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OF THE STATE OF SOUTH DAKOTA SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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IN THE MATTER OF THE PETITION OF
BLACK HILLS CORPORATION FOR A
STATEMENT TO THE SECURITIES AND
EXCHANGE COMMISSION REGARDING
INVESTMENT IN FOREIGN UTILITIES

EL04-026

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Transcript of Proceedings
November 19, 2004

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BEFORE THE PUBLIC UTILITIES COMMISSION

ROBERT SAHR, CHAIRMAN
GARY HANSON, VICE CHAIRMAN
JIM BURG, COMMISSIONER

COMMISSION STAFF

John Smith
Rolayne Ailts Wiest
Karen Cremer
Sara Harens
Greg Rislov
Harlan Best
Keith Senger
Dave Jacobson
Michele Farris
Jim Mehlhaff
Tina Douglas
Heather Forney
Pam Bonrud

APPEARANCES BY PHONE

Brian Iverson
Steve Helmers

Reported by Leslie A. Hicks, Professional Reporter

TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the South Dakota State Capitol,
Room 412, 500 East Capitol Avenue, Pierre, South Dakota, on
the 19th day of November 2004, commencing at 10:10 a.m.

1 CHAIRMAN SAHR: With that let's go ahead then
2 and call the meeting back to order. We are still under
3 Electric, and we're on the item EL04-026, In the Matter of
4 the Petition of Black Hills Corporation for a Statement to
5 the Securities and Exchange Commission Regarding Investment
6 in Foreign Utilities, and the question today is how shall the
7 Commission proceed.

8 Mr. Iverson?

9 MR. IVERSON: Thank you, Mr. Chairman.

10 Black Hills Corporation has filed an
11 application with the SEC, as you stated, to become a
12 registered holding company under the Public Holding Company
13 Act. As part of that process, SEC asks each regulatory body
14 that Black Hills Corporation is governed by to confirm that
15 their regulatory authority over our utilities is -- is in
16 place and that the consumers in this case of South Dakota
17 will be properly protected if we continue our investments in
18 wholesaler generators and any foreign utility companies, and
19 we don't have any of the latter. And so we would just ask
20 that the Commission approve the request and issue the letter
21 to the SEC confirming that the authority is sufficient to
22 protect the customers of South Dakota.

23 CHAIRMAN SAHR: Great. Thank you very much.

24 I'm going to turn to Mr. Smith. I know he's
25 been working on this issue, and see what his comments are.

1 MR. SMITH: Thank you, Mr. Chairman.

2 This particular case, Commission counsel and
3 staff have been working together on, and Mr. Rislov, the
4 Commission's advisor, and we wish to recommend that the
5 Commission issue the letter.

6 We do have a couple of recommended changes to
7 the proposed letter that Black Hills submitted with its --
8 with its application, and I would like to go through those.

9 And, Mr. Iverson, I apologize, but due to the
10 way this week went I was unable to get this to you before
11 today, and if I -- if I could I'd like to just read the
12 changes.

13 CHAIRMAN SAHR: Yeah. John, why don't you go
14 ahead and read the proposed changes and everyone can follow
15 along on their copies.

16 MR. SMITH: Basically, I don't think we have
17 any problems with the substance of the letter. There were a
18 couple of things in there and then you can respond,
19 Mr. Iverson, if you feel this is unwarranted or -- or cause
20 you a problem.

21 MR. IVERSON: Thank you.

22 MR. SMITH: I think the problem that -- that
23 we perceived was merely with the level of -- of strength, if
24 you will, of the assurance that we were giving in here,
25 particularly in the light of what happened with the Northwest

1 situation. And what I'd like to propose is that in -- on
2 the first page in the first paragraph of the proposed letter
3 at the beginning of the sentence -- second sentence, which
4 now begins with, "The Public Utilities Commission's" --
5 second paragraph. Pardon me. The second paragraph of the
6 letter, second sentence, we add the phrase "at this time."
7 And I think it will become apparent why in a minute. The
8 second -- I think it's the third paragraph on the second page
9 which begins, "The Public Utilities Commission's regulatory
10 jurisdiction over Black Hills Power is sufficient to
11 assure..." Our proposed language would read, "The Public
12 Utilities Commission's regulatory jurisdiction over Black
13 Hills Power is sufficient at this time to provide a
14 reasonable level of assurance..."

15 And then at the end instead of with the
16 language on customers and all that, we would propose deleting
17 that and simply adding and concluding that sentence with
18 "...impact on Black Hills Power's South Dakota ratepayers."

19 And then at the end of the -- of the letter we
20 would propose due to the developments that have occurred
21 nationally through the last few years related to various
22 companies in the wake of the -- of the energy -- problems
23 that have happened in the energy business, most notably the
24 Westar situation at FERC, we would propose adding in the
25 following language, and it deals partially with a unique

1 situation with our statutes where our statutes under certain
2 circumstances divest this Commission of jurisdiction upon the
3 occurrence of -- of a situation where FERC or any federal
4 regulatory agency assumes jurisdiction over the matter.

5 And the language we would propose is this as
6 the last paragraph: "Under certain circumstances, to the
7 extent that Black Hills Power's issuance of securities,
8 incurrence of obligations or liabilities or reorganization
9 transactions might in the future come under the regulatory
10 jurisdiction of the Federal Energy Regulatory Commission or
11 other federal agency" --

12 CHAIRMAN SAHR: And Mr. Smith can make the
13 copy of the letter available as well, as far as anyone who's
14 keeping minutes or who needs a copy of it. We'll fax a
15 photocopy of it.

16 MR. SMITH: "...the Public Utilities
17 Commission could, under applicable state statutes, lose its
18 authority to regulate these matters. The Public Utilities
19 Commission accordingly suggests that in approving the
20 application, the SEC consider the extent to which separation
21 of the properties and operations of Black Hills Power from
22 the obligations and liabilities of Black Hills and its
23 affiliates is advised to minimize potential risk to Black
24 Hills Power's customers. In Westar Energy, Inc., the Federal
25 Energy Regulatory Commission announced its intention to

1 impose such conditions on all debt security issuances
2 involving regulated utilities. The SEC may wish to consider
3 whether conditions having this objective are prudent and
4 appropriate with respect to Black Hills' application."

5 Those would be our proposed amendments to the
6 -- to the letter.

7 And, lastly, we would propose that the
8 Commission in its Order include a statement to the effect
9 that by issuing this letter the Commission is not either
10 approving nor indicating an intent to approve any of the
11 transactions that are set forth within the application to the
12 SEC.

13 And maybe with that, Mr. Iverson, you could --
14 you could comment.

15 CHAIRMAN SAHR: And, Mr. Iverson, we do
16 realize that we're putting you on the spot here. What's
17 your reaction to that proposed language?

18 MR. IVERSON: I have Steve Helmers here, the
19 general counsel for the company.

20 MR. HELMERS: This is Steve Helmers. I
21 understand the time issue, John, but it would have been
22 helpful to see the language. My concern at this point is
23 that we're within a few weeks of hopefully getting the
24 approval the FEC, and language that -- that even we might be
25 able to accept, may not be acceptable to the SEC to the

1 extent it constitutes some kind of a qualification of -- of
2 what is language supplied by the SEC for approval of this
3 kind -- letters of this kind, so I guess I'm only -- I'm
4 stating a concern that they may look at language like
5 authorities sufficient at this time as unacceptable
6 qualification and we may find ourselves coming back to review
7 some language of that kind for clarification at least as to
8 what the real concern is by the PUC.

9 MR. SMITH: They may come back with a
10 question. I think the only concern is just accuracy. I
11 think that's really it. In terms of, you know, we -- the
12 Commission has jurisdiction at this point in time over a good
13 portion of what is covered under the SEC's request for the
14 views. And, again, all they ask for was the views of the
15 Commission, but the fact is, you know, over the life of the
16 very ambitious proposal that you -- you know, application
17 that you have, we absolutely -- we just simply can't
18 truthfully certify that over the entire life of whatever you
19 do, Steve, that it's going to necessary -- that we are
20 necessarily going to retain that jurisdiction over that time
21 period.

22 I mean, you include in there, for example,
23 specifically provisions with respect to potential
24 reorganization, and we have no idea, for example, whether
25 that might mean in the future formation of a Delaware

1 corporation and a merger into that or what might happen. We
2 don't know. And I don't know that you do.

3 MR. HELMERS: The company has no such plans.
4 These are very standard requests that form a part of a filing
5 with the SEC and they're intended to create general baskets
6 of authority that a company can use should events develop in
7 the future so we don't have to repeatedly go back to the SEC
8 for approval of certain transactions and, you know, you're
9 correct. These are just -- they're, again, general baskets
10 of authority in various categories and there's nothing in any
11 of them that would specifically relate to Black Hills Power.

12 MR. SMITH: One of our people here is going to
13 fax you the letter. And, again, I think your objection is a
14 relatively general one that I don't even know that the
15 language matters, but we'll fax you the letter, and what I
16 recommend that the Commission defer this item and take up the
17 other matters so they can get the copy and take a look at it.

18 CHAIRMAN SAHR: I think that's probably a good
19 course. Again, what's the deadline for this?

20 MR. SMITH: The 24th. So we do have -- we
21 have five days.

22 CHAIRMAN SAHR: And I certainly -- I know my
23 schedule is open next week so if it entails having to take a
24 couple days and look at it and get the language done, that
25 certainly isn't a problem for me.

1 (Short pause in proceedings.)

2 CHAIRMAN SAHR: Are you ready to comment or I
3 certainly don't mind taking this up early next week if that's
4 what we need to do. Mr. Iverson, Mr. Helmers?

5 MR. HELMERS: If you could fax that over to us
6 we'll start looking at it right away and hopefully have
7 something early next week to keep the process moving.

8 CHAIRMAN SAHR: If that's all right with you I
9 think that makes sense from -- at least from my perspective.

10 Mr. Smith, do you have any comments?

11 MR. SMITH: No, that would be great. And I
12 apologize, Steve, that we got jammed like this. That's the
13 way it happened.

14 MR. HELMERS: For planning purposes I can -- I
15 can call in at any time.

16 MR. IVERSON: All right. We'll work with
17 Mr. Smith then and keep it moving.

18 CHAIRMAN SAHR: Okay. Then I -- just to take
19 care of this docket then I'll move that we defer this until
20 next week.

21 MR. SMITH: Second.

22 COMMISSIONER HANSON: Concur.

23 CHAIRMAN SAHR: That concludes the agenda.

24 (Hearing concluded at 10:28 a.m.)
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1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

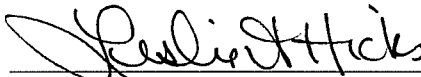
3 COUNTY OF HUGHES)

4
5 I, LESLIE A. HICKS, a Professional Reporter and
6 Notary Public in and for the State of South Dakota;

7 DO HEREBY CERTIFY that the foregoing pages 1-11,
8 inclusive, are a true and correct transcript of my stenotype
9 notes made during the time of the taking of the proceedings.

10 I FURTHER CERTIFY that I am not an attorney for, nor
11 related to the parties to this action and that I am in no way
12 interested in the outcome of this action.

13 In testimony whereof, I have hereto set my hand and
14 official seal this 2nd day of December 2004.

15
16 

17 Leslie A. Hicks,
18 Notary Public and
19 Professional Reporter
20
21

22 SEAL
23
24
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