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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

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May 4, 1999

OF COUNSEL  
DAVID E. MORRILL

[e-mail: jknooney@mtnlaw.com]

VIA OVERNIGHT DELIVERY

William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Re: Black Hills Corporation  
Application to Approve Stock Option Plan

Dear Mr. Bullard:

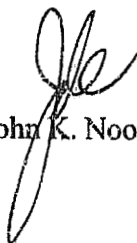
On behalf of Black Hills Corporation, I am submitting to you the original and six copies of an application for an order authorizing the issuance of stock options under Black Hills Corporation's 1999 stock option plan. These stock options are securities, so it is necessary that we obtain an order approving the plan.

Enclosed is a proposed Order.

This plan is expected to be approved by the shareholders of Black Hills on May 11, 1999.

I do not believe this to be controversial, but if any of the Staff has any questions with regard to this, be sure to call me. The Commission approved a similar plan in 1996.

Sincerely yours,



John K. Nooney

JKN:bjr  
Enclosures  
cc Roxann R. Basham w/enclosures

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED  
MAY 05 1999  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE )  
APPLICATION OF BLACK HILLS )  
CORPORATION FOR AN ORDER )  
AUTHORIZING THE ISSUANCE )  
OF STOCK OPTIONS UNDER )  
BLACK HILLS CORPORATION )  
1999 STOCK OPTION PLAN )

Docket No. EL \_\_\_\_\_

APPLICATION

Black Hills Corporation ("Black Hills"), which operates its electric utility business under the assumed name of Black Hills Power and Light Company, does hereby make application to the South Dakota Public Utilities Commission ("Commission") as follows:

1. Black Hills is a public utility as described as SDCL 49-34A and is engaged in the generation, transmission, distribution, purchase and sale of electric power and energy through an interconnected transmission network in a territory comprising 20 incorporated communities, various unincorporated communities and rural areas located in western South Dakota, eastern Wyoming and southeastern Montana.

2. Black Hills' gross operating revenues received from the sale of electric power and energy and transmission service derived from operations by states are approximately 76 percent in South Dakota, 6 percent in Wyoming, 1 percent in Montana, and 17 percent wholesale.

3. The name, title and address of the persons to whom notice and correspondence with regard to this Application shall be addressed are as follows:

Roxann R. Basham  
Vice President – Finance and Secretary/Treasurer  
Black Hills Corporation  
P. O. Box 1400  
Rapid City, SD 57709  
605-348-1700

The Commission is respectfully requested to send copies of all notices and communications to Black Hills' attorney as follows:

John K. Nooney, Esq.  
Morrill Thomas Nooney & Braun, LLP  
P. O. Box 8108  
Rapid City, SD 57709-8108  
605-348-7516

4. The Board of Directors of Black Hills adopted, subject to shareholder approval, the Black Hills Corporation 1999 Stock Option Plan (the "Plan"). A full copy of the Plan is attached as Attachment I. A similar plan was approved in 1996. The purpose of the Plan is to enable Black Hills to offer certain officers and other key employees of Black Hills and its subsidiaries options to acquire shares of Common Stock of Black Hills, thereby attracting, retaining and rewarding such employees and strengthening the mutuality of interests between such employees and Black Hills' shareholders. In addition, the Board of Directors believes that the Plan will provide the participants therein with an incentive for excellence in individual performance and will promote teamwork among the participants.

The Plan commences on May 11, 1999, subject to shareholder and Commission approval, and shall remain in effect, subject to the right of the Board of Directors to amend or terminate the Plan at any time, until all shares subject to it shall have been purchased or acquired, but in no event shall any awards be granted on or after May 11, 2009.

The Board of Directors has reserved an aggregate of 700,000 shares ("Shares") of the Company's authorized but unissued Common Stock for issuance under the Plan. Shares issued under the Plan may be authorized but unissued shares, treasury shares, shares acquired on the open market specifically for distribution under this Plan, or any combination thereof. All of the Shares may, but need not, be issued pursuant to the exercise of "Incentive Stock Options" within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"). If there is a lapse, expiration, termination or cancellation of any option prior to the issuance of Shares thereunder, those Shares may again be used for new awards under the Plan.

The Plan provides for administration by a committee (the "Committee"), to be comprised of either the Compensation Committee of the Board or another committee designated by the Board. Initially, the Company's Compensation Committee, composed of all outside (nonemployee) Directors, will administer the Plan. Among the Committee's powers are the authority to interpret the Plan, establish rules and regulations for its operation, select officers and other key employees of the Company and its subsidiaries to receive awards, and consistent with the Plan determine the form, amount and other terms and conditions of each of the awards. The Committee also has the power to make adjustments in the terms and conditions of any of the awards in recognition of unusual or nonrecurring events whenever the Committee determines that such adjustments are appropriate in order to prevent dilution or enlargement of the benefits or potential intended to be made available under the Plan.

Officers and other full-time employees of the Company or any of its subsidiaries, including

subidiaries of subsidiaries, are eligible to participate in the Plan. The selection of participants from eligible employees is within the discretion of the Committee. Members of the Board of Directors who are not employees of the Company and part-time employees of the Company are not eligible to participate under the Plan.

