

ELDD-011

EL00-011

CH/H-F

EL00-011

DOCKET NO.

In the Matter of

IN THE MATTER OF THE
APPLICATION OF BLACK HILLS
CORPORATION TO AUTHORIZE
GERALD R. FORSYTHE TO ACQUIRE
CONTROL, DIRECTLY OR
INDIRECTLY, OF MORE THAN 10% OF
THE TOTAL CAPITAL STOCK OF
BLACK HILLS CORPORATION

Public Utilities Commission of the State of South Dakota

DATE

MEMORANDA

4/10 00 Filed and Docketed;

4/13 00 Public Filing;

5/9 00 Staff Analysis and Recommendation;

5/12 00 Public Hearing Application;

5/12 00 Docket Closed.

7/27 00 Final Documents relating to the merger of Black Hills Energy Capital, Inc
(General Documents are in EL00-010).

LAW OFFICES

MORRILL THOMAS NOONEY & BRAUN, LLP

625 NINTH STREET - 8TH FLOOR

P.O. Box 8108

RAPID CITY, SOUTH DAKOTA 57709-8108

TELEPHONE (605) 348-7516

FAX (605) 348-5852

RECEIVED

APR 10 2000

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

OF COUNSEL
DAVID E. MORRILL

April 7, 2000

TIMOTHY L. THOMAS*
JOHN K. NOONEY*
LONNIE R. BRAUN
PENNY TIBKE PLATNICK*
GREGORY J. BERNARD
RYAN J. TAYLOR*

*ALSO LICENSED IN WYOMING
*ALSO LICENSED IN MINNESOTA
*ALSO CERTIFIED PUBLIC ACCOUNTANT

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

Dear Mr. Bullard:

On behalf of Black Hills Corporation, I am submitting to you the original and ten copies of the Application to Authorize Gerald R. Forsythe to Acquire Control, Directly or Indirectly, of More than 10% of the Total Capital Stock of Black Hills Corporation (the "Application") and the accompanying exhibits. This Application, and its accompanying exhibits, pertains to the proposed merger between Black Hills Corporation and Indeck Capital, Inc.

The Application and all supporting exhibits are contained in the accompanying binders. Also contained in the binders is a Request for Confidential Treatment made pursuant to ARSD 20:10:01:39 through 20:10:01:45, inclusive. The binder cover sheets include the confidentiality notice required by ARSD 20:10:01:40. The Request for Confidential Treatment applies to the Application itself, certain portions of the Agreement and Plan of Merger, and all exhibits and attachments to the Agreement and Plan of Merger in their entirety. Each page for which Black Hills Corporation is requesting confidential treatment is marked with the heading "CONFIDENTIAL TREATMENT IS REQUESTED." As previously mention, only certain portions of the Agreement and Plan of Merger are considered to be confidential by Black Hills Corporation. Those confidential portions are shaded and the page contains the previously mentioned notation. I have also enclosed one copy of the Agreement and Plan of Merger with the portions for which confidential treatment is requested removed. Black Hills Corporation does not consider this redacted copy to be confidential.

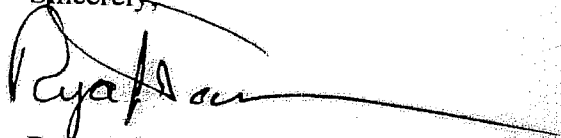
William Bullard, Jr.

Page 2

April 7, 2000

If you have any questions or comments relating to this Application or the Request for Confidential Treatment, please do not hesitate to call at (605) 348-7516. I look forward to hearing from you and the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan J. Taylor", with a long horizontal flourish extending to the right.

Ryan J. Taylor

Enclosures

cc: Gary R. Fish
Mark T. Thies
Roxann R. Basham
John K. Nooney, Esq.

CONFIDENTIAL TREATMENT IS REQUESTED

RECEIVED

APR 10 2000

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF BLACK HILLS CORPORATION TO)
AUTHORIZE GERALD R. FORSYTHE TO)
ACQUIRE CONTROL, DIRECTLY OR)
INDIRECTLY, OF MORE THAN 10% OF THE)
TOTAL CAPITAL STOCK OF BLACK HILLS)
CORPORATION)

DOCKET NO. _____

NOTICE

**THE INFORMATION IN THIS FILE IS DESIGNATED
CONFIDENTIAL UNDER CHAPTER 20:10:01 OF THE
RULES OF THE SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION. DISCLOSURE OF ANY
SUCH CONFIDENTIAL INFORMATION TO A
PERSON OTHER THAN COMMISSION MEMBERS,
EMPLOYEES, OR AGENTS IS PROHIBITED UNLESS
OTHERWISE PERMITTED BY THE COMMISSION.**

CONFIDENTIAL

[1]

... through April 6, 2000 through April 12, 2000
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 COMPLAINTS

CT00-060 In the Matter of the Complaint filed by Don and Judy Blindauer, Mitchell, South Dakota, against Sprint Communications Company L.P. Regarding Unauthorized Switching of Long Distance Provider.

