

BLACK HILLS CORP /SD/  
Form U-1/A  
December 29, 2004

**Acquisition U-1**

As filed with the Securities and Exchange Commission on December 29, 2004

File No. 70-10255

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

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**FORM U-1/A**

**AMENDED AND RESTATED**

**APPLICATION-DECLARATION**

**UNDER THE**

**PUBLIC UTILITY HOLDING COMPANY ACT OF 1935**

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**Black Hills Corporation**

625 Ninth Street

Rapid City, SD 57701

(Name of Company filing this statement and address of principal executive offices)

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David R. Emery

President and Chief Executive Officer

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Black Hills Corporation

625 Ninth Street

Rapid City, SD 57701

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The Commission is requested to send copies of all notices, orders and communications in connection with this Application-Declaration to:

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The Application/Declaration filed in this proceeding on October 14, 2004, is hereby amended and restated in its entirety to read as follows.

**Item 1. Description of the Proposed Transactions**

A. Introduction

In this Application-Declaration ( Application ),<sup>1</sup> Black Hills Corporation ( Black Hills ) is seeking the approvals required under the Public Utility Holding Company Act of 1935, as amended (the Act ), from the Securities and Exchange Commission ( SEC or Commission ) in connection with its proposed acquisition of the outstanding voting securities of Cheyenne Light, Fuel and Power Company ( CLF&P ) (the Acquisition ).<sup>2</sup>

Black Hills is currently the parent holding company of Black Hills Power, Inc. ( Black Hills Power ), a utility company which is engaged in the generation, transmission, distribution, and sale of electricity to customers in South Dakota, Wyoming, and Montana and the wholesale sale of power in the western United States. CLF&P, currently a wholly-owned utility company subsidiary of Xcel Energy, Inc. ( Xcel Energy ), is a combination retail electric and gas operating utility serving customers exclusively in Wyoming. Black Hills also owns non-utility subsidiaries engaged in energy, energy-related, and telecommunications activities.<sup>3</sup>

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1. Unless defined in this Application, capitalized terms have the meaning defined in the Act.

2. On July 19, 2004, as amended and restated on November 1, 2004, and December 28, 2004, Black Hills filed an Application-Declaration (the Registration U-1 ) with the Commission requesting the authorizations and approvals required under the Act with respect to the internal restructuring of various functions and activities necessary to enable Black Hills and its Subsidiaries to operate as a registered holding company system and engage in ongoing financing and investment activities, intra-system services, and other transactions following the registration of Black Hills as a public utility holding company under the Act. *Black Hills Corporation*, File No. 70-10237. Black Hills will register as a holding company following the issuance of the Commission's order with respect to the Registration U-1.

3. Black Hills and its subsidiaries are referred to herein as the Black Hills System .

The Acquisition will join two relatively small, well-managed utility companies operating in adjacent states into an energy company responsive to the unique challenges confronting utilities in the western United States. The Acquisition will provide benefits to Black Hills shareholders and to the employees and customers of Black Hills Power and CLF&P. The Acquisition will significantly improve Black Hills competitive position and create enhanced opportunities for the future growth of its utility business.

B. Overview of the Acquisition

Black Hills and Xcel Energy entered into a Stock Purchase Agreement, dated as of January 13, 2004 (the Acquisition Agreement), pursuant to which Black Hills will acquire all of the issued and outstanding shares of common stock of CLF&P currently held by Xcel Energy for \$82 million, payable in cash at closing, less principal and accrued interest on all CLF&P indebtedness, and appropriate adjustments for working capital and capital expenditures.<sup>4</sup> The Acquisition Agreement has been approved by the Boards of Directors of Black Hills and Xcel Energy. No shareholder approval of the Acquisition is required.

The Acquisition has been approved by the Wyoming Public Service Commission ( Wyoming Commission )<sup>5</sup> and the Federal Energy Regulatory Commission ( FERC ).<sup>6</sup> Further, the Federal Trade Commission ( FTC ) has granted early termination of the applicable

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4. A copy of the Acquisition Agreement is attached hereto as Exhibit B-1 and is incorporated herein by reference.

5. The Wyoming Commission approved the Acquisition on August 26, 2004. *In the Matter of the Application of Cheyenne Light Fuel and Power Company and Black Hills Corporation for Authority to Transfer All of the Issued and Outstanding Stock in Cheyenne Light Fuel and Power Company to Black Hills Corporation*, Order Approving Stock Sale Transaction and Stipulation, Docket Nos. 20003-EA-04-75 and 30005-GA-04-97 (August 26, 2004). A copy of the Wyoming Commission's order is provided as Exhibit No. D-2.2.

6. FERC approved the Acquisition on September 20, 2004. *Black Hills Corporation, et al.*, 108 FERC ¶ 62,247 (2004). A copy of the FERC order is provided as Exhibit No. D-1.2.

waiting period with respect to the Acquisition under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the HSR Act ).<sup>7</sup> Notice filings will also be made with the Federal Communications Commission (the FCC ) in connection with the transfer of various telecommunications licenses.<sup>8</sup> Apart from the approvals of the Commission under the Act, the foregoing approvals are the only governmental approvals and filings required for the Acquisition.

C. Description of the Parties to the Acquisition

1. Black Hills Corporation and its Subsidiaries

a. Black Hills Corporation

Black Hills is a South Dakota corporation with its principal executive offices located at 625 Ninth Street, Rapid City, South Dakota 57701. Black Hills is an integrated energy company with three principal subsidiaries engaged in three principal lines of business:

- (i) Black Hills Power, a regulated electric utility company;
- (ii) Black Hills Energy, Inc. ( Black Hills Energy ), an unregulated Subsidiary engaged through its Subsidiaries in the development, ownership, and operation of exempt wholesale generators ( EWGs ) and qualifying facilities ( QFs ), the production, transportation and marketing of natural gas, oil, coal, and other energy commodities, power marketing and other energy-related activities; and
- (iii) Black Hills FiberCom, LLC ( Black Hills FiberCom ), an unregulated Subsidiary engaged in telecommunications activities, which has applied to the FCC for a determination that it is an exempt telecommunications company ( ETC ).

Black Hills is currently a public utility holding company within the meaning of the Act. In past years, Black Hills had made annual filings on Form U-3A-2 pursuant to Rule 2 of the Commission s regulations claiming an intrastate exemption under Section 3(a)(1) of the Act.

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7. The FTC granted early termination of the applicable waiting period on May 17, 2004. *Black Hills Corporation, et al.*, Trans. Num. 20040862 (May 17, 2004).

8. No approvals from the South Dakota Public Utilities Commission ("South Dakota Commission") are required for the Acquisition.

Upon the issuance of the Commission's order with respect to the Registration U-1, Black Hills will register with the Commission as public utility holding company under Section 5 of the Act.

b. Black Hills Power's Utility Business

Black Hills Power is a South Dakota corporation with its principal office in Rapid City, South Dakota. Black Hills Power is engaged in the generation, transmission, distribution and sale of electricity to approximately 60,000 retail customers in eleven counties throughout a 9,300 square mile service territory comprising portions of western South Dakota, eastern Wyoming and southern Montana.<sup>9</sup> Black Hills Power also sells bundled capacity and energy service to the municipal electric system of the City of Gillette, Wyoming, and wholesale capacity and energy to other wholesale customers under its market-based rate wholesale power sales tariff on file with FERC. Black Hills Power owns generating facilities located in its South Dakota service area and in Wyoming's Powder River Basin, just west of Black Hills Power's service territory.

Black Hills Power owns and operates a small transmission system of 230 kV and smaller transmission facilities located in southwest South Dakota and northeast Wyoming, with a 69 kV distribution extension into southeast Montana. Black Hills Power's transmission system totals 2,195 miles of transmission facilities. Black Hills Power provides transmission service over its system under a joint open access transmission tariff on file with FERC in Docket No. ER03-1354-000 (the Black Hills Power Joint Tariff).<sup>10</sup> Black Hills Power shares an ownership interest with Basin Electric in a new 200-MW capacity AC/DC/AC converter tie facility located at Rapid City, South Dakota (the Rapid City Tie) that interconnects the Western and Eastern

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9. Black Hills Power's distribution facilities in Montana are extremely limited, and Black Hills Power served only 34 retail customers in Montana in 2003.

10. The Black Hills Power Joint Tariff governs the provision of transmission service on the combined transmission systems of Black Hills Power and the neighboring transmission systems of Basin Electric Power Cooperative and Powder River Energy Corporation.



electric grids. Transmission service over the Rapid City Tie is available under the Black Hills Power Joint Tariff. Because of its system's isolated location, Black Hills Power provides transmission service to only a small number of third-party customers.<sup>11</sup>

Black Hills Power is subject to regulation as a public utility under the public utility laws of the states of South Dakota, Wyoming, and Montana with respect to retail electric rates and charges, issuance of most of its securities, service and facilities, classification of accounts, and transactions with affiliated interests. Black Hills Power is also subject to regulation by FERC pursuant to the Federal Power Act with respect to the classification of accounts, rates for wholesale sales of electricity, the interstate transmission of electric power and energy, interconnection agreements and acquisitions and sales of certain utility properties. Black Hills Power has been subject to a retail rate freeze in South Dakota since August 1, 1995. Black Hills Power's retail rate freeze will expire at the end of 2004, but absent Black Hills Power's request of a rate increase from the South Dakota Commission or other action by the South Dakota Commission, its rate freeze will continue indefinitely.

c. Black Hills Services

In the Registration U-1, Black Hills has requested authorization to organize and capitalize Black Hills Services Company, Inc. ( "Black Hills Services" ), to serve as a services company for Black Hills and its Subsidiaries (the "Black Hills System" ). Black Hills Services will provide centralized services, such as accounting, financial, human resources, information technology, and legal services to Black Hills Power and other companies in the Black Hills System pursuant to services agreements (the "Services Agreements" ) consistent with the standard forms of

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11. Maps of the Electric Service Area and Transmission System of Black Hills Power are provided as Exhibit E-1.

Services Agreement submitted with the Registration U-1.12 Upon the consummation of the Acquisition, Black Hills Services also will enter into a Service Agreement with CLF&P. As discussed in greater detail herein and in the Registration U-1, Black Hills is seeking certain exemptions from, or waiver of, the Commission's rules regarding the provision and pricing of certain goods and services to and from the Utility Subsidiaries of Black Hills. The requested exemptions and waivers would apply to CLF&P in certain instances.

d. Black Hills Financial Position

As of the close of business on September 30, 2004, there were 32,469,000 shares of Black Hills common stock issued and outstanding. Black Hills' total assets as of September 30, 2004 were \$2,031,535,000, consisting of \$480,998,000 in total electric utility assets and \$1,550,537,000 in other corporate assets. For the nine months ended September 30, 2004, Black Hills Power had electric utility revenues of \$129,377,000. For the year ended December 31, 2003, Black Hills Power had electric utility revenues of \$171,019,000.

Black Hills is a financially strong company which has demonstrated consistent financial performance. Black Hills has provided its shareholders with 34 consecutive years of dividend increases. Black Hills shareholders' total return over the past five years has exceeded the total return on the S&P 500 Index and has exceeded the total return on the EEI Investor Owned Electric Index. Black Hills has investment grade ratings from both major rating agencies (Baa3 from Moody's and BBB- from Standard & Poor's).<sup>13</sup>

2. Cheyenne Light, Fuel & Power Company.

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12. Two forms of Black Hills Services' Services Agreements are provided as Exhibit B-2 to the Registration U-1. One form of Services Agreements is for utilities, the other form is for non-utilities.

13. Black Hills' Annual Report on Form 10-K for 2003, and its most recent Quarterly Reports on Form 10-Q, are provided as Exhibits H-1, H-3, H-5, and H-7 to this Application.

a. CLF&P's Utility Business

CLF&P, currently a wholly-owned subsidiary of Xcel Energy,<sup>14</sup> is a small combination retail electric and gas operating utility that operates exclusively in Wyoming. As of December 31, 2003, CLF&P served 37,806 electric retail customers and 30,709 gas retail customers, in and around the City of Cheyenne in southeast Wyoming. CLF&P makes no wholesale sales of electricity.

CLF&P has historically obtained full electric requirements service to serve its retail electric load. Since 2001, CLF&P has obtained full requirements service from its affiliate PSCo.

Black Hills supplies power to PSCo and therefore may from time-to-time indirectly supply a portion of CLF&P's requirements. In 2001, Black Hills Wyoming, Inc. ( "Black Hills Wyoming" ), a wholly-owned indirect non-utility Subsidiary of Black Hills that owns and operates electric generating facilities located in Wyoming, entered into two long-term power sales agreements with CLF&P to supply CLF&P with up to 100 MW of electric capacity and associated energy and some ancillary services on a unit-contingent basis ( "PPAs" ). One of the PPAs expires in 2011, the other expires in 2013. CLF&P subsequently assigned the PPAs to PSCo through 2003 and again from 2004 through 2007, both periods when PSCo was or will be the full requirements supplier of CLF&P. After 2007, the PPAs automatically will revert back from PSCo to Cheyenne without further action by any party. Under the PPAs through 2007,

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14. Xcel Energy is a registered holding company under the Act. In addition to CLF&P, Xcel Energy owns four utility companies: Northern States Power Company ( "NSP" ), a combination electric and gas utility that operates in Minnesota, North Dakota, and South Dakota; Northern States Power Company (Wisconsin) ( "NSP-W" ), a combination electric and gas utility that operates in Wisconsin and Michigan; Public Service Company of Colorado ( "PSCo" ), a combination electric and gas utility that operates in Colorado; and Southwestern Public Service Company ( "SPS" ), an electric utility which operates in Texas, New Mexico, Oklahoma, and Kansas (collectively the "Xcel Energy Operating Companies" ).

PSCo may from time-to-time dispatch Black Hills Wyoming's generation to serve CLF&P's load.

The Xcel Energy Operating Companies operate an integrated electric system within the meaning of the Act and coordinate their operations in certain respects in accordance with a Joint Operating Agreement ( JOA ). CLF&P is not directly interconnected with any of the Xcel Energy Operating Companies, and it is not considered part of the primary Xcel Energy electric system. Rather, CLF&P is a separate system that the Commission allowed Xcel Energy to retain under the Act. CLF&P is not a party to the Xcel Energy JOA. The Xcel Energy Operating Companies, along with CLF&P, also offer transmission service on a joint basis pursuant to the Xcel Energy Open-Access Transmission Tariff ( Xcel Energy OATT ).

CLF&P owns only limited transmission facilities. CLF&P owns two 115 kV transmission line segments that total 25.5 miles in length that are situated wholly within, and are operated by, Western Area Power Administration's ( WAPA ) Rocky Mountain Region control area. CLF&P also owns limited transmission facilities in two WAPA transmission substations and a switching station. CLF&P uses these transmission facilities to interconnect its distribution system with the WAPA transmission system. Although its transmission facilities lines operate at transmission voltage (115 kV), they effectively serve only as an extension of CLF&P's distribution system, enabling CLF&P to interconnect its system with the WAPA system. Transmission service over the CLF&P transmission facilities is offered under the Xcel Energy OATT, although Xcel Energy has never received any request for transmission service over CLF&P's transmission facilities.

CLF&P does not have any rate schedules or tariffs on file with FERC. CLF&P is a public utility as defined in Section 201(e) of the Federal Power Act solely on account of its ownership of the limited set of transmission facilities described above.

CLF&P also provides natural gas distribution service to over 30,000 retail customers in a 1,200 square mile service area of southeastern Wyoming in and adjacent to Cheyenne, which substantially overlaps its electric service area. In 2003, 26% of CLF&P's operating revenues, and 36% of its operating income, were from its gas operations.<sup>15</sup>

CLF&P is currently subject to the provisions of the Act since it is a wholly-owned subsidiary of Xcel Energy, a registered holding company. CLF&P is subject to regulation by the Wyoming Commission with respect to retail rates, accounting, service standards, service territory, issuance of securities, certification of projects, and various other matters. CLF&P is also subject to the jurisdiction of FERC under the Federal Power Act with respect to its offer of transmission service under the Xcel Energy OATT.

b. CLF&P's Financial Position

CLF&P's authorized capitalization consists of 100 shares of common stock, par value \$0.01 per share, and 1,000,000 shares of preferred stock, par value \$100 per share. As of the close of business on December 31, 2003, there were 100 shares of CLF&P common stock issued and outstanding. CLF&P's outstanding securities on December 31, 2003, consisted of \$25 million in long-term debt. CLF&P's property, plant and equipment as of December 31, 2003 was approximately \$82,642,100, consisting of: \$49,544,478 in net electric utility property, plant and equipment; \$29,357,486 in net gas utility property, plant and equipment; and \$3,740,136 in net other corporate assets. For the year ended December 31, 2003, CLF&P had electric utility

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15. Maps of the Electric and Gas Service Areas and Transmission of CLF&P are provided as Exhibit E-2.

revenues of \$72,107,894 and gas utility revenues of \$24,926,180. During the nine months ending September 30, 2004, CLF&P had total revenues of approximately \$68 million.

CLF&P is a financially strong company that has demonstrated consistent financial performance. The company has consistently provided positive net operating income that has averaged over \$4 million per year over the last ten years.<sup>16</sup>

D. Description of the Acquisition

The Acquisition is structured as a stock purchase. Following the Acquisition, Black Hills will own all of the issued and outstanding shares of common stock of CLF&P. The Acquisition is subject to customary closing conditions, including the receipt of all necessary approvals from the Commission and other government agencies.

The Acquisition will be accounted for using purchase accounting. Black Hills will acquire CLF&P by paying Xcel Energy \$82 million in cash, less principal and accrued interest on all CLF&P indebtedness, with appropriate adjustments for working capital and capital expenditures. Black Hills expects the purchase price to be approximately equal to CLF&P's book value as of the date of the Acquisition Agreement. No new long-term debt is expected to be issued to finance Black Hills' cash payment to Xcel Energy, although Black Hills will be indirectly assuming approximately \$25 million of CLF&P's outstanding long-term debt.

The Acquisition Agreement contains certain covenants relating to the conduct of business by CLF&P pending the consummation of the Acquisition. Generally, CLF&P must conduct its business in the ordinary course consistent with past practice and may not take extraordinary

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16. Xcel Energy's Annual Report on Form 10-K for 2003, and its most recent Quarterly Reports on Form 10-Q, are incorporated by reference as Exhibits H-2, H-4, H-6, and H-8 to this Application.

actions, such as entering into any new contracts or making any capital expenditures that exceed threshold amounts, without Black Hills' consent.

E. Management and Operation of CLF&P Following the Acquisition

Following the Acquisition, CLF&P will be operated as a direct Subsidiary of Black Hills. Although Black Hills has not yet determined the leadership of CLF&P and the exact composition of the CLF&P's board of directors, it is expected that the CLF&P official in charge of day-to-day operations at CLF&P will be a Wyoming resident, as will certain members of CLF&P's board of directors. CLF&P's corporate headquarters will remain in Cheyenne and CLF&P will retain local facilities in Wyoming for customer service, maintenance, and field work operations. Xcel Energy agreed to provide such transitional services at cost as part of the overall negotiations of the consideration to be paid by Black Hills in the Acquisition.

Immediately following the Acquisition and for a brief transition period thereafter, Xcel Energy will continue to provide CLF&P with certain operational and administrative services under a transition services agreement in order to assure the seamless transition of CLF&P's utility operation from the Xcel Energy System to the Black Hills System.

As noted, Black Hills Services will enter into a Services Agreement with CLF&P. This Services Agreement will be substantially identical to the standard form of utility Services Agreement submitted with the Registration U-1. Pursuant to this agreement, Black Hills Services will provide CLF&P with certain administrative, management, and technical support services which, upon the completion of the transition period, will be substantially similar to the services that it intends to provide to Black Hills Power, utilizing the same work order procedures and methods of allocating costs specified in the Services Agreement. Certain employees of CLF&P may be transferred to and become employees of Black Hills Services.

In addition, Black Hills Power and CLF&P may provide to one another and to other associate companies services incidental to their utility businesses, including but not limited to, infrastructure services maintenance, storm outage emergency repairs, supply planning services, switchyard activities and services of personnel with specialized expertise related to the operation of the utility. It is anticipated that these services will be provided in accordance with Rules 87, 90, and 91. Moreover, in accordance with Rules 87, 90, and 91, certain goods may be provided through a leasing arrangement or otherwise by one Utility Subsidiary to one or more associate companies, and certain assets may be used by one Utility Subsidiary for the benefit of one or more other associate companies. To the extent these services might exceed those allowable under applicable rules, Black Hills seeks approval pursuant to Rules 85(a), 87(a)(3), or otherwise for Black Hills Power and any future Utility Subsidiary to provide such services to each other, at cost as defined in Rules 90 and 91, as required for the efficient operation of the Black Hills System.

Black Hills Services will be required to provide the Commission with written notice at least 60 days prior to implementing any change in the type and character of the companies receiving services the methods of allocating costs to associate companies, or the scope or character of services to be rendered. If, upon the receipt of any such notice, the Commission shall notify Black Hills Services within the sixty-day period that a question exists as to whether the proposed change is consistent with the provisions of Section 13 of the Act, or of any rule, regulation, or order thereunder, the proposed change shall not become effective unless and until Black Hills Services shall have filed with the Commission an appropriate declaration regarding such proposed change and the Commission shall have permitted such declaration to become effective.



As Black Hills explains in the Registration U-1, Black Hills expects Black Hills Services to be formed within 60 days of the issuance of the Commission's order with respect to this Application. However, in the Registration U-1 Black Hills has sought authority to delay, for a period not longer than 12 months following the date of such order, the full implementation of all expected services to be provided by Black Hills Services and full implementation of required accounting systems and cost allocation methodologies, provided that Black Hills committed in the Registration U-1 to implement the Commission's at cost requirements under Rule 90 as soon as practicable for each type of service following the establishment of Black Hills Services. Such transition period is necessary to accommodate the complexities of the formation and implementation of the services company. First, appropriate personnel from Black Hills and its Subsidiaries will be transferred to Black Hills Services' employ, but the timing of those transfers will be subject to the need to transfer employee benefit, health, and pension plans, contracts, licenses, and permits to Black Hills Services subject to the receipt of applicable approvals and consents from regulators, counterparties, and vendors. Moreover, Black Hills Services will need to develop systems to fully implement the desired accounting requirements. Black Hills anticipates that it will take up to twelve months to transfer employees to Black Hills Services, develop and implement accounting and other systems, and make Black Hills Services fully operational. Accordingly, as Black Hills has explained in the Registration U-1, Black Hills requests a phased-in transition period for Black Hills Services of up to twelve months.<sup>17</sup>

F. Financing CLF&P's Operations Following the Acquisition

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17. The Commission has allowed similar phase-in periods in the past for companies becoming subject to the Act for the first time as a result of a merger or acquisition. *See, e.g., Emera, Inc.*, Holding Company Act Release No. 35-27445 (Oct. 1, 2001); *Exelon Corporation*, Holding Company Act Release No. 35-27256 (Oct. 19, 2001); *AGL Resources, Inc.*, Holding Company Act Release No. 35-27243 (Oct. 5, 2000); *New Century Energies, Inc.*, Public Holding Company Act Release No. 35-27212 (Aug. 16, 2000); *Dominion Resources*, HCAR No. 35-27113 (Dec. 15, 1999).

The existing equity and long-term debt securities of CLF&P, as described above, will remain outstanding after the Acquisition closes. In general, all securities issuances by CLF&P, other than indebtedness with a final maturity of less than one year, renewable for a period of not more than two years, must be approved by the Wyoming Commission. All external securities issued by CLF&P, other than short-term indebtedness and all intercompany borrowings by CLF&P, will be exempt from sections 6(a) and 7 of the Act under Rule 52(a).

In the Registration U-1, Black Hills has requested authorization and approval of the Commission with respect to the issuance of various types of debt and equity securities, the provision of guarantees and other forms of credit support, and other types of financing transactions by Black Hills and its Subsidiaries, including its Utility Subsidiaries, following the registration of Black Hills as a holding company, to the extent such financing arrangements are not exempt under Rule 52. Black Hills has requested authorization for these financing transactions for the period beginning with the effective date of the Commission order issued with respect to the Registration U-1 continuing to and including December 31, 2007 (the Authorization Period). To the extent that the financing authorizations provided in the Commission's order issued with respect to the Registration U-1 apply to Black Hills Subsidiaries generally, or to its Utility Subsidiaries in particular, Black Hills requests that these authorizations also apply to CLF&P.

In the Registration U-1, Black Hills has requested the Commission to approve a financing request for the issuance of up to an additional \$1 billion in securities of Black Hills and its Subsidiaries outstanding at any time, subject to the Commission's reservation of jurisdiction over \$250 million pending completion of the record, with a sublimit of \$350 million applicable to Black Hills Utility Subsidiary. Black Hills requests that \$100 million of the Utility Subsidiary financing sublimit apply to CLF&P to permit CLF&P to issue securities up to a total of \$100 million during the Authorization Period.

In particular, Black Hills requests authority for CLF&P to issue and sell from time to time during the Authorization Period short-term debt securities to unaffiliated lenders, to enter into interest rate hedging transactions, and to become a participant in the Black Hills System utility money pool (Utility Money Pool). CLF&P will not engage in any such financing transactions unless, on a pro forma basis taking into account the amount and types of the

financing and the application of the proceeds thereof, common equity as a percentage of capitalization (including short-term debt and current maturities of long-term debt) is at least 30%.

1. External Short-Term Debt

Prior to the Acquisition, CLF&P will not have any outstanding third-party short-term debt (other than the current portion of long-term debt). After CLF&P becomes a subsidiary of Black Hills, Black Hills seeks for CLF&P the flexibility to establish credit lines and make short-term borrowings as needed to finance its operations and support working capital needs, consistent with Black Hills' request for such authority with respect to Black Hills Power as requested in the Registration U-1. Accordingly, Black Hills requests authorization for CLF&P to issue commercial paper and/or establish and make secured or unsecured short-term borrowings (*i.e.*, maturities less than one year) under credit lines with banks or other institutional lenders from time to time during the Authorization Period to the extent such arrangements are not exempt under Rule 52, provided that the aggregate principal amount of commercial paper and borrowings by CLF&P at any time outstanding under credit facilities, when added to the aggregate amount of borrowings at any time by CLF&P under the Utility Money Pool, described below, and direct borrowings at any time by CLF&P from Black Hills, will not exceed the limit allowed under Wyoming law. Subject to this limitation, Black Hills requests authority for CLF&P to sell commercial paper, from time to time, in established commercial paper markets. The commercial paper would typically be sold to dealers at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring the commercial paper will reoffer it at a discount to corporate, institutional and individual investors. Black Hills

anticipates that the commercial paper may be reoffered to investors such as commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, finance companies, and nonfinancial corporations.

The issuance of secured short-term debt by CLF&P would be limited to those circumstances in which CLF&P can expect a savings in costs over the issuance of unsecured short-term debt or in which unsecured credit is unavailable, except at a higher cost than secured short-term debt. Black Hills anticipates that the collateral offered as security for short-term debt of CLF&P would generally be limited to short-term assets, such as inventory and/or accounts receivable.

Black Hills also requests authority for CLF&P to establish credit lines with banks or other institutional lenders and other credit arrangements and/or borrowing facilities generally available to borrowers with comparable credit ratings as it deems appropriate in light of its needs and existing market conditions providing for revolving credit or other loans and having commitment periods not longer than the Authorization Period. Only the amounts drawn and outstanding under these agreements and facilities will be counted against the limitation allowed under Wyoming Law. The effective cost of money on all external short-term borrowings by CLF&P will not exceed at the time of issuance 300 basis points over the six-month London Interbank Offered Rate ( LIBOR ) for maturities of less than one year.<sup>18</sup>

Except for securities issued for the purpose of funding Utility Money Pool operations, CLF&P will not issue any short-term debt securities in reliance upon the authorization granted by the Commission under this Application, unless: (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of CLF&P that are rated are rated investment

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18. See *Ameren Corporation*, Holding Company Act Release No. 35-27860 (June 18, 2004).

grade; and (iii) all outstanding securities of Black Hills that are rated are rated investment grade ( Investment Grade Condition ). For purposes of this Investment Grade Condition, a security will be deemed to be rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3-1 under the Securities Exchange Act of 1934, as amended. Black Hills requests that the Commission reserve jurisdiction over the issuance of any short-term debt securities by CLF&P at any time that the conditions set forth in clauses (i) through (iii) are not satisfied.

2. Participation in Utility Money Pool

In the Registration U-1, Black Hills requested authorization to establish a Utility Money Pool in order to provide for the short-term cash and working capital needs of its Utility Subsidiaries. Black Hills Non-Utility Subsidiaries would be authorized to make unsecured short-term borrowings from the Utility Money Pool, to contribute surplus funds to the Utility Money Pool, and to lend and extend credit to (and acquire promissory notes from) one another through the Utility Money Pool. Black Hills may not make borrowings under the Utility Money Pool. If surplus funds made available by the participants in the Utility Money Pool (*i.e.*, Internal Funds ) are used to fund loans to eligible borrowers, the interest rate applicable to such loans will be the rates for high-grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in *The Wall Street Journal* or the rate then available to the lending company from an eligible investment in readily marketable money market funds or the existing short-term investment accounts maintained by the lender during the period in question. If proceeds from external borrowings by any participant in the Utility Money Pool (*i.e.*, External Funds ) are used to fund loans to eligible borrowers, the interest rate is equal to the

lending company's cost of borrowing. In cases where both Internal Funds and External Funds are used to fund loans to eligible borrowers, the applicable interest rate is a composite rate equal to the weighted average of the Internal Funds and External Funds.

Black Hills requests authorization for CLF&P to become a party to the Utility Money Pool Agreement after the closing of the Acquisition on the same basis as Black Hills Power.

### 3. Interest Rate Hedges

Black Hills also requests authorization for CLF&P to enter into interest rate hedging transactions ( Interest Rate Hedges ) with respect to outstanding indebtedness, subject to certain limitations and restrictions, in order to reduce or manage its effective interest rate cost. CLF&P would employ interest rate derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued pursuant to this authorization or an applicable exemption by, in effect, synthetically (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt to variable rate debt, and (iii) limiting the impact of changes in interest rates resulting from variable rate debt. In no case will the notional principal amount of the underlying debt instrument in any interest rate swap exceed the face value of the underlying debt instrument and related interest rate exposure. Transactions will be entered into for a fixed or determinable period.

Interest Rate Hedges (other than exchange-traded interest rate futures contracts) would only be entered into with counterparties ( Approved Counterparties ) whose senior debt ratings, or the senior debt ratings of any credit support providers who have guaranteed the obligations of such counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's, Fitch Investor Services, or Duff and Phelps. Interest Rate Hedges will involve the use of financial instruments commonly used in today's

capital markets, such as interest rate and currency forwards, swaps, caps, collars, floors, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of any underlying asset or index), or transactions involving the purchase or sale, including short sales, of government or agency (*e.g.*, Fannie Mae) obligations, or LIBOR-based swap instruments (collectively, Hedge Instruments ). The transactions would be for fixed periods and stated notional amounts. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

In addition, Black Hills requests authorization for CLF&P to enter into interest rate hedging transactions with respect to anticipated debt offerings ( Anticipatory Hedges ), subject to certain limitations and restrictions. Such Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix the interest rate and/or limit the interest rate risk associated with any new issuance through: (i) A forward sale of exchange-traded Hedge Instruments (each a Forward Sale ), (ii) the purchase of put options on Hedge Instruments ( Put Options Purchase ), (iii) a Put Options Purchase in combination with the sale of call options on Hedge Instruments ( Zero Cost Collar ), (iv) transactions involving the purchase or sale, including short sales, of Hedge Instruments, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar, and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange ( On-Exchange Trades ) with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade or other financial exchange, the opening of over-the-counter positions

with one or more counterparties ( Off-Exchange Trades ), or a combination of On-Exchange Trades and Off-Exchange Trades. CLF&P will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. CLF&P may decide to lock in interest rates and limit its exposure to interest rate increases. The proposed terms of CLF&P s Anticipatory Hedges are substantially the same as the Commission has approved in other cases.<sup>19</sup>

CLF&P will comply with Statement of Financial Accounting Standards No