Under the Plan, the Committee is authorized to award two types of options, (i) Incentive Stock Options ("ISO") and (ii) Nonqualified Stock Options ("NQSO"). The difference in these two types of options is explained in the following paragraph. The Option Price for every award issued for either an ISO or an NQSO shall be equal to 100 percent of the Fair Market Value (the closing price on the New York Stock Exchange) on the date the award is made, or the Committee may set a higher Option Price. No repricing of options is allowed under the Plan. Each such option shall expire at the time the Committee shall determine but in no event shall be exercisable later than the tenth anniversary date of its grant. Payment to exercise for any of said options shall be in cash, by cashless exercise, or, if permitted by the award, by tendering previously acquired shares having an aggregate Fair Market Value at the time of exercise to total the Option Price and which shares have been held by the participant for at least six months, or a combination of the foregoing. The Plan does not authorize the Company to make employees loans with which to exercise options.

Under current law, the following are the United States federal income tax consequences generally arising with respect to awards under the Plan. A participant who is granted an ISO within the meaning of Section 422 of the Code does not recognize any taxable income at the time of the grant or at the time of exercise. Similarly, the Company is not entitled to any deduction at the time of grant

or at the time of exercise. If the participant makes no disposition of the Shares acquired pursuant to an ISO before the later of two years from the date of grant and one year from the date of exercise, any gain or loss realized on a subsequent disposition of the Shares shall be treated as a long-term capital gain or loss. Under such circumstances, the Company will not be entitled to any deduction for federal income tax purposes.

A participant who is granted an NQSO will not have taxable income at the time of the grant but will have taxable income at the time of exercise equal to the difference between the exercised price of the Shares and the market value of the shares on the date of exercise. The Company will be entitled to a tax deduction at that time for the same amount.

5. Since the issuance of an option to purchase shares of the Common Stock of Black Hills is a security, the Plan is subject to the approval of this Commission and the Wyoming Public Service Commission.

6. The shareholders of Black Hills have been asked to approve the Plan at its annual meeting to be held on May 11, 1999.

7. Black Hills respectfully requests the Commission to authorize Black Hills to issue said options as it determines from time to time subject to all conditions of the Plan effective May 11, 1999.

8. Attached hereto as Addendum 2 is a pro forma capital structure of the Company as if the entire 700,000 shares of Common Stock were issued under the Plan. Because of the nature of stock options, the shares will be issued over a long period of time; and by the time all shares are issued, the capital structure of the Company could materially change. Black Hills does not believe that



even if the entire 700,000 shares subject to the Plan are issued, such issuance will have a material effect upon its capital structure.

9. The Plan and the issuance of stock options under the Plan will be passed upon as to legality on behalf of Black Hills by John K. Nooney, Esq., Morrill Thomas Nooney & Braun, LLP, 625 Ninth Street, 8th Floor, P. O. Box 8108, Rapid City, SD 57709.

10. No approval of any federal or state governmental commission for issuance of the securities proposed to be issued by Black Hills is required except the approval of this Commission and the Public Service Commission of Wyoming. An application is being filed with each of said commissions.

11. The proposed issuance of stock options under the Plan will be within Black Hills' corporate purpose and compatible with the public interest; the object is necessary, appropriate and consistent with the performance by Black Hills of services of a public utility and will not impair its ability to perform that service and is reasonably necessary and appropriate for such purpose.

WHEREFORE, Black Hills respectfully requests the Commission to enter its Order herein approving and authorizing Black Hills, commencing with the effective date of the Plan, May 11, 1999, to issue from time to time stock options which are consistent with and under the Plan and upon the exercise of the options to issue the shares of Common Stock for which the options are exercised.

Dated May 4, 1999.

BLACK HILLS CORPORATION

By Roxann R. Basham  
Roxann R. Basham  
Vice President - Finance  
and Secretary/Treasurer

STATE OF SOUTH DAKOTA     )  
  )  
COUNTY OF PENNINGTON     )

Roxann R. Basham, being first duly sworn on her oath, deposes and says: That she is the Vice President - Finance and Secretary/Treasurer of Black Hills Corporation, named in the within and foregoing Application; that she has read the same and knows the contents thereof to be true of her own knowledge except as to those matters therein stated on information and belief, and as to such matters, she believes it to be true.

Roxann R. Basham  
Roxann R. Basham

Subscribed and sworn to before me this 4th day of May, 1999.

Jana Henderson  
Notary Public

(SEAL)

**BLACK HILLS CORPORATION 1999  
STOCK OPTION PLAN**

**ARTICLE 1. Establishment, Objectives, Duration**

**1.1 Establishment of Plan.** Black Hills Corporation (hereinafter referred to as the "Company"), hereby establishes an incentive compensation plan to be known as the "Black Hills Corporation 1999 Stock Option Plan" (hereinafter referred to as the "Plan"), as set forth in this document. The Plan permits the grant of Nonqualified Stock Options and Incentive Stock Options.

Subject to approval by the Company's shareholders, the Plan shall become effective as of May 11, 1999 (the "Effective Date") and shall remain in effect as provided in Section 1.3 hereof.

**1.2 Objectives of the Plan.** The objectives of the Plan are to optimize the profitability and growth of the Company through incentives which are consistent with the Company's objectives and which link the interests of Participants to those of the Company's shareholders; to provide Participants with an incentive for excellence in individual performance; and to promote teamwork among Participants.

The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of Participants who make significant contributions to the Company's success and to allow Participants to share in the success of the Company.

**1.3 Duration of the Plan.** The Plan shall commence on the Effective Date, as described in Section 1.1 hereof, and shall remain in effect, subject to the right of the Board of Directors to amend or terminate the Plan at any time pursuant to Article 11 hereof, until all Shares subject to it shall have been purchased or acquired according the Plan's provisions. However, in no event may an Award be granted under the Plan on or after May 11, 2009.

**ARTICLE 2. Definitions**

Whenever used in the Plan, the following terms shall have the meanings set forth below, and when the meaning is intended, the initial letter of the word shall be capitalized:

**2.1 "Award"** means, individually or collectively, a grant under this Plan of Nonqualified Stock Options or Incentive Stock Options.

**2.2 "Award Agreement"** means an agreement entered into by the Company and each Participant setting forth the terms and provisions applicable to Awards granted under this Plan.

**2.3** "Beneficial Owner" or "Beneficial Ownership" shall have the meaning ascribed to such term in Rule 13d-3 of the General Rules and Regulations under the Exchange Act.

**2.4** "Board" or "Board of Directors" means the Board of Directors of the Company.

**2.5** "Change in Control" of the Company shall be deemed to have occurred (as of a particular day, as specified by the Board) upon the occurrence of any event described in this Section 2.5 as constituting a Change in Control.

- (a) An acquisition (other than directly from the Company) of any Shares of the Company by any person immediately after which such Person has Beneficial Ownership of thirty percent (30%) or more of the Shares of the Company, provided, however, in determining whether a Change in Control has occurred, Shares which are acquired in a "Non-Control Acquisition" (as hereinafter defined) shall not constitute an acquisition which would cause a Change in Control. A "Non-Control Acquisition" shall mean an acquisition by (i) an employee benefit plan (or a trust forming a part thereof) maintained by (A) the Company; or (B) a Subsidiary; (ii) the Company or its Subsidiaries; or (iii) any Person in connection with a "Non-Control Transaction" (as hereinafter defined);
- (b) The individuals who, as of the Effective Date hereof, are members of the Board (the "Incumbent Board") cease for any reason to constitute at least two-thirds (2/3) of the members of the Board; provided, however, that if the election, or nomination for election by the Company's common shareholders, of any new director was approved by a vote of at least two-thirds (2/3) of the Incumbent Board, such new director shall, for purposes of this Plan, be considered as a member of the Incumbent Board; provided further, however, that no individual shall be considered a member of the Incumbent Board if such individual initially assumed office as a result of either an actual or threatened Election Contest" (as described in Rule 14e-11 promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board (a "Proxy Contest") including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest; or
- (c) Approval by shareholders of the Company of:
  - (i) A merger, consolidation, or reorganization involving the Company, unless such merger, consolidation, or reorganization is a "Non-Control Transaction." A "Non-Control Transaction" shall mean a merger, consolidation, or reorganization of the Company where:

- (A) the shareholders of the Company, immediately before such merger, consolidation, or reorganization, own directly or indirectly, immediately following such merger, consolidation, or reorganization, at least seventy percent (70%) of the combined voting power of the outstanding Voting Securities of the corporation resulting from such merger or consolidation or reorganization (the "Surviving Corporation") in substantially the same proportion as their ownership of the Voting Securities immediately before such merger, consolidation, or reorganization;
  - (B) the individuals who were members of the Incumbent Board immediately prior to the execution of the agreement providing for such merger, consolidation, or reorganization constitute at least two-thirds (2/3) of the members of the board of directors of the Surviving Corporation, or a corporation beneficially directly or indirectly owning a majority of the Voting Securities of the Surviving Corporation; and
  - (C) no Person other than (i) the Company; (ii) any Subsidiary; (iii) any employee benefit plan (or any trust forming a part thereof) maintained by the Company, the Surviving Corporation, or any Subsidiary; or (iv) any Person who, immediately prior to such merger, consolidation, or reorganization had Beneficial Ownership of thirty percent (30%) or more of the then outstanding Voting Securities), has Beneficial Ownership of thirty percent (30%) or more of the combined voting power of the Surviving Corporation's then outstanding Voting Securities.
- (ii) A complete liquidation or dissolution of the Company; or
  - (iii) An agreement for the sale or other disposition of all or substantially all of the assets of the Company to any Person other than (x) a transfer to a Subsidiary; or (y) a sale or transfer of a Subsidiary by the Company except if such sale or transfer would be a sale or other disposition of all or substantially all of the assets of the Company.

(d) Notwithstanding the foregoing, (i) a Change in Control shall not be deemed to occur solely because any Person (the "Subject Person") acquired Beneficial Ownership of more than the permitted amount of the then outstanding Common Stock as a result of the acquisition of Shares by the Company which, by reducing the number of Shares then outstanding, increases the proportional number of shares beneficially owned by the Subject Persons, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of Shares by the Company, and after such stock acquisition by the Company, the Subject Person becomes the Beneficial Owner of any additional Shares which increases the percentage of the then outstanding Shares beneficially owned by the Subject Person, then a Change in Control shall occur; and (ii) a Change in Control shall not be deemed to occur unless

and until all regulatory approvals required to effect a Change in Control of the Company have been obtained.

2.6 "Code" means the Internal Revenue Code of 1986, as amended from time to time.

2.7 "Committee" means the Compensation Committee of the Board, as specified in Article 3 herein, or such other Committee appointed by the Board to administer the Plan with respect to grants of Awards.

2.8 "Company" means Black Hills Corporation, together with any and all Subsidiaries, and any successor thereto as provided in Article 14 herein.

2.9 "Director" means any individual who is a member of the Board of Directors of the Company.

2.10 "Disability" shall have the meaning ascribed to such term in the Participant's governing long-term disability plan.

2.11 "Effective Date" shall have the meaning ascribed to such term in Section 1.1 hereof.

