

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

IN THE MATTER OF THE APPLICATION OF)	ORDER APPROVING
BLACK HILLS CORPORATION TO)	APPLICATION
AUTHORIZE GERALD R. FORSYTHE AND)	
OTHER STOCKHOLDERS TO ACQUIRE)	EL00-011
CONTROL, DIRECTLY OR INDIRECTLY, OF)	
MORE THAN 10% OF THE TOTAL CAPITAL)	
STOCK OF BLACK HILLS CORPORATION)	

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>Delaine Kalbo</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