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## STAFF MEMORANDUM

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**TO:** COMMISSIONERS AND ADVISORS

**FROM:** PATRICK STEFFENSEN, AMANDA REISS, AND JENNIE FUERST

**RE:** Docket EL24-032 - In the Matter of the Application of Black Hills Power, Inc. dba Black Hills Energy for Authorization to Enter into up to \$450 Million of Intercompany Notes with Black Hills Corporation

**DATE:** October 17, 2024

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Commission Staff (Staff) submits this memorandum regarding its recommendations for Docket EL24-032.

### **BACKGROUND**

On October 4, 2024, Black Hills Power, Inc. dba Black Hills Energy (BHP) filed with the Commission an application requesting authorization pursuant to SDCL § 49-34A-29, to issue debt securities, specifically unsecured Intercompany Promissory Notes (Intercompany Notes) payable to the corporate parent of BHP, Black Hills Corporation. The Intercompany Notes would have a term of at least two years and would be for a total amount up to \$450 million. BHP intends to use the funds obtained through the Intercompany Notes to replace \$190 million in short-term debt and for the construction, completion, extension, improvement, and/or maintenance of its facilities, and for general BHP purposes.

Pursuant to SDCL § 49-34A-29, a public utility receiving more than 25% of its gross revenue in this state and which nonresident public utility is exempt from the jurisdiction of the Federal Energy Regulatory Commission (FERC) in the issuance of its securities needs an order from the Commission authorizing the issuance of any security, or assumption of any obligation or liability as a guarantor, endorser, surety, or otherwise, in respect of any security of another person. Since BHP receives more than 25% of its gross revenue in South Dakota and is exempt from the jurisdiction of FERC in the issuance of securities, it must receive such approval from the Commission.

For the last decade, BHP has funded its incremental rate base capital through a combination of equity and short-term, 364-day Intercompany Notes. BHP states in its application the use of Intercompany Notes has allowed it to benefit from more timely and diversified access to capital by drawing from the proceeds of Black Hills Corporation's diversified long-term bond portfolio rather than being subject to market demand and pricing at a specific point in time for its debt financing needs. BHP has also benefited from the favorable terms associated with the corporate debt offerings, including access to cost-effective debt that results from borrowing at index-eligible scale for Black Hills Corporation debt offerings as opposed to the smaller tranches of debt that would otherwise be required specifically for BHP.

BHP requests Commission approval to replace its \$190 million in short-term, 364-day Intercompany Notes with new Intercompany Notes with a term of at least two years. BHP believes this longer term is more appropriate to better align with the primary purpose of the Intercompany Notes and gives the

Commission better insight into the financing activities of BHP through security filings prior to the amounts being included in the capital structure in future rate cases. BHP states it will continue to participate in the Black Hills Corporation Utility Money Pool (UMP) for its short-term financing needs. Under the UMP agreement, BHP and its regulated sister utilities can contribute surplus funds to the UMP or engage in short-term borrowing from the UMP<sup>1</sup> to access funds for day-to-day working capital requirements.

In addition to the \$190 million of Intercompany Notes to replace existing short-term debt, BHP requests to enter into another \$260 million of Intercompany Notes for the construction, completion, extension, improvement, and/or maintenance of its facilities, and for general BHP purposes. BHP states in discovery it will utilize the new Intercompany Notes along with an equity infusion or retained earnings to finance the proposed Lange 2 powerplant.

### **STAFF'S ANALYSIS**

Staff reviewed the Company's filing to ensure it met the requirements of applicable statutes and to evaluate the impact the debt issuance could have on BHP's customers.

Pursuant to SDCL § 49-34A-32, the Commission shall make an order under § 49-34A-29 only if it finds that an issue or assumption is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary or appropriate for such purposes. As stated, the proposed Intercompany Notes will replace short-term debt and be used for the construction, completion, extension, improvement, and/or maintenance of its facilities, and for general BHP purposes.

The actual impact<sup>2</sup> this proposed issuance will have on customer rates will be determined as part of future rate case filings. Staff's rate of return witness will analyze the Company's capital structure and debt costs to ensure the rate of return allowed in future rate cases is in the public interest.

### **RECOMMENDATION**

Staff recommends the Commission authorize BHP to issue up to \$450 million in unsecured Intercompany Promissory Notes, with the conditions that Commission authorization does not constitute the Commission's determination of any utility ratemaking issues and that the issuance of securities does not mean that the Commission is in any way prohibited at some future date from finding BHP's capital structure in need of adjustment.

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<sup>1</sup> BHP states it will remain compliant with the Commission order in EL01-001 in which short-term borrowing under the UMP may not consist of more than 30% of BHP's total capitalization.

<sup>2</sup> BHP does not request any changes to its authorized capital structure in this application. BHP states it will continue to obtain additional equity to target its authorized capital structure.