2.12 "Employee" means any full-time, active employee of the Company. Directors who are not employed by the Company shall not be considered Employees under this Plan.

2.13 "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, or any successor act thereto.

2.14 "Fair Market Value" shall be determined on the basis of the closing sale price on the principal securities exchange on which the Shares are traded or, if there is no such sale on the relevant date, then on the last previous day on which a sale was reported.

2.15 "Incentive Stock Option" or "ISO" means an option to purchase Shares granted under Article 6 herein and which is designated as an Incentive Stock Option and which is intended to meet the requirements of Code Section 422.

2.16 "Insider" shall mean an individual who is, on the relevant date, an officer, director or ten percent (10%) beneficial owner of any class of the Company's equity securities that is registered to Section 12 of the Exchange Act, all as defined under Section 16 of the Exchange Act.

2.17 "Nonemployee Director" means an individual who is a member of the Board of Directors of the Company but who is not an Employee of the Company.

2.18 "Nonqualified Stock Option" or "NQSO" means an option to purchase Shares granted under Article 6 herein and which is not intended to meet the requirements of Code Section 422.

2.19 "Option" means an Incentive Stock Option or a Nonqualified Stock Option, as described in Article 6 herein.

2.20 "Option Price" means the price at which a Share may be purchased by a Participant pursuant to an Option.

2.21 "Participant" means an Employee who has outstanding an Award granted under the Plan. The term "Participant" shall not include Nonemployee Directors.

2.22 "Person" shall have the meaning ascribed to such term in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, including a "group" as defined in Section 13(d) thereof.

2.23 "Retirement" shall have the meaning ascribed to such term in the Company's tax-qualified defined benefit retirement plan.

2.24 "Shares" means the shares of Common Stock of the Company.

2.25 "Subsidiary" means any corporation or other Person of which a majority of its voting power or its voting equity securities ("Voting Securities") or equity interest is owned, directly or indirectly, by the Company.

### Article 3. Administration

3.1 **The Committee.** The Plan shall be administered by the Compensation Committee of the Board, or by any other Committee appointed by the Board, which Committee shall satisfy the "disinterested administration" rules of Rule 16b-3 under the Exchange Act, or any successor provision. The members of the Committee shall be appointed from time to time by, and shall serve at the discretion of, the Board of Directors.

3.2 **Authority of the Committee.** Subject to the provisions herein, the Committee shall have full power to select Employees who shall participate in the Plan; determine the sizes and types of Awards; determine the terms and conditions of Awards in a manner consistent with the Plan; construe and interpret the Plan and any agreement or instrument entered into under the Plan as they apply to Employees; establish, amend, or waive rules and regulations for the Plan's administration as they apply to Employees; and (subject to the provisions of Article 11 herein) amend the terms and conditions of any outstanding Award to the extent such terms and conditions are within the discretion of the Committee as provided in the Plan. Further, the Committee shall make all other determinations which may be necessary or advisable for the administration of the Plan, as the Plan applies to Employees. As permitted by law, the Committee may delegate its authority as identified herein.

**3.3 Decisions Binding.** All determinations and decisions made by the Committee pursuant to the provisions of the Plan and all related orders and resolutions of the Board shall be final, conclusive and binding on all persons, including the Company, its shareholders, Employees, Participants, and their estates and beneficiaries.

#### **Article 4. Shares Subject to the Plan**

**4.1 Number of Shares Available for Grants.** Subject to adjustment as provided in Section 4.3 herein, the number of Shares which may be issued on exercise of Options shall be 700,000. Such Shares may be authorized but unissued Shares, treasury Shares, Shares acquired on the open market specifically for distribution under this Plan, or any combination thereof, as the Committee may from time to time determine.

**4.2 Lapsed Awards.** If any Award granted under this Plan is canceled, terminates, expires, or lapses for any reason any Shares subject to such Award again shall be available for the grant of an Award under the Plan.

**4.3 Adjustments in Authorized Shares.** In the event of any change in corporate capitalization, such as a stock split, or a corporate transaction, such as any merger, consolidation, separation, including a spin-off, or other distribution of stock or property of the Company, any reorganization (whether or not such reorganization comes within the definition of such term in Code Section 368) or any partial or complete liquidation of the Company, such adjustment shall be made in the number and class of Shares which may be delivered under Section 4.1, in the number and class of and/or price of Shares subject to outstanding Awards granted under the Plan, as may be determined to be appropriate and equitable by the Committee, in its sole discretion, to prevent dilution or enlargement of rights; provided, however, that the number of Shares subject to any Award shall always be a whole number.

#### **Article 5. Eligibility and Participation**

**5.1 Eligibility.** Persons eligible to participate in this Plan include all Employees of the Company, including Employees who are members of the Board.

**5.2 Actual Participation.** Subject to the provisions of the Plan, the Committee may, from time to time, select from all eligible Employees, those to whom Awards shall be granted and shall determine the nature and amount of each Award.

#### **Article 6. Stock Options**

**6.1 Grant of Options.** Subject to the terms and provisions of the Plan, Options may be granted to Participants in such number, and upon such terms, and at any time and from time to time as shall be determined by the Committee.



**6.2 Award Agreement.** Each Option grant shall be evidenced by an Award Agreement that shall specify the Option Price, the duration of the Option, the number of Shares to which the Option pertains, and such other provisions as the Committee shall determine. The Award Agreement also shall specify whether the Option is intended to be an ISO within the meaning of Code Section 422, or an NQSO whose grant is intended not to fall under the provisions of Code Section 422.