The complainants allege that they received charges for long distance out of state phone service from Sprint on their December phone bill. They never authorized Sprint to be a carrier and they had a "freeze" on their phone service to prevent being slammed. The charges from Sprint were high, ranging from .57 cents per minute to \$3.09 per minute. They received another bill from Sprint in February and they continue to get bills from their chosen carrier I-Link. The complainants are requesting that the Sprint rates be re-rated to the charges they would have received with I-Link and that they be paid \$1000.00 for the inconvenience. The complainants would like to see Sprint heavily fined in order to put a stop to this type of thing. The complainants want to be sure that Sprint is off of their phone service and if they have to attend a hearing in Pierre, they feel that Sprint should have to pay their expenses.

Staff Analyst: Charlene Lund
Staff Attorney: Karen Cremer
Date Docketed: 04/06/00
Intervention Deadline: NA

ELECTRIC

EL00-010 In the Matter of the Application of Black Hills Corporation for Authority to Issue Common Stock and Preferred Stock.

On April 10, 2000, Black Hills Corporation submitted an application for authority to issue common stock and preferred stock related to the agreement and plan of merger between Black Hills Corporation and Indeck Capital, Inc.

Staff Analyst: Heather Forney
Staff Attorney: Camron Hoseck
Date Docketed: 04/10/00
Intervention Deadline: 04/28/00

EL00-011 In the Matter of the Application of Black Hills Corporation to Authorize Gerald R. Forsythe to Acquire Control, Directly or Indirectly, of more than 10% of the Total Capital Stock of Black Hills Corporation.

On 04/10/00, Black Hills Corporation submitted an application to authorize Gerald R. Forsythe to acquire control, directly or indirectly, of more than 10% of the total capital stock of Black Hills Corporation. This application pertains to the proposed merger between Black Hills Corporation and Indeck Capital, Inc.

Staff Analyst: Heather Forney
Staff Attorney: Camron Hoseck
Date Docketed: 04/10/00
Intervention Deadline: 04/28/00

TELECOMMUNICATIONS

TC98-203 In the Matter of the Filing for Approval of a Second Amendment to the Interconnection Agreement between FirsTel, Inc. and U S WEST Communications, Inc.

An amendment, termed a "second" amendment to an interconnection agreement between FirsTel, Inc. and U S WEST Communications, Inc., has been filed with the Commission for approval pursuant to 47 U.S.C. Section 252(e). The interconnection agreement amends a prior agreement approved by the Commission on September 14, 1999 in docket TC98-203. The amendment purports to allow FirsTel to access certain preexisting combinations of unbundled network elements in accordance with the FCC's November 5, 1999 Order and related federal regulations. It will add terms, conditions and rates with regard to unbundled network elements. Pending at this time is a first amendment of the same interconnection agreement.

Staff Attorney: Camron Hoseck
Date Docketed: 04/12/00
Intervention Deadline: 04/28/00

TC99-086 In the Matter of the Filing for Approval of a Second Amendment to the Interconnection Agreement between DSLnet Communications, LLC and U S WEST Communications, Inc.

An amendment, termed a "second" amendment to an interconnection agreement between DSLnet Communications, LLC and U S WEST Communications, Inc., has been filed with the Commission for approval pursuant to 47 U.S.C. Section 252(e). The interconnection agreement amends a prior agreement approved by the Commission on September 23, 1999 in docket TC99-086. The amendment purports to allow DSLnet to access certain preexisting combinations of unbundled network elements in accordance with the FCC's November 5, 1999 Order and related federal regulations. It will add terms, conditions and rates with regard to unbundled network elements.

Staff Attorney: Camron Hoseck
Date Docketed: 04/12/00
Intervention Deadline: 04/28/00

TC00-065 In the Matter of the Filing by South Dakota Independent Telephone Coalition for Approval of Reciprocal Transport and Termination Agreement between G.C.C. License L.L.C. and Brookings Municipal Telephone Company.

TC00-066 In the Matter of the Filing by South Dakota Independent Telephone Coalition for Approval of Reciprocal Transport and Termination Agreement between G.C.C. License L.L.C. and Cheyenne River Sioux Tribe Telephone Authority.

TC00-067 In the Matter of the Filing by South Dakota Independent Telephone Coalition for Approval of Reciprocal Transport and Termination Agreement between G.C.C. License L.L.C. and Tri County Telcom, Inc.

The above companies (TC00-065, TC00-066, TC00-067) have each filed a reciprocal transport and termination agreement which was negotiated and entered into between them and G.C.C. License L.L.C. which is an affiliate of Western Wireless Corporation. Commission approval is sought pursuant to 46 U.S.C. Section 252(e).

Staff Attorney: Camron Hoseck

Date Docketed: 04/07/00

Intervention Deadline: 04/28/00

TC00-068 In the Matter of the Filing by U S WEST Communications, Inc. Regarding the Sale of Exchanges in Nebraska and Minnesota.

"U S WEST Communications and Citizens [Communications] have entered into transactions whereby Citizens will purchase 14 U S WEST exchanges in Nebraska and 43 [U S WEST] exchanges in Minnesota....Approximately 95 South Dakota customers are served out of the Valentine, Nebraska exchange and approximately 520 South Dakota customers are served out of the Ortonville-Big Stone, Minnesota exchange....[U S WEST and Citizens] respectfully request that the Commission, as expeditiously as possible, issue two separate statements that: 1) contingent on the Nebraska Public Service Commission's approval of the Nebraska sale, the Commission does not object to the FCC granting study area waivers nor to any configuration of study area boundaries involving the South Dakota portion of the Valentine, Nebraska exchange and; 2) contingent on the State of Minnesota Public Utilities Commission's approval of the Minnesota sale, the Commission does not object to the FCC granting study area waivers nor to any configuration of study area boundaries involving the South Dakota portion of the Ortonville-Big Stone, Minnesota exchange."

Staff Analyst: Harlan Best

Staff Attorney: Camron Hoseck

Date Docketed: 04/10/00

Intervention Deadline: 04/28/00

TC00-069 In the Matter of the Application of Natel, LLC for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Natel, LLC submitted an application to provide resold interexchange telecommunications services in South Dakota. The applicant proposes to offer 1+ and 101XXXX direct outward dialing, 800/888 toll-free inbound dialing, travel card service, and prepaid calling card service.

Staff Analyst: Heather Forney

Staff Attorney: Karen Cremer

Date Docketed: 04/11/00

Intervention Deadline: 04/28/00

TC00-070 In the Matter of the Application of Enhanced Communications Group, L.L.C. d/b/a ECG, L.L.C. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Enhanced Communications Group, L.L.C. d/b/a ECG, L.L.C. has filed a request for a Certificate of Authority to offer resold interexchange services, including message toll service, incoming 800/888, and travel card services throughout South Dakota.

Staff Analyst: Michele Farris

Staff Attorney: Karen Cremer

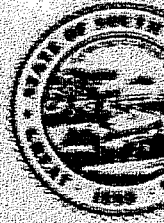
Date Docketed: 04/12/00

Intervention Deadline: 04/28/00

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You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc/>



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

May 9, 2000

Mr. Ryan J. Taylor
Attorney at Law
Morrill Thomas Nooney & Braun, LLP
P. O. Box 8108
Rapid City, SD 57709-8108

Re: In the Matter of the Application of Black Hills Corporation to Authorize Gerald R. Forsythe to Acquire Control, Directly or Indirectly, of more than 10% of the Total Capital Stock of Black Hills Corporation
Docket EL00-011

Dear Mr. Taylor:

Enclosed you will find a copy of Staff Analysis and Recommendation in the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Camron Hoseck
Staff Attorney

CH:dk
Enc.

Capitol Office
Telephone (605)773-3201
FAX (605)773-3809

Transportation/
Warehouse Division
Telephone (605)773-5280
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-877-1113

Internet Website
www.state.sd.us/puc/

Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Laska Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

- Harlan Best
- Martin C. Bettmann
- Sue Cichos
- Karen E. Cremer
- Terry Emerson
- Michele M. Farris
- Mariette Fischbach
- Heather K. Fomey
- Mary Giddings
- Lewis Hammond
- Leni Healy
- Mary Healy
- Camron Hoseck
- Lisa Hull
- Dave Jacobson
- Jennifer Kirk
- Bob Knadle
- Delaine Kolbo
- Charlene Lund
- Gregory A. Rislov
- Keith Senger
- Kolayne Ailts Wiest

CONFIDENTIAL

[2]

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

IN THE MATTER OF THE APPLICATION OF)
BLACK HILLS CORPORATION TO)
AUTHORIZE GERALD R. FORSYTHE AND)
OTHER STOCKHOLDERS TO ACQUIRE)
CONTROL, DIRECTLY OR INDIRECTLY, OF)
MORE THAN 10% OF THE TOTAL CAPITAL)
STOCK OF BLACK HILLS CORPORATION)

**ORDER APPROVING
APPLICATION**

EL00-011

On April 10, 2000, Black Hills Corporation (Black Hills) filed an application with the Public Utilities Commission (Commission) for authorization for a person to acquire more than ten percent of the total capital stock of Black Hills. Black Hills and Black Hills Energy Capital, Inc. entered into an Agreement and Plan of Merger on January 1, 2000. Under the Agreement and Plan of Merger, Black Hills, through its subsidiary Black Hills Energy Capital Inc., will acquire all outstanding and issued stock of Indeck Capital, Inc. The Agreement and Plan of Merger provides that Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe, and John W. Salyer, Jr. (Stockholders) will receive at the time of closing 1,536,751 shares of Black Hills' Common Stock and 4,000 shares of Series 2000-A No Par Preferred Stock (Preferred Stock). In addition, "for each of the four calendar years in the period from January 1, 2000, through December 31, 2003, Black Hills shall issue to the Stockholders such number of shares of Black Hills Common Stock and Preferred Stock, having a value equal to the product of (x) the amount of adjusted net income, as defined in the Agreement and Plan of Merger, and (y) a factor of .35; provided, however, in no event shall the earnout consideration paid to the Stockholders over the time period and methodology identified herein exceed \$35,000,000 ("Contingent Merger Consideration"). All Contingent Merger Consideration shall be paid by Black Hills to the Stockholders 50% payable in the form of Black Hills Common Stock and 50% payable in the form of Preferred Stock." The Shareholders Agreement provides that the Stockholders will vote their shares as one. Under the Agreement and Plan of Merger, it is possible, although unlikely, that the Stockholders could eventually own ten percent or more of Black Hills' total capital stock.

However, because the possibility exists that the Stockholders could eventually own ten percent or more of Black Hills' total capital stock, Black Hills requested that the Commission issue an order which determines that the Stockholders shall be treated as one individual pursuant to SDCL 49-34A-38.1 and that the Commission authorize the Stockholders, consistent with the Agreement and Plan of Merger, to acquire or control directly or indirectly, more than ten percent of the total capital stock of Black Hills but only if it is a result of the stock earned under the Agreement and Plan of Merger.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-34A, specifically 49-34A-38.1. SDCL 49-34A-38.1 provides as follows:

Notwithstanding the provisions of §§ 49-34A-35 to 49-34A-38, inclusive, no person may acquire or control either directly or indirectly more than ten percent of the total capital stock of any public utility organized and doing business in this state or of any public utility organized under the laws of any other state receiving more than twenty-five percent of its gross revenue in this state without first securing authorization to do so from the Public Utilities Commission. Any such acquisition or control without the commission's prior authorization is void.

At its May 10, 2000, meeting, the Commission considered this matter. Commission Staff recommended approval of the application. The Commission voted to approve the application to authorize the Stockholders, consistent with the Agreement and Plan of Merger, to acquire or control, directly or indirectly, more than ten percent of the total capital stock of Black Hills only if it is a result of the stock earned per the Agreement and Plan of Merger and Addendum. The Commission stated that this approval is based on the application and accompanying exhibits as filed with the Commission. It is therefore

ORDERED, that the Stockholders shall be considered as one individual and it is

FURTHER ORDERED, that the Stockholders, consistent with the Agreement and Plan of Merger and Addendum, may acquire or control, directly or indirectly, more than ten percent of the total capital stock of Black Hills only if it is a result of the stock earned per the Agreement and Plan of Merger.

Dated at Pierre, South Dakota, this 12th day of May, 2000.

CERTIFICATE OF SERVICE	
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.	
By: <u>Delvin Kelbo</u>	
Date: <u>5/12/00</u>	
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner