to the amendment the documents necessary to demonstrate compliance with the Act.

2. Other Affiliate Transactions

The Utility Subsidiary may provide services incidental to its utility businesses, such as infrastructure services and storm outage emergency repairs, to another Black Hills utility subsidiary company, in the future, and other associate companies in accordance with rules 87, 90 and 91. In accordance with these rules also, a utility may provide certain goods, through a leasing arrangement or otherwise, to one or more associate companies, and may use certain assets for the benefit of one or more associate companies.

Black Hills Services and the Nonutility Subsidiaries will provide certain construction, goods or services at fair market value, under certain circumstances, to certain associate nonutility companies. Black Hills requests an exemption under section 13(b) of the Act from the at-cost standards of rules 90 and 91 with respect to transactions involving:

⁴³ Black Hills states that the transition period is necessary to accommodate the complexities of the formation of the services company. Black Hills states that, first, appropriate personnel from Black Hills and its Subsidiaries will be transferred to Black Hills Services' employ, subject to requirements associated with the transfer employees' benefit, health and pension plans, contracts, licenses and permits to Black Hills Services, and subject to approvals and consents from regulators, counterparties and vendors.

- (1) a FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;
- (2) an EWG that sells electricity at market-based rates which have been approved by the FERC or other appropriate state public utility commission, provided that the purchaser of the EWG's electricity is not an affiliated public-utility or an affiliate that resells such power to an affiliated public utility;
- (3) a QF under PURPA that sells electricity exclusively at rates negotiated at arm's length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, or to an electric utility company other than an affiliated electric utility at the purchaser's "avoided cost" determined under PURPA;
- (4) an EWG or a QF that sells electricity at rates based upon its costs of service, as approved by the FERC or any state public-utility commission having jurisdiction, provided that the purchaser of the electricity is not an affiliated public-utility; or
- (5) an energy-related company under rule 58 or any other nonutility subsidiary that (a) is partially owned, provided that the ultimate purchaser of goods or services is not a public-utility subsidiary, (b) is engaged solely in the business of developing owning, operating and/or providing services or goods to nonutility companies described in (1) through (4) above, or (c) does not derive, directly or indirectly, any part of its income from sources within the U.S. and is not a public-utility company operating within the U.S.

In addition, under section 13(b) of the Act, the Commission will grant Black Hills approval to retain an existing affiliate arrangement in which Wyodak Resources Development Corporation ("Wyodak Resources") sells delivered coal produced at its Wyodak coal mine to Black Hills Power under a cost-based pricing formula methodology. Black Hills Power uses the coal procured from Wyodak Resources to fuel its coal-fired generating facilities, some of which are mine-mouth plants located at the

Wyodak mine site.

VI. Retention

Black Hills is engaged in nonutility businesses through Subsidiaries and investments in business ventures, including: (1) EWGs and QFs, (2) energy-related businesses involving exploration and production, transmission and distribution and cogeneration, among other things; and (3) telecommunication activities. These various nonutility interests are described, and the legal bases for their retention are explained, in Appendix A to this order.

VII. Conclusion

We have examined the Application under the applicable standards of the Act and have concluded that the proposed transactions are consistent with those standards. We have reached those conclusions on the basis of the complete record before us.

Except as described above, no state regulatory commission and no federal regulatory commission, other than this Commission, has jurisdiction over any of the proposed transactions. Black Hills expects to pay or incur approximately \$250,000 in aggregate fees, commissions, and expenses, directly or indirectly, in connection with the proposed transactions.

Due notice of the filing of the Application has been given in the manner prescribed by rule 23 under the Act and no hearing has been requested of, or ordered by, the Commission. Based on the facts in the record, the Commission finds that the applicable standards of the Act are satisfied and that no adverse findings are necessary.

IT IS ORDERED that, except as to those matters over which jurisdiction is reserved, the Application is granted and permitted to become effective immediately,

subject to the terms and conditions prescribed in rule 24 and provided that Applicants file reports on a quarterly basis, for the periods ended March 31, June 30, September 30 and December 31 of each year (such reports to be submitted within 60 days after the end of each calendar quarter and 90 days after the end of the last calendar quarter, commencing with the first calendar quarter following the date of the Commission's order in this proceeding (unless otherwise stated below)) including:⁴⁴

- (a) The sales of any Common Stock or Preferred Securities and the purchase price per share and the market price per share at the date of the agreement of sale;
- (b) The total number of share of Common Stock issued or issuable under options granted during the quarter under employee benefit plans and dividend reinvestment plans (including any later adopted employee benefit plans or dividend reinvestment plans);
- (c) If Common Stock has been transferred to a seller of securities of a company being acquired, the number of shares so issued, the value per share and whether the shares are restricted in the hands of the acquirer;
- (d) If a guarantee is issued during the quarter, the name of the guarantor, the name of the beneficiary of the guarantee and the amount, terms and purpose of the guarantee;
- (e) The amount and terms of any Black Hills indebtedness issued during the quarter;
- (f) The amount and terms of any Short-Term Debt issued by any Utility Subsidiary during the quarter;

⁴⁴Black Hills will integrate its 34 Act and Securities Act of 1933 ("33 Act") reports with reports filed under the Act to eliminate duplication of Commission filings. To effect such integration, the portion of the 1933 Act and 1934 Act reports containing or reflecting disclosures of transactions authorized in this proceeding will be incorporated by reference in its rule 24 certificates of notification. The certificates will also contain all information required by rule 24 (including the certification that each transaction being reported on had been carried out in accordance with the terms and conditions of and for the purposes represented in this Application). A copy of relevant document (*e.g.*, underwriting agreements, indentures, bank agreements) for the relevant quarter will be filed with, or incorporated by reference from, 33 Act or 34 Act filings in rule 24 reports.