**6.3 Option Price.** The Option Price for each grant of an Option under this Plan shall be at least equal to one hundred percent (100%) of the Fair Market Value of a Share on the date the Option is granted or a higher amount. No repricing of Options by any method shall be allowed, including, without limitation, cancellation and reissuance.

**6.4 Duration of Options.** Each Option granted to an Employee shall expire at such time as the Committee shall determine at the time of the grant; provided, however, that no Option shall be exercisable later than the tenth (10<sup>th</sup>) anniversary date of its grant.

**6.5 Exercise of Options.** Options granted under this Article 6 shall be exercisable at such times and be subject to such restrictions and conditions as the Committee shall in each instance approve, which need not be the same for each grant or for each Participant.

**6.6 Payment.** Options granted under this Article 6 shall be exercised by the delivery of a written notice of exercise to the Company, setting forth the number of Shares with respect to which the Option is to be exercised, accompanied by full payment for the Shares.

The Option Price upon exercise of any Option shall be payable to the Company in full either (a) in cash or its equivalent; (b) if permitted in the governing Award Agreement, by tendering previously acquired Shares having an aggregate Fair Market Value at the time of exercise equal to the total Option Price (provided that the Shares which are tendered must have been held by the Participant for at least six (6) months prior to their tender to satisfy the Option Price); or (c) if permitted in the governing Award Agreement, by a combination of (a) and (b).

In addition, if permitted in the Award Agreement, the Participant may also be permitted to exercise Options pursuant to a "cashless exercise" procedure as permitted under the Federal Reserve Board's Regulation T, subject to securities law restrictions. In the event the Participant exercises pursuant to a "cashless exercise" procedure, any net gain on the "cashless exercise," after appropriate tax withholdings, shall be distributed to the Participant in the form of Shares.

As soon as practicable after receipt of a written notification of exercise and full payment, the Company shall deliver to the Participant, in the Participant's name, Share certificates in an appropriate amount based upon the number of Shares purchased under the Option(s). If either the purchase price or the Shares of Common Stock upon exercise of any Option or the tax withholding requirement is satisfied by tendering or withholding of Shares of Common Stock,

only the number of Shares of Common Stock to be issued net of the Shares of Common Stock tendered or withheld shall be delivered.

**6.7 Restrictions on Share Transferability.** The Committee may impose such restrictions on any Shares acquired pursuant to the exercise of an Option granted under this Article 6 as it may deem advisable, including, without limitation, restrictions under applicable Federal securities laws, under the requirements of any stock exchange or market upon which such Shares are then listed and/or traded, and under any blue sky or state securities laws applicable to such Shares.

**6.8 Termination of Employment.** Each Participant's Option Award Agreement shall set forth the extent to which the Participant shall have the right to exercise the Option following termination of the Participant's employment with the Company. Such provisions shall be determined in the sole discretion of the Committee, shall be included in the Award Agreement entered into with each Participant, need not be uniform among all Options issued pursuant to this Article 6, and may reflect distinctions based on the reasons for termination of employment.

**6.9 Nontransferability of Options.**

(a) **Incentive Stock Options.** No ISO granted under the Plan may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution. Further, all ISOs granted to a Participant under the Plan shall be exercisable during his or her lifetime only by such Participant.

(b) **Nonqualified Stock Options.** Except as otherwise provided in a Participant's Award Agreement, no NQSO granted under this Article 6 may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution. Further, except as otherwise provided in a Participant's Award Agreement, all NQSOs granted to a Participant under this Article 6 shall be exercisable during his or her lifetime only by such Participant.

#### **Article 7. Beneficiary Designation**

Each Participant under the Plan may, from time to time, name any beneficiary or beneficiaries (who may be named contingently or successively) to whom any benefit under the Plan is to be paid in case of his or her death before he or she received any or all of such benefit. Each such designation shall revoke all prior designations by the same Participant, shall be in a form prescribed by the Company, and will be effective only when filed by the Participant in writing with the Company during the Participant's lifetime. In the absence of any such designation, benefits remaining unpaid at the Participant's death shall be paid to the Participant's estate.

**Article 8. Deferrals**

The Committee may permit or require a Participant to defer such Participant's receipt of the payment of cash or the delivery of Shares that would otherwise be due to such Participant by virtue of the exercise of an Option. If any such deferral election is required or permitted, the Committee shall, in its sole discretion, establish rules and procedures for such payment deferrals.

**Article 9. Rights of Employees**

**9.1 Employment.** Nothing in the Plan shall interfere with or limit in any way the right of the Company to terminate any Participant's employment at any time, nor confer upon any Participant any right to continue in the employ of the Company.

**9.2 Participation.** No Employee shall have the right to be selected to receive an Award under this Plan, or, having been so selected, to be selected to receive a future Award.

**Article 10. Change in Control**

**10.1 Treatment of Outstanding Awards.** Upon the occurrence of a Change in Control, unless otherwise specifically prohibited under applicable laws, or by the rules and regulations of any governing governmental agencies or national securities exchanges, any and all Options granted hereunder shall become immediately exercisable, and shall remain exercisable throughout their entire term.

**10.2 Termination, Amendment, and Modifications of Change-in-Control Provisions.** Notwithstanding any other provision of this Plan or any Award Agreement provision, the provisions of this Article 10 may not be terminated, amended, or modified on or after the date of a Change in Control to affect adversely any Award theretofore granted under the Plan without the prior written consent of the Participant with respect to said Participant's outstanding Awards.

**Article 11. Amendment, Modification, and Termination**

**11.1 Amendment, Modification, and Termination.** Subject to Section 10.2 herein, the Board may at any time and from time to time, alter, amend, suspend or terminate the Plan in whole or in part; provided, however, that no amendment which requires shareholder approval in order for the Plan to continue to comply with Rule 16b-3 under the Exchange Act, including any successor to such Rule, shall be effective unless such amendment shall be approved by the requisite vote of shareholders of the Company entitled to vote thereon.

The Committee shall not have the authority to cancel outstanding Awards and issue substitute Awards in replacement thereof.

**11.2 Adjustment of Awards Upon the Occurrence of Certain Unusual or Nonrecurring Events.** The Committee may make adjustments in the terms and conditions of, and the criteria included in, Awards in recognition of unusual or nonrecurring events (including, without limitation the events described in Section 4.3 hereof) affecting the Company or the financial statements of the Company or of changes in applicable laws, regulations, or accounting principles, whenever the Committee determines that such adjustments are appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan.

**11.3 Awards Previously Granted.** No termination, amendment, or modification of the Plan shall adversely affect in any material way any Award previously granted under the Plan, without the written consent of the Participant holding such Award.

## **Article 12. Withholding**

**12.1 Tax Withholding.** The Company shall have the power and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy Federal, state and local taxes, domestic or foreign, required by law or regulation to be withheld with respect to any taxable event arising as a result of this Plan.

**12.2 Share Withholding.** With respect to withholding required upon the exercise of Options, Participants may elect, subject to the approval of the Committee, to satisfy the withholding requirement, in whole or in part, by having the Company withhold Shares having a Fair Market Value on the date the tax is to be determined equal to the minimum statutory total tax which could be withheld on the transaction. All such elections shall be irrevocable, made in writing, signed by the Participant, and shall be subject to any restrictions or limitations that the Committee, in its sole discretion, deems appropriate.

## **Article 13. Indemnification**

Each person who is or shall have been a member of the Committee, or of the Board, shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such action, suit, or proceeding against him or her provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Articles of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

#### **Article 14. Successors**

All obligations of the Company under the Plan with respect to Awards granted hereunder shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, of all or substantially all of the business and/or assets of the Company, or a merger, consolidation, or otherwise.

#### **Article 15. Miscellaneous Provisions**

**15.1 Gender and Number.** Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine; the plural shall include the singular and the singular shall include the plural.

**15.2 Severability.** In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

**15.3 Requirements of Law.** The granting of Awards and the issuance of Shares under the Plan shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

**15.4 Securities Law Compliance.** With respect to Insiders, transactions under this Plan are intended to comply with all applicable conditions of Rule 16b-3 or its successors under the Exchange Act. To the extent any provision of the plan or action by the Committee fails to so comply, it shall be deemed null and void, to the extent permitted by law and deemed advisable by the Committee.

**15.5 Governing Law.** To the extent not preempted by Federal law, the Plan, and all agreements hereunder, shall be construed in accordance with and governed by the laws of the state of South Dakota.

**15.6 Unfunded Status of the Plan.** The Plan is intended to constitute an "unfunded" Plan. With respect to any payments or deliveries of Shares not yet made to a Participant by the Company, nothing contained herein shall give any rights that are greater than those of a general creditor of the Company.

**15.7 Purchase for Investment.** The Committee may require each Participant purchasing or receiving Shares pursuant to an Option to represent to and agree with the Company in writing that such person is acquiring the Shares for investment and without a view to distribution or resale.

Black Hills Corporation  
Parent Company Only  
Pro Forma Capital Structure  
As of December 31, 1998

	December 31 1998	Adjustment for Stock Options Granted and Unexercised (1)	Adjustment for 1999 Stock Option Plan (2)	Pro Forma December 31 1998
	(in thousands)			
<b>Common stock equity:</b>				
Common stock	\$ 21,719	\$ 293	\$ 700	\$ 22,712
Additional paid-in capital	40,254	5,646	15,094	60,994
Retained earnings	87,086			87,086
	<u>149,059</u>	<u>5,939</u>	<u>15,794</u>	<u>170,792</u>
Long-term debt	163,360			163,360
	<u>312,419</u>	<u>5,939</u>	<u>15,794</u>	<u>334,152</u>
<b>Total capitalization</b>	<b>\$ 312,419</b>	<b>\$ 5,939</b>	<b>\$ 15,794</b>	<b>\$ 334,152</b>
<b>Capital ratios:</b>				
Common stock equity	48%			51%
Long-term debt	52%			49%

- (1) Assumes the issuance of the stock options granted under the 1996 stock option plan that have not been issued to date.
- (2) Assumes the issuance of 700,000 shares of Common Stock under the 1999 Stock Option Plan at \$22.5625 per share (the closing price of Black Hills Corporation's Common Stock on April 28, 1999). Assumes no shares are issued through open market purchases.

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

IN THE MATTER OF THE )  
APPLICATION OF BLACK HILLS )  
CORPORATION FOR AN ORDER )  
AUTHORIZING THE ISSUANCE )  
OF STOCK OPTIONS UNDER )  
BLACK HILLS CORPORATION )  
1999 STOCK OPTION PLAN )

Docket No. EL \_\_\_\_\_

ORDER APPROVING STOCK OPTION PLAN

On \_\_\_\_\_, 1999, the Public Utilities Commission (Commission) received an Application from Black Hills Corporation (BHC), which operates its electric utility under the assumed name of Black Hills Power and Light Company, requesting the approval of Black Hills Corporation's 1999 Stock Option Plan (Plan) providing for the granting of options to acquire up to 700,000 shares of the Company's authorized but unissued Common Stock.

