

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

<b>IN THE MATTER OF THE PETITION OF )</b>	<b>ORDER APPROVING</b>
<b>BLACK HILLS CORPORATION FOR A )</b>	<b>ISSUANCE OF LETTER</b>
<b>STATEMENT TO THE SECURITIES AND )</b>	
<b>EXCHANGE COMMISSION REGARDING )</b>	<b>EL04-026</b>
<b>INVESTMENT IN FOREIGN UTILITIES )</b>	

On August 16, 2004, Black Hills Corporation (Black Hills) filed a request with the South Dakota Public Utilities Commission (Commission) that the Commission issue a letter to the Securities and Exchange Commission (SEC) requesting various approvals and authorizations in connection with its anticipated registration as a public utility holding company under PUHCA. In the filing, Black Hills is requesting authorization from the SEC to retain its existing investments in Exempt Wholesale Generators and to issue and finance additional investments in Exempt Wholesale Generators and Foreign Utility Companies. As part of this process, the SEC will send letters to each state regulatory commission having regulatory authority of Black Hills' regulated utility requesting confirmation that such commission's regulatory authority is sufficient to assure that Black Hills' retention of its existing investments and any proposed issue and sale of securities to finance the acquisition of additional investments will not have an adverse impact on Black Hills' customers or the Commission's ability to protect the customers of Black Hills Power.

Commission Advisors and Staff recommended issuing a letter expressing the views of the Commission in the form attached as Exhibit A. Staff requested that the order contain a statement that this approval and the letter are not to be construed as an approval or an indication of intent to approve any of the transactions described in the application to the SEC and that, to the extent provided by South Dakota law, Black Hills will be required to seek approval of the Commission prior to undertaking any such transactions or actions.

At its regularly scheduled ad hoc meeting of November 22, 2004, the Commission considered this matter. The Commission voted unanimously to issue a letter to the SEC in the form set forth in Exhibit A with the order to contain the statement requested by Staff.

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The Commission has jurisdiction in this matter pursuant to SEC Rule 53 and SDCL 49-34A-6. It is therefore

**ORDERED**, that the Commission shall issue a letter to the SEC as petitioned for by Black Hills in the form set forth in Exhibit A. The Commission's action approving and issuing this letter shall not be construed as an approval or an indication of intent to approve any of the transactions described in the application to the SEC and to the extent provided by South Dakota law, Black Hills will be required to seek approval of the Commission prior to undertaking any such transactions or actions.

Dated at Pierre, South Dakota, this 22<sup>nd</sup> day of November, 2004.

**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: *William Kiebo*

Date: 11/22/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

*Robert K. Sahr*  
ROBERT K. SAHR, Chairman

*Gary Hanson*  
GARY HANSON, Commissioner

*James A. Burg*  
JAMES A. BURG, Commissioner



Bob Sahr, Chair  
Gary Hanson, Vice-Chair  
Jim Burg, Commissioner

## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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November 22, 2004

Ms. Catherine A. Fisher  
Assistant Director  
Office of Public Utility Regulation  
U.S. Securities and Exchange Commission  
901 East Street N.W.  
Washington, D.C. 20549

Re: Black Hills Corporation  
Docket EL04-026  
SEC File No. 70-10237

Dear Ms. Fisher:

It is our understanding that Black Hills Corporation (Black Hills), has filed an Application-Declaration, dated July 19, 2004, with the Securities and Exchange Commission (SEC) under the Public Utility Holding Company Act of 1935, as amended (PUHCA), requesting various approvals and authorizations in connection with its proposed registration as a public utility holding company under PUHCA. In this Application-Declaration, Black Hills requested authorization to retain its existing investments in Exempt Wholesale Generators (EWGs) and issue and sell securities to finance additional investments in EWGs and Foreign Utility Companies (FUCOs), so long as its aggregate investment in EWGs and FUCOs does not exceed \$1.4 billion at any time during an Authorization Period ending on December 31, 2007.

Black Hills is the parent company of Black Hills Power, Inc. (Black Hills Power). Black Hills Power is an electric utility company subject to regulation as a public utility under the laws of several states, including regulation by the Public Utilities Commission under the laws of the state of South Dakota. At this time, the Public Utilities Commission's regulatory jurisdiction includes regulation of Black Hills Power's retail electric rates, fees, and charges, securities issuances, and affiliate transactions to ensure that the interests of Black Hills Power's customers in the state of South Dakota are adequately protected.

EXHIBIT A

Ms. Catherine A. Fisher  
Assistant Director  
Office of Public Utility Regulation  
U.S. Securities and Exchange Commission  
November 22, 2004  
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The Public Utilities Commission's regulatory jurisdiction over Black Hills Power is sufficient at this time to provide a reasonable level of assurance that Black Hills' retention of its existing investments in EWGs and proposed issue and sale of securities to finance the acquisition of additional investments in EWGs and FUCOs, as described in the above-referenced Application-Declaration with the SEC, will not have an adverse impact on Black Hills Power or its South Dakota ratepayers. The Public Utilities Commission has adequate resources to allow it to exercise its regulatory jurisdiction, and the Public Utilities Commission will exercise its authority as necessary to protect SD customers:

Under certain circumstances, to the extent that Black Hills Power's issuance of securities, incurrence of obligations or liabilities or reorganization transactions might in the future come under the regulatory jurisdiction of the Federal Energy Regulatory Commission or other federal agency, the Public Utilities Commission could, under applicable state statutes, lose its authority to regulate these matters. Although the Public Utilities Commission cannot offer an opinion to the SEC as to matters beyond the scope of its jurisdiction, the Commission does note that in Westar Energy, Inc., 102 FERC 61,186 (February 21, 2003), the Federal Energy Regulatory Commission announced its intention to impose conditions on all debt security issuances involving regulated utilities to achieve a separation of utility properties and operations from the obligations and liabilities of non-utility affiliates. The Commission believes that in the event Black Hills Power might come under FERC jurisdiction in the future, FERC's policy should provide an adequate level of protection for utility assets and customers.

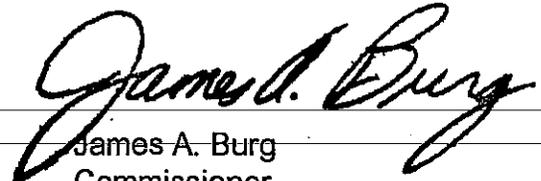
Sincerely,



Robert K. Sahr  
Chairman



Gary Hanson  
Commissioner



James A. Burg  
Commissioner