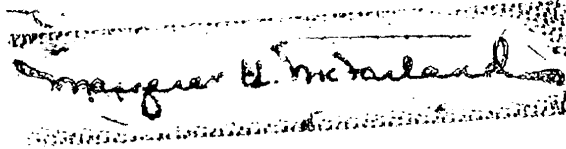
- (g) The amount and terms of any financings consummated by any Nonutility Subsidiary not exempt under rule 52;
- (h) The notional amount and principal terms of any Hedge Instruments or Anticipatory Hedges entered into during the quarter and the identity of the counterparties;
- (i) The name, parent company and amount invested in any Intermediate Subsidiary or Financing Subsidiary during the quarter and the amount and terms of any securities issued by those Subsidiaries during the quarter;
- (j) A list of U-6B-2 forms filed with the Commission during the quarter, including the name of the filing entity and the date of filing;
- (k) Consolidated balance sheets as of the end of the quarter and separate balance sheets as of the end of the quarter for each company that has engaged in jurisdictional financing transactions during the quarter;
- (l) A table showing, as of the end of the quarter, the dollar and percentage components of the capital structure of Black Hills on a consolidated basis and of the Utility Subsidiary;
- (m) A retained earnings analysis of Black Hills on a consolidated basis and of the Utility Subsidiary detailing gross earnings, goodwill amortization, dividends paid out of each capital account and the resulting capital account balances at the end of the quarter;
- (n) Future registration statements filed under the 33 Act for securities subject to the Application will be filed or incorporated by reference as exhibits to the next certificate filed under rule 24; and
- (o) Black Hills' rule 53 undertakings addressing:
 - (1) a computation in accordance with rule 53(a) setting forth Black Hills' "aggregate investment" in all EWGs and FUCOs, its "consolidated retained earnings," and a calculation of the amount remaining under the Aggregate EWG/FUCO Limit as then in effect;
 - (2) a breakdown showing Black Hills' aggregate investment in each individual EWG/FUCO project under the Aggregate EWG/FUCO Limit;
 - (3) consolidated capitalization ratio of Black Hills as of the end of that quarter, with consolidated debt to include all Short-Term Debt and non-recourse debt of all EWGs and FUCOs;

- (4) the market-to-book ratio of Common Stock;
- (5) identification of any new EWG/FUCO project under the Aggregate EWG/FUCO Limit in which Black Hills has invested or committed to invest during the preceding quarter;
- (6) analysis of the growth in consolidated retained earnings which segregates total earnings growth of EWGs and FUCOs from that attributable to other Subsidiaries of Black Hills; and
- (7) a statement of revenues and net income for each EWG and FUCO for the twelve months ending as of the end of that quarter.

IT IS FURTHER ORDERED that jurisdiction is reserved over (1) an additional \$250 million in authority under the Aggregate Additional Financing Limit; (2) Energy Marketing outside the United States, Mexico and Canada; (3) issuance of any securities that fail to meet the Investment Grade Condition; (4) (a) addition of participants to the Nonutility Money Pool and (b) the use of short-term debt securities rated AAA by Standard and Poor's, Aaa by Moody's, or AAA by Fitch, or short-term debt securities issued or guaranteed by an entity rated AAA by Standard and Poor's, AAa by Moody's, or AAA by Fitch, as short-term investments for excess money pool funds, (5) changes in

capital stock of partially owned Subsidiaries, (6) the retention of entities for which EWG or QF or ETC status is not yet determined, all pending completion of the record.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

A handwritten signature in black ink, appearing to read "Margaret H. McFarland", is written over a horizontal line. The signature is somewhat cursive and includes a large, sweeping flourish at the end.

Margaret H. McFarland
Deputy Secretary

APPENDIX A

RETENTION OF BLACK HILLS CORPORATION'S NONUTILITY BUSINESSES

The following is a description of the nonutility businesses in which Black Hills Corporation ("Black Hills") and its subsidiaries are engaged and the legal bases that support the Securities and Exchange Commission's ("Commission's") authorization of Black Hills to retain these businesses following its registration as a public-utility holding company under the Public Utility Holding Company Act of 1935, as amended ("Act").

A. Nonutility Business of Black Hills Power, Inc.

Black Hills Power, Inc. ("Black Hills Power"), is a direct wholly owned subsidiary of Black Hills and a South Dakota corporation headquartered in Rapid City, South Dakota. Black Hills Power is a public utility engaged in the generation, transmission, distribution and sale of electricity to approximately 60,000 customers in eleven counties in Western South Dakota, Eastern Wyoming, and Southwestern Montana. Black Hills Power is currently Black Hills' only regulated public-utility subsidiary.

Black Hills Power engages in various "energy-related" activities which are permissible under rule 58, including the sale of products and services providing for protection from electrical surges resulting from lightning strikes and other surge anomalies and the sale and servicing of home appliances and home heating and cooling devices. Black Hills Power earned revenues of approximately \$357,000 in these "energy-related" activities in 2003, representing approximately 0.21% of Black Hills Power's revenues in 2003.¹

B. Black Hills Energy, Inc.

Black Hills Energy, Inc. ("Black Hills Energy"), is a direct wholly owned subsidiary of Black Hills and a South Dakota corporation headquartered in Golden, Colorado. Black Hills Energy is an intermediate holding company for subsidiaries primarily engaged in the generation and sale of electricity through exempt wholesale generators, as defined in section 32 under the Act ("EWGs") and qualifying facilities as defined in the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") ("QFs"), the production, marketing and transportation of natural gas, oil and coal and

¹ The Commission has previously permitted utility subsidiaries to retain businesses in marketing electrotechnology products and services, including surge protection equipment under rule 58(b)(1)(vii). See, e.g., CP&L Energies, Inc., Holding Co. Act Release No. 27284 (November 27, 2000) (citing New Century Energies, Inc., Holding Co. Act Release No. 26748 (August 1, 1997)).

other “energy-related” activities.² The businesses of these Black Hills Energy subsidiaries, both direct and indirect, are described below.

1. Black Hills Exploration and Production, Inc.

Black Hills Exploration and Production, Inc. (“BHEP”) is a direct wholly owned subsidiary of Black Hills Energy and is a Wyoming corporation headquartered in Golden, Colorado. BHEP engages in oil and natural gas exploration and production in Wyoming, Montana, North Dakota, Nebraska, Colorado, California, Texas, Oklahoma and Louisiana.³ BHEP also owns subsidiaries engaged in oil and natural gas and pipeline activities.

a. Black Hills Gas Holdings Corp.

Black Hills Gas Holdings Corp. (“BHGasHC”) is a direct wholly owned subsidiary of BHEP and is a Colorado corporation. BHGasHC is an intermediate holding company for Black Hills’ ownership of Black Hills Gas Resources, Inc.⁴

i. Black Hills Cabresto Pipeline, LLC

Black Hills Cabresto Pipeline, LLC (“BHCP”) is a direct wholly owned subsidiary of BHGasHC and is a Delaware limited liability company. BHCP owns and operates a 12-mile natural gas pipeline located in the San Juan Basin of New Mexico.⁵

² See, e.g., CP&L Energies, Inc., Holding Co. Act Release No. 27284 (November 27, 2000) (authorizing retention of intermediate holding company involved in similar activities).

³ See, e.g., WGL Holdings, Inc., Holding Co. Act Release No. 26856 (April 14, 1998) (authorizing retention of oil and gas exploration subsidiary).

⁴ The Commission has authorized the retention of, or investment in, energy-related assets, including oil and natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities that will be incidental to and assist applicants and their subsidiaries in connection with their marketing, brokering and trading activities. See American Electric Power, Inc., et al., Holding Company Act Release Nos. 27842 (April 30, 2004) and 26933 (November 2, 1998). See also Progress Energy, Inc., Holding Co. Act Release No. 27297 (December 12, 2000); Exelon Corporation, Holding Co. Act Release No. 27545 (June 27, 2002).

⁵ American Electric Power, Inc., et al., Holding Co. Act Release Nos. 27842 (April 30, 2004) and 26933 (November 2, 1998) (authorizing retention of, or investment in, energy-related assets, including oil and natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities that will be incidental to and assist applicants and their affiliates in connection with their marketing, brokering, and trading activities); CP&L Energy, Inc., Holding Co. Act Release No. 27284 (November 27, 2000) (authorizing subsidiary formed to acquire extend an existing intrastate pipeline) (citing New Centuries, Inc., Holding Co.

ii. Black Hills Gas Resources, Inc.

Black Hills Gas Resources, Inc. (“BHGasR”), a direct wholly owned subsidiary of BHGasHC, is a Colorado corporation. BHGasR owns and operates oil and natural gas wells on leased oil and gas reserves located primarily in the San Juan Basin of New Mexico, operates an exploration and production program on those reserves and is constructing a natural gas gathering pipeline in furtherance of its gas exploration and production program (it is not engaged in the pipeline construction business).⁶

2. Black Hills Generation, Inc.

Black Hills Generation, Inc. (“BHGeneration”) is a direct wholly owned subsidiary of Black Hills Energy and is a Delaware corporation headquartered in Golden, Colorado. Through its direct and indirect subsidiaries, BHGeneration holds investments in hydroelectric and natural gas-fired electric generating facilities located in California, Colorado, Massachusetts and Nevada that are QFs or are owned by EWGs.⁷ BHGeneration also owns interests in funds that have investments in QFs and EWGs throughout the U.S. and interests in other business related to the ownership and operation of QFs and EWGs.

a. California EWG and QF

i. Harbor Cogeneration Company, LLC

Harbor Cogeneration Company (“Harbor Cogen”) is an indirect wholly owned subsidiary of BHGeneration and an EWG and a California general partnership that owns a 98 MW generating facility in Los Angeles County, California.⁸

ii. Black Hills Ontario, LLC

Act Release No. 26748 (August 1, 1997) and SCANA Corporation, Holding Co. Act Release No. 27133 (February 9, 2000)).

⁶ American Electric Power, Inc., *et al.*, Holding Co. Act Release Nos. 27842 (April 30, 2004) and 26933 (November 2, 1998) (authorizing retention of, or investment in, energy-related assets, including oil and natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities that will be incidental to and assist applicants and their affiliates in connection with their marketing, brokering, and trading activities); WGL Holdings, Inc., Holding Co. Act Release No. 26856 (April 14, 1998) (authorizing retention of oil and gas exploration subsidiary). See also rule 58(b)(1)(ix).

⁷ See, e.g., New Centuries Energy, Inc., Holding Co. Act Release No. 27212 (August 16, 2000) (allowing retention of interests in several businesses holding electric generating EWGs).

⁸ Harbor Cogeneration Company, 86 FERC ¶62,188 (1999).

Black Hills Ontario, LLC, is a subsidiary of BHGeneration and a Delaware limited liability company with operations in Ontario, California. BHGeneration holds, directly and indirectly, 50% of the membership interests in Black Hills Ontario, LLC, and manages the company. Black Hills Ontario, LLC, owns and operates a natural gas-fired cogeneration facility that is a QF in Ontario, California.⁹

b. Colorado EWGs

i. Black Hills Colorado, LLC

Black Hills Colorado, LLC (“Black Hills Colorado”) is a direct wholly owned subsidiary of BHGeneration and is a Delaware limited liability company headquartered in Golden, Colorado. Black Hills Colorado is an EWG that owns and operates natural gas-fired electric generating facilities located at the Arapahoe Power Station in Denver, Colorado, and the Valmont Power Station in Boulder, Colorado, with a combined generating capacity of 210 MW.¹⁰

A. Black Hills Valmont Colorado, Inc.

Black Hills Valmont Colorado, Inc., is a wholly owned subsidiary of BHGeneration through Black Hills Colorado, is a Delaware corporation headquartered in Golden, Colorado. The company acted as financing agent during the construction phase of the Black Hills Colorado, LLC, an EWG expansion project.¹¹

ii. Black Hills Fountain Valley, LLC

Black Hills Fountain Valley, LLC (“BHFV”), is a direct wholly owned subsidiary of BHGeneration and a Delaware limited liability company headquartered in Golden, Colorado. BHFV holds the investment of BHGeneration in Fountain Valley Power, LLC, an EWG.¹²

iii. Black Hills Fountain Valley II, LLC

⁹ See rule 58(b)(1)(viii).

¹⁰ See *Indeck Colorado, LLC*, 91 FERC ¶62,131 (2000).

¹¹ The Commission has previously authorized registered holding companies to create and own intermediate subsidiaries to hold or acquire energy-related companies, EWGs and QFs. See, e.g., *Energy East Corporation, Holding Co.* Act Release No. 27228 (September 12, 2000); *Interstate Energy Corporation, Holding Co.* Act Release No. 27069 (August 26, 1999).

¹² See, e.g., *New Centuries Energy, Inc., Holding Co.* Act Release No. 27212 (allowing retention of interests in several businesses owning gas-fired EWGs).

Black Hills Fountain Valley II, LLC (“BHFVII”) is a direct wholly owned subsidiary of BHGeneration and a Colorado limited liability company headquartered in Golden, Colorado. BHFVII was formed to purchase real property on and adjacent to the Fountain Valley Power project. The adjacent property is undeveloped. It currently serves as a buffer zone around the Fountain Valley Power generating facility and could serve as a site for future expansion of the Fountain Valley Power facility or the development of a new generating facility.¹³

A. E-Next A Equipment Leasing Company, LLC

E-Next A Equipment Leasing Company, LLC, is an indirect wholly owned subsidiary of BHGeneration through BHFV and a Delaware limited liability company. It owns and leases certain equipment, including gas turbines and transformer packages, used at Fountain Valley Power LLC’s generation facility.¹⁴

B. Fountain Valley Power, LLC

Fountain Valley Power, LLC (“Fountain Valley Power”), is an indirect wholly owned subsidiary of BHGeneration through BHFV and a Delaware limited liability company headquartered in Golden, Colorado. Fountain Valley Power is an EWG.¹⁵ Fountain Valley Power owns and operates a 240 MW gas-fired electric generation facility located south of Colorado Springs, Colorado.

c. Massachusetts EWG

i. Black Hills Pepperell Power Associates, LLC

Black Hills Pepperell Power Associates, LLC (“Pepperell”), is a direct wholly owned subsidiary of BHGeneration, incorporated in Delaware with its principal business in Golden, Colorado. Pepperell is an EWG that owns a 38 MW generating facility located in Pepperell, Massachusetts, near the James River Pepperell, Inc., paper mill.¹⁶

d. Nevada QFs and EWGs

i. Black Hills Southwest, LLC

¹³ See rule 58(b)(1)(viii). See also New Century Energies, Inc., Holding Co. Act Release No. 27212 (August 16, 2000) (permitting retention of business engaged in ownership of real property adjacent to generating facilities).

¹⁴ The Commission previously has authorized retention of infrastructure services. See, e.g., Exelon Corporation, Holding Co. Act Release No. 27256 (October 19, 2000); GPU, Inc., Holding Co. Act Release No. 27165 (April 14, 2000).

¹⁵ See Fountain Valley Power, LLC, 95 FERC ¶62,099 (2001).

¹⁶ Pepperell Power Associates, LP, 62 FERC ¶61,182 (1993).

Black Hills Southwest, LLC (“BHS”), is a direct wholly owned subsidiary of BHGeneration and a Delaware limited liability company headquartered in Golden, Colorado. Through its direct and indirect subsidiaries, it holds an investment in a 53 MW natural gas-fired cogeneration facility that is a QF and owns an adjacent 224 MW natural gas-fired electric power generation facility, both of which are located in North Las Vegas, Nevada.¹⁷

A. Black Hills Nevada, LLC

Black Hills Nevada, LLC (“BHN”), is an indirect wholly owned subsidiary of BHGeneration and a Delaware limited liability company. Through its direct and indirect subsidiaries, it holds an investment in a 53 MW natural gas-fired cogeneration facility that is a QF and owns an adjacent 224 MW natural gas-fired electric power generation facility, both of which are located in North Las Vegas, Nevada.¹⁸

(1) Black Hills Nevada Real Estate Holdings, LLC

Black Hills Nevada Real Estate Holdings, LLC, is an indirect wholly owned subsidiary of BHN and a Delaware limited liability company. It owns and leases the land on which Las Vegas Cogeneration Limited Partnership’s 53 MW natural gas-fired cogeneration facility, Las Vegas Cogeneration II, LLC’s 224 MW natural gas-fired electric power generation facility and Sunco Ltd., LLC’s greenhouse facility are all located.¹⁹

(2) Desert Arc I, LLC

Desert Arc I, LLC, is 50%-owned indirectly by BHGeneration and a Delaware limited liability company. It is an 85% general partner in Las Vegas Cogeneration Limited Partnership, a Nevada limited partnership, which owns a 53 MW natural gas-fired cogeneration QF located in North Las Vegas, Nevada.²⁰

(3) Desert Arc II, LLC

Desert Arc II, LLC, is 50%-owned by BHN, a subsidiary of BHGeneration, and is a Delaware limited liability company. Desert Arc II, LLC, is a 15%-limited partner in

¹⁷ See, e.g., New Centuries Energy, Inc., Holding Co. Act Release No. 27212 (allowing retention of interests in businesses holding gas-fired QFs).

¹⁸ See *supra* note 17.

¹⁹ See rule 58(b)(1)(viii). See also New Century Energies, Inc., Holding Co. Act Release No. 27212 (August 16, 2000) (permitting retention of business engaged in ownership of real property adjacent to generating facilities).

²⁰ See *supra* note 17.

Las Vegas Cogeneration, LP, a Nevada limited partnership, which owns a 53 MW natural gas-fired cogeneration QF located in North Las Vegas, Nevada.²¹

(a) Las Vegas Cogeneration Limited Partnership

Las Vegas Cogeneration Limited Partnership is a Nevada limited partnership. BHGeneration indirectly owns a 42.5% general partnership interest and a 7.5% limited partnership interest in this partnership. The partnership owns a 53 MW natural gas-fired cogeneration QF located in North Las Vegas, Nevada.²²

(4) Las Vegas Cogeneration II, LLC

Las Vegas Cogeneration II, LLC (“LVCII”), an indirect wholly owned subsidiary of BHGeneration, is a Delaware limited liability company. LVCII is an EWG that owns and operates a 224 MW natural gas-fired electric power generation facility in the North Las Vegas, Nevada.²³ LVCII is administered in Golden, Colorado. LVCII holds a 100% ownership interest in another EWG, Las Vegas Cogeneration Energy Financing, LLC, which owns certain facilities and equipment and which it leases to LVCII.

(a) Las Vegas Cogeneration Energy Financing Company, LLC

Las Vegas Cogeneration Energy Financing Company, LLC (“LVCEFC”), is an indirect wholly owned subsidiary of BHGeneration and a Delaware limited liability company. LVCEFC is an EWG that owns and leases certain equipment used at LVCII’s 224 MW natural gas-fired electric power generation facility in North Las Vegas, Nevada.²⁴

ii. Black Hills Nevada Operations, LLC

Black Hills Nevada Operations, LLC, is a direct wholly owned subsidiary of BHGeneration and a Delaware limited liability. The company operates the 53 MW natural gas-fired cogeneration facility owned by Las Vegas Cogeneration Limited Partnership and the 224 MW natural gas-fired electric power generation facility owned by Las Vegas Cogeneration II, LLC, both located in North Las Vegas, Nevada.²⁵

iii. Black Hills Ivanpah, LLC

²¹ See *supra* note 17.

²² See *supra* note 17.

²³ Las Vegas Cogeneration II, LLC, 99 FERC ¶62,182 (2002).

²⁴ Las Vegas Cogeneration Energy Financing Company, LLC, 99 FERC ¶62,148 (2002).

²⁵ See rule 58(b)(1)(vi) and (viii). See, e.g., Exelon Corporation, Holding Co. Act Release No. 27256 (October 19, 2000) (authorizing retention of subsidiary that leases equipment for cogeneration facilities and related activities).

Black Hills Ivanpah, LLC (“Black Hills Ivanpah”), is a direct wholly owned subsidiary of BHGeneration and a Delaware limited liability company headquartered in Golden, Colorado. Black Hills Ivanpah was established to hold BHGeneration’s 49.5% limited partnership interest in a 500 MW generating facility project under development (but not yet constructed or operational) in southern Nevada. Black Hills states that it anticipates that the project partnership will qualify as an EWG.

iv. Black Hills Ivanpah GP, LLC

Black Hills Ivanpah GP, LLC (“Black Hills Ivanpah GP”), is a direct wholly owned subsidiary of BHGeneration and a Delaware limited liability company headquartered in Golden, Colorado. Black Hills Ivanpah GP was established to hold BHGeneration’s 0.5% general partnership interest in a 500 MW generating facility project under development (but not yet constructed or operational) in southern Nevada. Black Hills states it anticipates that the project partnership will qualify as an EWG.

e. Investment Funds

i. EIF Investors, Inc.

EIF Investors, Inc., is a direct wholly owned subsidiary of BHGeneration and a Delaware corporation headquartered in Golden, Colorado. The corporation holds BHGeneration’s investments in Energy Investors Fund, LP, Energy Investors Fund II, LP, and Energy Investors Fund III, LP, which in turn hold investments in numerous electric generating facilities that are either QFs or are owned by EWGs in the U.S. and elsewhere.²⁶

f. Other Businesses Related to QFs and EWGs

i. Black Hills Idaho Operations, LLC

Black Hills Idaho Operations, LLC, is an indirect wholly owned subsidiary of BHGeneration and a Delaware limited liability company headquartered in Golden, Colorado. The company is engaged in the business of providing plant operating services to two natural gas-fired QFs located in the cities of Rupert and Glens Ferry, Idaho.²⁷

ii Sunco Ltd., LLC

Sunco Ltd., LLC (“Sunco”), is an indirect wholly owned subsidiary of BHGeneration and a Nevada limited liability company. Sunco owns and operates a 12-acre greenhouse facility used to grow organic tomatoes. The greenhouse facility serves

²⁶ See supra note 17.

²⁷ See, e.g., CP&L Energies, Inc., Holding Co. Act Release No. 27284 (November 27, 2000) (allowing retention of various businesses engaged in maintenance and repair services).

as the thermal host required by Las Vegas Cogeneration Limited Partnership to maintain its QF status. Las Vegas Cogeneration Limited Partnership supplies the greenhouse with thermal energy produced by the QF.²⁸

iii. West Cascade Energy, LLC

West Cascade Energy, LLC, a direct wholly owned subsidiary of BHGeneration, is a Delaware limited liability company. West Cascade Energy, LLC, is currently exploring the development of an EWG facility in Oregon.²⁹

3. Wyodak Resources Development Corporation

Wyodak Resources Development Corporation (“Wyodak”) is a direct wholly owned subsidiary of Black Hills Energy and a Delaware corporation headquartered in Rapid City, South Dakota. Its principal place of business is in Gillette, Wyoming. Wyodak owns and operates a surface coalmine in the Powder River Basin of Wyoming and produces and markets coal to several unrelated third parties. Wyodak also supplies coal to Black Hills Power. Wyodak makes approximately 60% of its coal sales to unaffiliated customers and the remainder to Black Hills Power.³⁰

The following direct and indirect subsidiaries of Wyodak are engaged in the businesses of generating and selling electricity, producing and marketing coal, oil and natural gas and other energy-related activities.

a. Black Hills Wyoming, Inc.

Black Hills Wyoming, Inc. (“Black Hills Wyoming”), is a direct wholly owned subsidiary of Wyodak and a Wyoming corporation headquartered in Rapid City, South Dakota. Black Hills Wyoming is an EWG and operates a 90 MW coal-fired electric generation facility located near Gillette, Wyoming, at the Wyodak coalmine (“Wygen Plant”).³¹ The company leases the facility from Wygen Funding, LLC, an unaffiliated Delaware limited partnership owned by the project financiers. Black Hills Wyoming also

²⁸ See rule 58(b)(1)(viii).

²⁹ See, e.g., New Century Energies, Inc., Holding Co. Act Release No. 27212 (August 16, 2002) (citing Interstate Energy Corporation, Holding Co. Act Release No. 27069 (August 26, 1999)). See also rule 58(b)(1)(v).

³⁰ See, e.g., E.ON AG, Holding Co. Act Release No. 27539 (June 14, 2002) (citing Vectren Corporation, Holding Co. Act Release No. 27150 (March 8, 2000)); New Century Energies, Inc., Holding Co. Act Release No. 27212 (August 16, 2002) (citing to Interstate Energy Corporation, Holding Co. Act Release No. 27069 (August 26, 1999)); Progress Energy, Inc., Holding Co. Act Release No. 27740 (October 21, 2003) (permitting retention of acquired coal mining subsidiaries).

³¹ Black Hills Generation, Inc., 95 FERC ¶62,025 (2001).

owns and operates a 40 MW combustion turbine (the Neil Simpson Complex CT #2) near Gillette, Wyoming.

b. Daksoft, Inc.

Daksoft, Inc. (“Daksoft”), is a direct wholly owned subsidiary of Wyodak and a South Dakota company headquartered in Rapid City, South Dakota. Historically, Daksoft was engaged in developing and marketing computer software, but it has exited that line of business and now is engaged primarily in providing information technology support to Black Hills and its subsidiaries. Black Hills states that, following formation of Black Hills’ services company, Black Hills Service, Inc. (“Black Hills Services”), Daksoft’s functions and personnel will be transferred to Black Hills Services, with the exception of a small number of personnel who will be employed by certain other Black Hills subsidiaries to provide internal information technology support to those subsidiaries. After the transfer of functions and employees, Daksoft will be merged or dissolved out of existence.

c. Enserco Energy Inc.

Enserco Energy Inc. (“Enserco”) is a direct wholly owned subsidiary of Wyodak and a South Dakota corporation. Enserco is headquartered in Golden, Colorado. Enserco is engaged in the business of marketing natural gas on a wholesale basis in the Mid-Continent, Rocky Mountain and Pacific Coast regions of the U.S. and in Canada.³²

4. Black Hills Energy Resources, Inc.

Black Hills Energy Resources, Inc. (“BHEnergy Resources”) is a wholly owned subsidiary of Black Hills Energy and a South Dakota corporation headquartered in Rapid City, South Dakota. BHEnergy Resources engages, directly and through its subsidiaries, in the marketing and transportation of oil in Texas.³³

³² See rule 58(b)(1)(v).

³³ American Electric Power, Inc., *et al.*, Holding Co. Act Release Nos. 27842 (April 30, 2004) and 26933 (November 2, 1998) and rule 58(b)(1)(v) and (ix). Black Hills states that the ownership and operation of oil pipelines and other oil transportation, storage and handling facilities is an integral part of the oil brokering and marketing business conducted by BHEnergy Resources and its subsidiaries, as these assets enable them to engage in financially advantageous trading strategies (such as asset-backed transactions) relying on these resources and minimizing the need for additional guarantees, counterparty assurances or firm contracts with other suppliers. As adopted, rule 58(b)(1)(v) encompasses brokering and marketing of energy commodities, including, but not limited to, combustible fuels such as oil. 62 Fed. Register 7900, 7906, note 62 (February 20, 1997). As Black Hills previously noted, the Commission has allowed the retention or acquisition of interests in gas pipelines, coalmines and other similar “energy-related” assets to facilitate gas and coal brokering and marketing businesses. See generally Progress Energy, Inc., Inc., Holding Co. Act Release Nos. 27740 (October 21,

a. Black Hills Energy Pipeline, LLC

Black Hills Energy Pipeline, LLC, is a direct wholly owned subsidiary of BHEnergy Resources and a Delaware limited liability company headquartered in Houston, Texas. The company is a 99% limited partner in Millennium Pipeline Company, LP, a Texas limited partnership that owns and operates an oil pipeline in the Gulf Coast region of Texas.³⁴

b. Black Hills Millennium Pipeline, Inc.

Black Hills Millennium Pipeline, Inc., a direct wholly owned subsidiary of BHEnergy Resources, is a South Dakota corporation headquartered in Houston, Texas. The company is a 1% general partner in Millennium Pipeline Company, LP, a Texas limited partnership that owns and operates an oil pipeline in the Gulf Coast Region of Texas.³⁵

i. Millennium Pipeline Company, LP

Millennium Pipeline Company, LP, an indirect subsidiary of BHEnergy Resources, is a Texas limited partnership that owns and operates an oil pipeline in the Gulf Coast region of Texas.³⁶

c. Black Hills Energy Terminal, LLC

Black Hills Energy Terminal, LLC, a direct wholly owned subsidiary of BHEnergy Resources, is a South Dakota limited liability company headquartered in Houston, Texas. The company is a 99% limited partner in Millennium Terminal

2003) and 27297 (December 12, 2000); Exelon Corporation, Holding Co. Act Release No. 27545 (June 27, 2002). Further, Black Hills notes that the Commission previously has allowed a combination electric- and gas-utility holding company to retain foreign oil transportation facilities. See generally Keyspan Corporation, Holding Co. Act Release No. 27271 (November 7, 2000).

³⁴ American Electric Power, Inc., et al., Holding Co. Act Release Nos. 27842 (April 30, 2004) and 26933 (November 2, 1998) and rule 58(b)(1) (v) and (ix). See also supra note 33.

³⁵ American Electric Power, Inc., et al., Holding Co. Act Release Nos. 27842 (April 30, 2004) and 26933 (November 2, 1998) and rule 58(b)(1) (v) and (ix). See also supra note 33.

³⁶ American Electric Power, Inc., et al., Holding Co. Act Release Nos. 27842 (April 30, 2004) and 26933 (November 2, 1998) and rule 58(b)(1) (v) and (ix). See also supra note 33.

Company, LP, a Texas limited partnership that owns and operates an oil terminal and storage facility.³⁷

d. Black Hills Millennium Terminal, Inc.

Black Hills Millennium Terminal, Inc., a direct wholly owned subsidiary of BHEnergy Resources, is a South Dakota corporation headquartered in Houston, Texas. The company is a 1% general partner in Millennium Terminal Company, LP, a Texas limited partnership that owns and operates an oil terminal and storage facility.³⁸

i. Millennium Terminal Company, LP

Millennium Terminal Company, LP, an indirect wholly owned subsidiary of BHEnergy Resources, is a Texas limited partnership that owns and operates an oil terminal and storage facility.³⁹

e. Black Hills Kilgore Energy Pipeline, LLC

Black Hills Kilgore Energy Pipeline, LLC (“BHKEP”), a direct wholly owned subsidiary of BHEnergy Resources, is a Delaware limited liability company. BHKEP is a 99% limited partner in Black Hills Kilgore Pipeline Company, LP, a Texas limited partnership that owns and operates an oil pipeline in the eastern and Gulf Coast regions of Texas.⁴⁰

f. Black Hills Kilgore Pipeline, Inc.

Black Hills Kilgore Pipeline, Inc. (“BHKP”), a direct wholly owned subsidiary of BHEnergy Resources, is a Delaware corporation. BHKP is a 1% general partner in

³⁷ American Electric Power, Inc., *et al.*, Holding Co. Act Release Nos. 27842 (April 30, 2004) and 26933 (November 2, 1998) and rule 58(b)(1) (v) and (ix). See also supra note 33

³⁸ American Electric Power, Inc., *et al.*, Holding Co. Act Release Nos. 27842 (April 30, 2004) and 26933 (November 2, 1998) and rule 58(b)(1) (v) and (ix). See also supra note 33.

³⁹ American Electric Power, Inc., *et al.*, Holding Co. Act Release Nos. 27842 (April 30, 2004) and 26933 (November 2, 1998) and rule 58(b)(1) (v) and (ix). See also supra note 33.

⁴⁰ American Electric Power, Inc., *et al.*, Holding Co. Act Release Nos. 27842 (April 30, 2004) and 26933 (November 2, 1998) and rule 58(b)(1) (v) and (ix). See also supra note 33.

BHKPC, a Texas limited partnership that owns and operates an oil pipeline in the eastern and Gulf Coast regions of Texas.⁴¹

i. Black Hills Kilgore Pipeline, LP

Black Hills Kilgore Pipeline Company, LP (“BHKPC”), an indirect wholly owned subsidiary of BHEnergy Resources, is a Texas limited partnership that owns and operates an oil pipeline in the Eastern and Gulf Coast regions of Texas.

g. Black Hills Operating Company, LLC

Black Hills Operating Company, LLC (“BHOC”), a direct wholly owned subsidiary of BHEnergy Resources, is a Delaware limited liability company headquartered in Houston, Texas. BHOC is an operating and management company for oil terminals and pipelines in the eastern and Gulf Coast regions of Texas.⁴²

C. Black Hills Fiber Systems, Inc.

Black Hills Fiber Systems, Inc. (“Black Hills Fiber”), a direct wholly owned subsidiary of Black Hills, is a South Dakota Corporation headquartered in Rapid City, South Dakota. Through its subsidiaries, Black Hills Fiber is engaged in telecommunications and related businesses that Black Hills anticipates will qualify as exempt telecommunications companies under section 34 of the Act (“ETCs”).

1. Black Hills FiberCom, LLC

Black Hills FiberCom, LLC (“Black Hills FiberCom”), a direct wholly owned subsidiary of Black Hills Fiber, is a South Dakota limited liability company, headquartered in Rapid City, South Dakota. Black Hills FiberCom is engaged in providing cable television, internet, broadband and other communications services in the Black Hills region of western South Dakota. Black Hills FiberCom anticipates it will qualify for ETC status.⁴³

2. BHFC Publishing, LLC

⁴¹ American Electric Power, Inc., *et al.*, Holding Co. Act Release Nos. 27842 (April 30, 2004) and 26933 (November 2, 1998) and rule 58(b)(1) (v) and (ix). See also supra note 33.

⁴² American Electric Power, Inc., *et al.*, Holding Co. Act Release Nos. 27842 (April 30, 2004) and 26933 (November 2, 1998) and rule 58(b)(1) (v) and (ix). See also supra note 33.

⁴³ See section 34 of the Act. Black Hills states that, on August 2, 2004, Black Hills FiberCom submitted an application to the Federal Communications Commission (“FCC”) requesting a determination of ETC status and Black Hills will notify the Commission of the FCC’s determination.

BHFC Publishing LLC (“BHFC Publishing”), a direct wholly owned subsidiary of Black Hills Fiber, is a Delaware limited liability company, headquartered in Rapid City, South Dakota. BHFC Publishing is engaged in the business of publishing a telephone directory for the Black Hills region of western South Dakota. BHFC Publishing anticipates it will qualify for ETC status.⁴⁴

3. Black Hills Publishing Montana, LLC

Black Hills Publishing Montana, LLC (“Black Hills Publishing Montana”), a direct wholly owned subsidiary of Black Hills Fiber, is a Delaware limited liability company, headquartered in Rapid City, South Dakota. Black Hills Publishing Montana is engaged in the business of publishing a telephone directory for the Billings, Montana region. Black Hills Publishing Montana anticipates it will qualify for ETC status.⁴⁵

D. Inactive Subsidiaries

Black Hills indirectly owns interests in a number of subsidiaries that remain in existence but no longer are active. These inactive subsidiaries are listed below.

<u>Subsidiary</u>	<u>Corporate Form/Place of Organization</u>	
Adirondack Hydro Development Corporation	corporation	Delaware
Acquisition Partners, LP	limited partnership	New York
NHP, LP	limited partnership	New York
VariFuel, LLC	limited liability company	South Dakota

⁴⁴ See section 34 of the Act. Black Hills states that, on August 2, 2004, BHFC Publishing LLC submitted an application to the FCC requesting a determination of ETC status and Black Hills will notify the Commission of the FCC’s determination.

⁴⁵ See section 34 of the Act. Black Hills states that, on August 2, 2004, Black Hills Publishing Montana submitted an application to the FCC requesting a determination of ETC status and Black Hills will notify the Commission of the FCC’s determination.

EXHIBIT MTT-2

CONFIDENTIAL

EXHIBIT MTT-3

CONFIDENTIAL