BHC stated that the purpose of the Plan is to enable BHC to offer certain officers and other key employees of BHC and its subsidiaries options to acquire shares of Common Stock of BHC, thereby attracting, retaining and rewarding such employees and strengthening the mutuality of interests between such employees and BHC's shareholders. In addition, BHC stated that the Plan will provide the participants therein with an incentive for excellence in individual performance and will promote teamwork among the participants.

BHC requests that the Plan have an effective date of May 11, 1999, the date the Plan is scheduled to be approved by the shareholders of Black Hills, and that the Plan remain in effect, subject to the right of the Board of Directors of BHC to amend or terminate the Plan at any time

and until all shares subject to it shall have been purchased or acquired, but in no event shall any awards be granted on or after May 11, 2009.

At its regularly scheduled meeting, the Commission considered BHC's Application. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-34A, specifically 49-34A-29 to 49-34A-34, inclusive. Pursuant to SDCL 49-34A-32, the Commission finds the following: the Plan, together with any awards of options and Common Stock issued pursuant to the exercise thereof, is for a lawful object; it is within the corporate purpose of BHC and compatible with the public interest; it is necessary or appropriate for or consistent with the proper performance by BHC of service as a public utility and will not impair its ability to perform that service; and is reasonably and necessarily appropriate for such purposes. It is therefore

**ORDERED** that the Plan, a copy of which is attached as Addendum 1 to BHC's Application, authorizing BHC through a committee to be appointed by the Board of Directors of BHC to grant awards of options to certain officers and other key employees of BHC and its subsidiaries as determined by the Committee from time to time in its discretion, to purchase up to 700,000 of the authorized but unissued shares of Common Stock of BHC be and the same is hereby approved with an effective date of May 11, 1999; and it is

**FURTHER ORDERED** that neither the issuance of securities by BHC pursuant to the provisions of this Order nor any other act or deed done or performed in connection therewith shall be construed to obligate the State of South Dakota to guarantee the payment in any manner whatsoever of any security authorized, issued, assumed or guaranteed thereunder; and it is



FURTHER ORDERED that the issuance of this Order by the Commission authorizing the hereinabove-described securities transactions is a securities authorization only and does not constitute the Commission's determination of any utility ratemaking issues whatsoever, which issues are expressly reserved for decision until they are presented to the Commission in appropriate proceedings; and it is

FURTHER ORDERED that the issuance of securities by BHC pursuant to this Order is not construed to mean that the Commission is in any way prohibited at some future date from finding BHC's capital structure in need of adjustment.

Dated at Pierre, South Dakota, this \_\_\_\_ day of \_\_\_\_\_, 1999.

BY ORDER OF THE COMMISSION

**South Dakota Public Utilities Commission**  
**WEEKLY FILINGS**  
For the Period of April 29, 1999 through May 5, 1999

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact  
Delaine Kolbo within five business days of this filing.  
Phone: 605-773-3705 Fax: 605-773-3809

**CONSUMER COMPLAINT**

**CT99-004** In the Matter of the Complaint filed by James Frankenstein, Redfield, South Dakota, against U S WEST Communications, Inc. Regarding Poor Service and Request to have Lines Updated.

The Complainant states that they have had poor service for several years. The Complainant requests that U S WEST fix the service and upgrade their system so that they may connect to the internet and use Caller ID. The Complainant states: "We feel we should have access to these services like everyone else."

Staff Analyst: Leni Healy  
Staff Attorney: Camron Hoseck  
Date Filed: 04/22/99  
Intervention Deadline: N/A

**ELECTRIC**

**EL99-000** In the Matter of the Application of Black Hills Corporation for an Order Authorizing the Issuance of Stock Options under Black Hills Corporation 1999 Stock Option Plan.

On May 5, 1999, the Commission received an application from Black Hills Corporation, which operates its electric utility under the assumed name of Black Hills Power and Light Company, requesting the approval of Black Hills Corporation's 1999 Stock Option Plan providing for the granting of options to acquire up to 700,000 shares of the Company's authorized but unissued Common Stock.

Staff Analyst: Bob Knadle  
Staff Attorney: Karen Cremer  
Date Filed: 05/05/99  
Intervention Deadline: 05/21/99

**EL99-007** in the Matter of the Filing by Black Hills Power and Light Company for Approval of its 1998 Economic Development Plan Annual Report and 1999 Economic Development Plan.

On May 5, 1999, the Commission received a filing from Black Hills Power and Light Company of: (1) a report of its 1998 economic development activity as required by SD Public Utilities Commission docket EL95-003; and (2) setting forth its 1999 economic development plan in accordance with the same docket.

Staff analyst: Michele Farris  
Staff Attorney: Camron Hoseck  
Date filed: 05/05/99  
Intervention Deadline: 05/21/99

## TELECOMMUNICATIONS

**TC99-050 In the Matter of the Establishment of Switched Access Revenue Requirement for Vivian Telephone Company d.b.a Golden West Communications, Inc.**

Vivian Telephone Company filed a switched access cost study developing a revenue requirement that is included in the revenue requirement used to determine the switched access rates for the Local Exchange Carrier Association.

Staff Analyst: Harlan Best/Keith Senger  
Staff Attorney: Karen Cremer  
Date Filed: 04/29/99  
Intervention Deadline: 05/21/99

**TC99-051 In the Matter of the Application of NET-tel Corporation d/b/a NET-tel Communications Corporation (FL) for a Certificate of Authority to Provide Telecommunications Services in South Dakota.**

Application by NET-tel Corporation d/b/a NET-tel Communications Corporation for a Certificate of Authority to provide interexchange, intrastate, inbound, outbound and travel card services in South Dakota.

Staff Analyst: Dave Jacobson  
Staff Attorney: Camron Hoseck  
Date Filed: 04/30/99  
Intervention Deadline: 05/21/99

**TC99-052 In the Matter of the Application of Columbia Telecommunications, Inc. d.b.a. aXessa for a Certificate of Authority to Provide Telecommunications Services in South Dakota.**

On April 30, 1999, the Commission received an application by Columbia Telecommunications, Inc. d.b.a. aXessa for a Certificate of Authority to provide resold interexchange telecommunications services in the state of South Dakota. Proposed services include both inbound and outbound intraLata toll services.

Staff Analyst: Bob Knadle  
Staff Attorney: Karen Cremer  
Date Filed: 04/30/99  
Intervention Deadline: 05/21/99

**TC99-053 In the Matter of the Filing by U S WEST Communications, Inc. for Approval of  
Tariff Pages for its Access Service Tariff Implementing its IntraLATA Toll Dialing  
Parity Plan.**

U S WEST Communications has filed for Commission approval Access Service Tariff pages  
implementing U S WEST's IntraLATA Toll Dialing Parity Plan. U S WEST has filed an Equal Access  
and Network Reconfiguration Recovery Charge and rates, terms and conditions for Presubscription.

Staff Analyst: Harlan Best  
Staff Attorney: Karen Cremer  
Date Filed: 05/03/99  
Intervention Deadline: 05/21/99

**TC99-054 In the Matter of the Filing by Fort Randall Telephone Company and Mount  
Rushmore Telephone Company to Establish Switched Access Rates.**

ML Rushmore Telephone Company and Fort Randall Telephone Company filed a combined switched  
access cost study similar to an interstate filing with a combined study area. The switched access  
rates will be used by both companies. Mt. Rushmore was granted a waiver from filing switched  
access cost studies in TC93-034.

Staff Analyst: Harlan Best/Keith Senger  
Staff Attorney: Karen Cremer  
Date Filed: 05/03/99  
Intervention Deadline: 05/21/99

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

IN THE MATTER OF THE APPLICATION OF )	ORDER AUTHORIZING THE
BLACK HILLS CORPORATION FOR AN )	ISSUANCE OF STOCK
ORDER AUTHORIZING THE ISSUANCE OF )	OPTIONS
STOCK OPTIONS UNDER BLACK HILLS )	
CORPORATION'S 1999 STOCK OPTION PLAN )	EL99-006

On May 5, 1999, the Public Utilities Commission (Commission) received an application from Black Hills Corporation (BHC), which operates its electric utility under the assumed name of Black Hills Power and Light Company, requesting approval of Black Hills Corporation's 1999 Stock Option Plan providing for the granting of options to acquire up to 700,000 shares of BHC's authorized but unissued common stock.

BHC stated the purpose of the plan is to enable BHC to offer certain officers and other key employees of BHC and its subsidiaries options to acquire shares of the unissued and unapproved common stock of BHC, thereby attracting, retaining and rewarding such employees and strengthening the mutuality of interests between such employees and BHC's shareholders. In addition, BHC has represented that the plan will provide the participants therein with an incentive for excellence in individual performance and will promote teamwork among participants.

On June 8, 1999, the Commission considered BHC's application. The Commission has jurisdiction over this matter pursuant to SDCL 49-34A-29 through 49-34A-34. The Commission finds the plan is within the corporate purposes of BHC, is compatible with the public interest, is appropriate for the proper performance by BHC as a public utility, it will not impair its ability to perform that service and that it is appropriate for such purposes. It is therefore

**ORDERED**, that the plan, a copy of which is attached as Addendum 1 to BHC's application, authorizing BHC through a committee to be appointed by the Board of Directors of BHC to grant awards of options to certain officers and other key employees of BHC and its subsidiaries as determined by the committee from time to time in its discretion, to purchase up to 700,000 of the authorized but unissued shares of common stock of BHC, be and the same is hereby approved effective June 8, 1999, and it is

**FURTHER ORDERED**, that neither the issuance of securities by BHC pursuant to the provision of this Order nor any other act or deed done or performed in connection therewith shall be construed to obligate the state of South Dakota to guarantee the payment in any manner whatsoever of any security authorized, issued, assumed or guaranteed hereunder, nor does it constitute a representation by the state of South Dakota or its Public Utilities Commission as to the quality or safety of any securities so issued, and it is

FURTHER ORDERED, that the issuance of this Order by the Commission authorizing the issuance of securities described herein is a securities authorization only and does not constitute the Commission's determination of any utility ratemaking issues whatsoever, which issues are expressly reserved for decision until they are presented to the Commission in an appropriate proceeding; and it is

FURTHER ORDERED, that the issuance of securities by BHC pursuant to this Order is not construed to mean that the Commission is in any way prohibited at some future date from finding BHC's capital structure in need of adjustment.

Dated at Pierre, South Dakota, this 23rd day of June, 1999.

<p align="center"><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>by <u>Alexis Kaelin</u></p> <p>Date: <u>6/23/99</u></p> <p align="center">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner