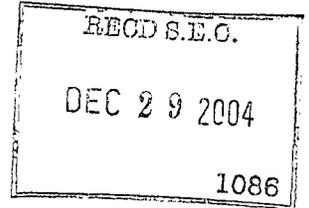


UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549



FORM SE
APPLICATION-DECLARATION
UNDER THE
PUBLIC UTILITY HOLDING COMPANY ACT OF 1935



Black Hills Corporation
625 Ninth Street
Rapid City, SD 57701
(Name of Company filing this statement and address of principal executive offices)

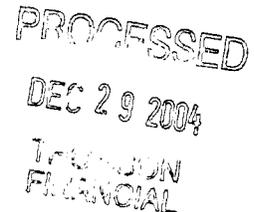
Registrant CIK: 0001130464

SEC File Number: 070-10255

FORM U-1/A

Name of Person Filing this Form SE:

Michael C. Griffen
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 739-5257



SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify on December 29, 2004, that the information set forth in this statement is true and complete.

By:

Michael C. Griffen
Attorney for Black Hills Corporation



Exhibits Filed With This Form SE

- Exhibit B-1 Stock Purchase Agreement (Acquisition Agreement)
 - Exhibit D-1.1 Joint Application of Black Hills and CLF&P to FERC re Acquisition
(excluding exhibits and testimony which Black Hills will supply upon
request of the Commission)
 - Exhibit D-1.2 Order of FERC Approving the Acquisition
 - Exhibit D-2.1 Application of Black Hills and CLF&P Before the Wyoming Commission
Regarding the Acquisition (excluding exhibits and testimony which Black
Hills will supply upon request of the Commission)
 - Exhibit D-2.2 Order of the Wyoming Commission Approving the Acquisition
 - Exhibit E-2 Maps Electric and Gas Service Areas and Transmission System of CLF&P
 - Exhibit E-4 Black Hills Corporate Organizational Chart (After Acquisition)
-

STOCK PURCHASE AGREEMENT

between

XCEL ENERGY INC.,

as "Seller,"

and

BLACK HILLS CORPORATION,

as "Buyer"

January 13, 2004

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STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT (this "Agreement"), made as of January 13, 2004, is between XCEL ENERGY INC., a Minnesota corporation ("Seller"), and BLACK HILLS CORPORATION, a South Dakota corporation ("Buyer"). Buyer and Seller are referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Cheyenne Light, Fuel & Power Company, a Wyoming corporation ("CLF&P"), owns and operates facilities to provide electricity and natural gas to consumers in Laramie County, Wyoming;

WHEREAS, Seller owns 100% of the outstanding capital stock of CLF&P (the "Shares"); and

WHEREAS, Seller desires to sell and Buyer desires to purchase the Shares, on the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, the Parties, in consideration of the mutual promises set forth in this Agreement, agree as follows:

ARTICLE 1 DEFINITIONS

As used in this Agreement, the following definitions will apply:

"Acquisition Proposal" has the meaning given in Section 6.8 of this Agreement.

"Affiliate" means any Person that directly, or indirectly through one or more Persons, controls, is controlled by, or is under common control with, the Person specified or, directly or indirectly, is related to or otherwise associated with any such Person.

"Affiliated Group" means any affiliated group within the meaning of Code Section 1504(a).

"Agent" has the meaning given in Section 6.8 of this Agreement.

"Agreement" means this Agreement, as may be amended or supplemented, together with all exhibits and schedules incorporated by reference or referred to herein.

"Black Hills Power Purchase Agreements" means the Gillette Turbine Power Purchase Agreement, dated March 5, 2001, by and between Black Hills Generation, Inc. and CLF&P, and the Power Purchase Agreement, dated February 16, 2001, by and between Black Hills Generation, Inc. and CLF&P, each as amended, supplemented or otherwise modified.

"Business Day" means any day that is not a Saturday, Sunday or national holiday on which commercial banks are closed.

"Buyer" has the meaning given in the preface to this Agreement.

"Buyer Material Adverse Effect" means any change or effect that is materially adverse to the business, operation, properties, financial conditions, assets or liabilities (including contingent liabilities) of Buyer or Buyer and its Affiliates, taken as a whole. "Material Adverse Effect," however, does not include any effect that is attributable to any of the following:

(a) Any change (or changes taken together) or effect generally affecting the international, national, regional or local natural gas or electricity production, sale or delivery industries as a whole;

(b) Any change (or changes taken together) or effect resulting from changes in the general national or regional economic or financial conditions; or

(c) Any change in law or any order, decree or act of any Governmental Entity applicable to the natural gas or electricity industries generally.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended as of the date of this Agreement.

"CLF&P" has the meaning given in the recitals to this Agreement.

"CLF&P's Current Assets" means the current assets of CLF&P excluding deferred debts, determined in accordance with GAAP consistently applied, as of the relevant date of determination, calculated in accordance with Exhibit A.

"CLF&P's Current Liabilities" means the current liabilities of CLF&P, determined in accordance with GAAP consistently applied, as of the relevant date of determination, calculated in accordance with Exhibit A.

"CLF&P's Net Working Capital" means CLF&P's Current Assets less CLF&P's Current Liabilities.

"Closing" has the meaning given in ARTICLE 11 of this Agreement.

"Closing Date" means the date on which the Closing occurs pursuant to ARTICLE 11 of this Agreement.

"Closing Date Balance Sheet" has the meaning given in Section 3.2(b) of this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended as of the date of this Agreement.

"Confidentiality Agreement" means the Confidential Nondisclosure Agreement, dated September 5, 2001, as amended, between Seller, CLF&P and Buyer.

"Deadline" has the meaning given in Section 12.5 of this Agreement.

"DOJ" means the United States Department of Justice.

"Due Diligence Materials" means (a) all due diligence materials provided for review or distributed in written, oral, electronic or digital form by Seller, CLF&P or their respective representatives to Buyer or its representatives, (b) all written, oral or electronic answers provided by Seller, CLF&P or their respective representatives to questions of Buyer or its representatives, (c) all materials contained in data rooms established for purposes of providing due diligence materials to Buyer or its representatives provided by Seller, CLF&P or their respective representatives to Buyer or its representatives, and (d) all information and data regarding CLF&P acquired by Buyer prior to Closing.

"Employee Benefit Plans" means all of Seller's and CLF&P's employee benefit plans (as defined in Section 3(3) of ERISA, including, without limitation, any employee pension benefit plan as defined in Section 3(2) of ERISA, and any employee welfare benefit plan as defined in Section 3(1) of ERISA), in which employees of CLF&P are eligible to participate.

"Employee Programs" means, other than Employee Benefit Plans, all of Seller's or CLF&P's payroll practices, personnel policies, contracts, plans and arrangements, if any, providing for bonuses, deferred compensation, retirement payments, profit sharing, incentive pay, commissions, vacation pay or other benefits in which any employee of CLF&P or such employee's spouse or dependents participate, and all employment, severance or other agreements with any directors or employees of CLF&P.

"Employees" means all individuals employed by CLF&P immediately prior to the Closing.

"Encumbrance" means any mortgage, security interest, pledge, lien, charge, claim, lease, conditional sale or other title retention agreement, easement, limitation, commitment, encroachment, restriction or other encumbrance of any kind or nature whatsoever.

"Environmental Laws" means all federal, state and local Legal Requirements: (a) concerning public health and safety and pollution or protection of the environment, flora, fauna or natural resources, including, without limitation, CERCLA, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., the Toxic Substances and Control Act, 15 U.S.C. § 2601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., and the Safe Drinking Water Act, 42 U.S.C. § 300f et. seq., each as amended as of the date of this Agreement; (b) concerning Hazardous Substances; or (c) relating to the management or use of natural resources.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended as of the date of this Agreement.

"ERISA Affiliate" means any corporation or trade or business (whether or not incorporated) under common control or treated as a single employer with Seller or CLF&P within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"Estimated Capital Expenditures" has the meaning given in Section 3.3(a) of this Agreement.

"Estimated Net Working Capital" has the meaning given in Section 3.2(a) of this Agreement.

"FCC" means the United States Federal Communications Commission.

"FERC" means the United States Federal Energy Regulatory Commission.

"Filings" means all material filings, notices, reports, returns, registrations, statements or applications, together with any amendments thereto, required to be filed with any Governmental Entity under any Legal Requirements.

"Final Closing Date Capital Expenditures" has the meaning given in Section 3.3(c) of this Agreement.

"Final Closing Date Net Working Capital" has the meaning given in Section 3.2(c) of this Agreement.

"Financial Statements" has the meaning given in Section 4.5 of this Agreement.

"First Mortgage Bonds" means CLF&P's bonds issued pursuant to the Indenture of Mortgage and Deed of Trust.

"FTC" means the United States Federal Trade Commission.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States.

"Good Utility Practices" means any of the practices, methods and acts engaged in and approved by a significant portion of the electric utility industry in the region during the relevant time period, or any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practices are not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the electric utility industry in the region.

"Governmental Entity" means any federal, state, local or foreign government, court, administrative agency, board or commission, or other governmental authority or instrumentality, including, without limitation, the DOJ, FCC, FERC, FTC, IRS, SEC and WPSC.

"Guaranty Agreements" means those certain guaranty agreements, made by Seller in favor of Black Hills Generation, Inc., dated as of March 18, 2001 and April 3, 2001, respectively, as from time to time further amended, supplemented or otherwise modified, together with all agreements, documents and instruments executed in connection therewith.

"Hazardous Substances" means substances that are defined or listed in, or otherwise classified pursuant to, Environmental Laws as "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants," "irritants" or "toxic substances," or that are otherwise regulated under any Environmental Laws.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated pursuant thereto.

"Indemnitee" has the meaning given in Section 12.6 of this Agreement.

"Indemnitor" has the meaning given in Section 12.6 of this Agreement.

"Indenture of Mortgage and Deed of Trust" means the Indenture of Mortgage & Deed of Trust dated March 1, 1948, between CLF&P, as issuer, and the United States National Bank of Denver, as trustee, as amended by the First Supplemental Indenture dated May 1, 1955, as further amended by the Second Supplemental Indenture dated April 1, 1960, as further amended by the Third Supplemental Indenture dated April 1, 1973, as further amended by the Fourth Supplemental Indenture dated September 1, 1991, as further amended by the Fifth Supplemental Indenture dated January 1, 1994, as further amended by the Sixth Supplemental Indenture dated April 3, 1997, and as further amended by the Seventh Supplemental Indenture dated June 5, 1997.

"IRS" means the United States Internal Revenue Service.

"Knowledge" means, with respect to an individual, that, with respect to a particular fact or other matter, such individual is actually aware of such fact or other matter. With respect to Seller, **"Knowledge"** means the Knowledge of any of the Persons listed on Schedule 1(a). With respect to Buyer, **"Knowledge"** means the Knowledge of any of the Persons listed on Schedule 1(b).

"Leases" has the meaning given in Section 4.8(b) of this Agreement.

"Legal Requirement" means any law, statute, judgment, order, writ, injunction, decree, award, rule or regulation of, or promulgated by, any Governmental Entity.

"Losses" means all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, reasonable amounts paid in settlement, liabilities, Taxes, Encumbrances, losses, expenses and fees, including all litigation costs and reasonable attorneys' fees and expenses.

"Material Adverse Effect" means any change or effect that is materially adverse to the business, operation, properties, financial conditions, assets or liabilities (including contingent liabilities) of CLF&P. "Material Adverse Effect," however, does not include any effect that is attributable to any of the following:

(a) Any change (or changes taken together) or effect generally affecting the international, national, regional or local natural gas or electricity production, sale or delivery industries as a whole;

(b) Any change (or changes taken together) or effect resulting from changes in the general national or regional economic or financial conditions;

(c) Any change that is cured (including by the payment of money) before the earlier of the Closing or the termination of the Agreement pursuant to Section 13.1; or

(d) Any change in law or any order, decree or act of any Governmental Entity applicable to the natural gas or electricity industries generally.

Any determination as to whether any condition or other matter has a Material Adverse Effect will be made only after taking into account all proceeds actually received pursuant to insurance and third party indemnification with respect to such condition or matter.

"Most Recent Interim Financial Statements" has the meaning given in Section 4.5 of this Agreement.

"Objectionable Title Matter" means any exceptions to or defects in CLF&P's title to Owned Real Property with respect to which Buyer gives Seller written notice of objection pursuant to Section 9.9 hereof ("**Objectionable Title Matters**"). Buyer shall have no right to object to exceptions or defects that are Permitted Encumbrances. All such exceptions and defects (other than any exceptions or defects arising after the date hereof) to which Buyer does not make objection in accordance with this Agreement, and all such exceptions and defects to which Buyer makes a valid objection but later waives such objection, shall be deemed Permitted Encumbrances.

"Organizational Documents" means certificates of incorporation, by-laws, certificates of formation, limited liability company operating agreements, partnership or limited partnership agreements and other formation or governing documents of a particular entity.

"Owned Real Property" has the meaning given in Section 4.8(a) of this Agreement.

"Parties" has the meaning given in the preface to this Agreement.

"Permitted Encumbrances" means:

(e) all Encumbrances for Taxes or assessments, special or otherwise, either not due and payable or being contested in good faith and fully accrued or adequately provided for;

(f) all Encumbrances representing mechanics', materialmen's, carriers', warehousemen's, landlords' and other similar or statutory liens arising in the ordinary course of business and fully accrued or adequately provided for;

(g) the Indenture of Mortgage and Deed of Trust; and

(h) any current easement or claim of easement, limitation, commitment, encroachment, restriction or other exception to title or title defect (other than liens), which in all cases does not materially impair the current use or operation of the property to which it relates.

"Person" means any individual, corporation, company, partnership (limited or general), joint venture, association, limited liability company, trust or other entity.

"Preliminary Closing Date Capital Expenditures" has the meaning given in Section 3.3(b) of this Agreement.

"Preliminary Closing Date Net Working Capital" has the meaning given in Section 3.2(b) of this Agreement.

"PUHCA" has the meaning given in Section 4.22 of this Agreement.

"Purchase Price" has the meaning given in Section 3.1 of this Agreement.

"Records" means all written records and original documents that pertain to and are utilized by Seller or CLF&P to administer, reflect, monitor, evidence or record information regarding CLF&P or the conduct of CLF&P's operations.

"Response Actions" means the activities defined in 42 U.S.C. § 9601(25) of CERCLA.

"Required Regulatory Approvals" means all approvals or consents of or Filings with any Governmental Entity required to consummate the transactions contemplated by this Agreement, all of which are listed on Schedule 4.3 (for Seller) and Schedule 5.3 (for Buyer).

"SEC" means the United States Securities and Exchange Commission.

"Seller" has the meaning given in the preface to this Agreement.

"Seller Material Adverse Effect" means any change or effect that is materially adverse to the business, operation, properties, financial conditions, assets or liabilities (including contingent liabilities) of Seller. "Material Adverse Effect," however, does not include any effect that is attributable to any of the following:

(i) Any change (or changes taken together) or effect generally affecting the international, national, regional or local natural gas or electricity production, sale or delivery industries as a whole;

(j) Any change (or changes taken together) or effect resulting from changes in the general national or regional economic or financial conditions; or

(k) Any change in law or any order, decree or act of any Governmental Entity applicable to the natural gas or electricity industries generally.

“Shares” has the meaning given in the recitals to this Agreement.

“Tax” means any federal, provincial, territorial, state, municipal, local, foreign or other taxes, imposts, rates, levies, assessments and other charges, including, without limitation, all income, franchise, gains, capital, real property, goods and services, transfer, value added, gross receipts, windfall profits, severance, ad valorem, personal property, production, sales, use, license, stamp, documentary stamp, recording, excise, environmental (including under Code Section 59A), employment, payroll, social security, unemployment, disability, estimated or withholding tax, and all customs and import duties, together with any interest, additions, fines or penalties with respect thereto or in respect of any failure to comply with any requirement regarding Tax Returns and any interest in respect of such additions, fines or penalties.

“Tax Return” means any return, declaration, report, claim for refund, information return, schedule or statement relating to Taxes including any schedule or attachment thereto, and including any amendment thereto.

“Title Policy” and “Title Policies” have the meanings given in Section 9.9 of this Agreement.

“2004 Budget” has the meaning given in Section 6.1(e) of this Agreement.

“WARN Act” means the Worker Adjustment and Retraining Notification Act.

“WPSC” means the Wyoming Public Service Commission.

ARTICLE 2 SALE OF THE SHARES

On the terms and subject to the conditions of this Agreement, at the Closing, Seller will sell, transfer, assign and deliver to Buyer, and Buyer will purchase and accept from Seller, the Shares, in exchange for the Purchase Price.

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price. At the Closing, as the purchase price for the Shares, Buyer will pay, by wire transfer or delivery of other immediately available funds, the sum of (a) \$82,000,000, minus (b) the principal amount of indebtedness and all accrued and unpaid interest thereon owing by CLF&P on or related to the First Mortgage Bonds as of the Closing, plus or minus (c) any adjustments pursuant to Section 3.2 and Section 3.3 (the “Purchase Price”).

3.2 Working Capital Adjustment to Purchase Price.

(a) Not later than 3 Business Days before the Closing Date, Seller will provide Buyer with Seller’s good faith estimate of CLF&P’s Net Working Capital as of the

Closing Date, based upon the accounting books and records of CLF&P (the "Estimated Net Working Capital"), and all underlying documentation supporting the Estimated Net Working Capital. The determination of the Estimated Net Working Capital will be binding on Seller and Buyer and will be used to determine the amount of the Purchase Price payable to Seller at the Closing. If the Estimated Net Working Capital is a number greater than zero, then the amount of the Purchase Price paid by Buyer to Seller at the Closing will be increased by the amount of such excess. If the Estimated Net Working Capital is a number less than zero, then the amount of the Purchase Price paid by Buyer to Seller at the Closing will be decreased by the amount of such deficit.

(b) Within 60 days after the Closing Date, Seller will prepare and deliver to Buyer a written calculation of CLF&P's Net Working Capital as of the Closing Date (the "Preliminary Closing Date Net Working Capital"), which calculation will be prepared based on the balance sheet of CLF&P (the "Closing Date Balance Sheet") and, if requested by Buyer and at Buyer's expense, audited by Deloitte & Touche LLP and prepared as of the Closing Date in accordance with GAAP on a basis consistent with the balance sheets included in the Financial Statements. To the extent of any inconsistency between CLF&P's past practice and GAAP, GAAP will prevail in determining any adjustment to the Purchase Price. Seller will provide copies and otherwise make available to Buyer and its representatives the work papers and back-up materials used in preparing the Closing Date Balance Sheet and calculating the Preliminary Closing Date Net Working Capital.

(c) If Buyer has any good faith objections to Seller's calculation of the Preliminary Closing Date Net Working Capital, then it must deliver a detailed written statement describing its objections to Seller within 20 Business Days after Seller delivers the Closing Date Balance Sheet and its calculation of the Preliminary Closing Date Net Working Capital to Buyer. If Buyer does not object to Seller's calculation of Preliminary Closing Date Net Working Capital (and any adjustments resulting therefrom) within such 20 Business Day period, then Buyer will be deemed to have accepted Seller's calculation thereof. If Buyer does object in a timely manner, the Parties will make a diligent, good faith effort to resolve all such objections. If the Parties are unable to resolve all objections to Seller's calculation of the Preliminary Closing Date Net Working Capital within 10 Business Days after Seller receives Buyer's statement of objections, then the Parties will select a mutually acceptable, nationally-recognized accounting firm (which may not be the auditors of either Party) to resolve any remaining objections. Neither Party shall submit evidence or materials to such accounting firm that was not presented to the other Party prior to the expiration of the 10 Business Day period. Buyer and Seller each will pay 50% of the costs and expenses of any accounting firm so used. The determination made by such accounting firm will be set forth in writing and will be conclusive and binding upon the Parties. The amount of the Preliminary Closing Date Net Working Capital as agreed to by Buyer and Seller or as determined by the accounting firm constitutes the "Final Closing Date Net Working Capital."

(d) In the event that the Final Closing Date Net Working Capital exceeds the Estimated Net Working Capital, then Buyer will pay to Seller in cash the amount of such excess. In the event that the Estimated Net Working Capital exceeds the Final Closing Date Net Working Capital, then Seller will pay to Buyer in cash the amount of such excess. All amounts payable under this Section 3.2 will be paid within 3 Business Days of the determination of the

Final Closing Date Net Working Capital by wire transfer of immediately available funds to a bank account designated in writing by the recipient not less than one Business Day before such payment.

3.3 Capital Expenditure Adjustment to Purchase Price.

(a) Not later than 3 Business Days before the Closing Date, Seller will provide Buyer with Seller's good faith estimate of the capital expenditures incurred by or on behalf of CLF&P in accordance with Section 6.1 between the date of this Agreement and the Closing Date based upon the accounting books and records of CLF&P (the "Estimated Capital Expenditures"), and all underlying documentation supporting the Estimated Capital Expenditures. Notwithstanding the foregoing, no capital expenditures shall be included in Estimated Capital Expenditures to the extent such capital expenditures are reflected in the CLF&P's Current Assets. The determination of the Estimated Capital Expenditures will be binding on Seller and Buyer and will be used to determine the amount of the Purchase Price payable to Seller at the Closing. If the Estimated Capital Expenditures is greater than zero, then the amount of the Purchase Price paid by Buyer to Seller at the Closing will be increased by the amount of such excess.

(b) Within 60 days after the Closing Date, Seller will prepare and deliver to Buyer a written calculation of the capital expenditures incurred by or on behalf of CLF&P in accordance with Section 6.1 between the date of this Agreement and the Closing Date (the "Preliminary Closing Date Capital Expenditures"), and all underlying documentation supporting the amount of the Preliminary Closing Date Capital Expenditures. Notwithstanding the foregoing, no capital expenditures shall be included in Preliminary Closing Date Capital Expenditures to the extent such capital expenditures are reflected in CLF&P's Current Assets.

(c) If Buyer has any good faith objections to Seller's calculation of the Preliminary Closing Date Capital Expenditures, then it must deliver a detailed written statement describing its objections to Seller within 20 Business Days after Seller delivers its calculation of the Preliminary Closing Date Capital Expenditures to Buyer. If Buyer does not object to Seller's calculation of Preliminary Closing Date Capital Expenditures (and any adjustments resulting therefrom) within such 20 Business Day period, then Buyer will be deemed to have accepted Seller's calculation thereof. If Buyer does object in a timely manner, the Parties will make a diligent, good faith effort to resolve all such objections. If the Parties are unable to resolve all objections to Seller's calculation of the Preliminary Closing Date Capital Expenditures within 10 Business Days after Seller receives Buyer's statement of objections, then the Parties will select a mutually acceptable, nationally-recognized accounting firm (which may not be the auditors of either Party) to resolve any remaining objections. Buyer and Seller each will pay 50% of the costs and expenses of any accounting firm so used. The determination made by such accounting firm will be set forth in writing and will be conclusive and binding upon the Parties. The amount of the Preliminary Closing Date Capital Expenditures as agreed to by Buyer and Seller or as determined by the accounting firm constitutes the "Final Closing Date Capital Expenditures."

(d) In the event that the Final Closing Date Capital Expenditures exceeds the Estimated Capital Expenditures, then Buyer will pay to Seller in cash the amount of such excess. In the event that the Estimated Capital Expenditures exceeds the Final Closing Date Capital

Expenditures, then Seller will pay to Buyer in cash the amount of such excess. All amounts payable under this Section 3.3 will be paid within 3 Business Days of the determination of the Final Closing Date Capital Expenditures by wire transfer of immediately available funds to a bank account designated in writing by the recipient not less than one Business Day before such payment.

3.4 Sales, Transfer and Other Taxes. Any sales, transfer, purchase, use, real estate, excise or other Taxes that may be payable by reason of the sale, transfer or conveyance of the Shares will be paid by Buyer.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as follows:

4.1 Corporate Existence and Powers; Capitalization; Subsidiaries; Organizational Documents.

(a) Seller is a corporation duly incorporated, validly existing and in good standing under the laws of Minnesota. CLF&P is a corporation duly incorporated, validly existing and in good standing under the laws of Wyoming. Seller has all requisite power and authority to own the Shares, and CLF&P has the requisite power and authority to conduct its business as now conducted. CLF&P is duly qualified to do business, and is in good standing, in each jurisdiction in which the property owned, leased, or operated by it or the nature of its business makes such qualification necessary.

(b) The authorized capital stock of CLF&P consists of 100 shares of common stock, par value \$0.01 per share, of which 100 shares are issued and outstanding and constitute the Shares, and 1,000,000 shares of preferred stock, par value \$100 per share, none of which are issued and outstanding. All of the Shares have been duly authorized and are validly issued, fully paid and nonassessable and were not issued in violation of the preemptive rights of any Person. Except as set forth on Schedule 4.1, Seller owns all of the Shares, free and clear of any restrictions on transfer (other than restrictions under the Securities Act of 1933, as amended, and state securities laws), Taxes, Encumbrances, options, warrants, purchase rights, contracts, commitments, equities, claims and demands.

(c) Except as set forth on Schedule 4.1, CLF&P does not have any subsidiaries nor does it otherwise control, own directly or indirectly, or have any equity participation directly or indirectly in any corporation, limited liability company, partnership, joint venture, trust or other business association.

(d) Seller has provided Buyer or its representatives access to true and correct copies of the Organizational Documents of CLF&P.

4.2 Authority. Seller has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated by this Agreement. Seller has duly and validly authorized the execution and delivery of this Agreement. This Agreement has been duly and validly executed and delivered by Seller and, subject to execution

and delivery of this Agreement by Buyer, this Agreement constitutes a valid and binding obligation of Seller enforceable against it in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, or by general equitable principles.

4.3 Required Regulatory Approvals and Filings; Consents. Except as set forth on Schedule 4.3, no consent, approval, action or authorization of or Filing with any Governmental Entity or any other Person on the part of Seller or CLF&P, or any of their Affiliates, is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby, except for such consents, approvals, actions or authorizations that, if not made or obtained, would not have a Material Adverse Effect.

4.4 No Conflicts. Subject to receipt of the Required Regulatory Approvals, and except as set forth on Schedule 4.4, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not (a) violate any Legal Requirement applicable to Seller or CLF&P, except for such violations that would not have a Material Adverse Effect, (b) violate, conflict with or result in a breach of, or constitute a default under, or result in the termination of any provision of Seller's or CLF&P's Organizational Documents, or, except for such violations, conflicts, breaches or defaults that would not have a Material Adverse Effect, any note, bond, mortgage, indenture, deed of trust, contract, lease or other instrument, obligation or agreement of any kind to which Seller or CLF&P is a party or their respective properties is bound, or (c) result in or create any Encumbrance (other than a Permitted Encumbrance) upon or with respect to any property or assets of CLF&P, except for such Encumbrances that would not have a Material Adverse Effect.

4.5 Financial Statements. Seller has furnished to Buyer true, correct and complete copies of the following financial statements for CLF&P (the "Financial Statements"): (a) audited balance sheets and statements of income and cash flow as of and for the fiscal years ended December 31, 2000, December 31, 2001 and December 31, 2002; and (b) unaudited balance sheet and statement of income as of and for the eleven (11) months ended November 30, 2003 (the "Most Recent Interim Financial Statements"). The Financial Statements have been prepared from the books and records of CLF&P in accordance with GAAP applied on a consistent basis. Except as set forth on Schedule 4.5, the Financial Statements present fairly in all material respects the financial position, results of operations and cash flows of CLF&P as of such dates and for the periods then ended (except that the Most Recent Interim Financial Statements are subject to normal year-end adjustments which shall not, in the aggregate, have a Material Adverse Effect, and lack footnotes and other presentation items).

CLF&P maintains books and records in reasonable detail to reflect its assets and liabilities and maintains proper and adequate internal accounting controls which provide reasonable assurance that (i) transactions are executed with management's authorization; (ii) transactions are recorded accurately and as necessary to permit preparation of the financial statements of CLF&P in accordance with generally accepted accounting principles and to maintain accountability for CLF&P's material assets; and (iii) access to CLF&P's assets and receipts and expenditures of CLF&P are permitted only in accordance with management's authorization.

4.6 Undisclosed Liabilities. CLF&P has no liabilities, debts or obligations that are required to be reflected in a balance sheet prepared in accordance with GAAP except for (a) liabilities or obligations reflected or reserved against in the Financial Statements; (b) liabilities or obligations that have arisen in the ordinary course of business since the date of the Most Recent Interim Financial Statements; or (c) liabilities or obligations to be performed under existing contracts and permits; or (d) liabilities or obligations set forth on Schedule 4.6.

4.7 Title to Assets; Sufficiency of Assets. Except as set forth on Schedule 4.7, CLF&P is in possession of and has good and marketable title to its assets free and clear of all Encumbrances (other than Permitted Encumbrances). To the Knowledge of Seller, except as set forth in Schedule 4.7, all of the property that is primarily used by CLF&P is included in the assets as reflected in the Most Recent Interim Financial Statements.

4.8 Real Property and Leases.

(a) Schedule 4.8 lists all real property owned in whole or in part by CLF&P (the "Owned Real Property"). Except as set forth on Schedule 4.8:

(i) To Seller's Knowledge, CLF&P has good and marketable fee simple title to all of the Owned Real Property, free and clear of all Encumbrances, except Permitted Encumbrances;

(ii) There are no leases or other occupancy agreements (written or oral) granting to any Person a right to occupy any part of the Owned Real Property;

(iii) There are no outstanding options, rights of first offer, rights of first refusal or other agreements granting to any Person a right to purchase the Owned Real Property or any part thereof or interest therein;

(iv) There are no arrangements or commitments of any kind pursuant to which the Owned Real Property (or any part thereof or interest therein) will become subject to any Encumbrances other than Permitted Encumbrances;

(v) To the Knowledge of Seller, the legal description for each parcel of Owned Real Property contained in the Indenture of Mortgage and Deed of Trust and supplements thereto are true, accurate and complete in all material respects;

(vi) There are no parties other than CLF&P in possession of any Owned Real Property;

(vii) To Seller's Knowledge, neither Seller nor CLF&P has received any notice in writing or by publication of any appropriation, condemnation or like proceeding, or of any violation of any applicable zoning law, regulation or rule or other Law, order, regulation, rule or requirement relating to or affecting any of the Owned Real Property.

(b) Schedule 4.8 lists, as of the date of this Agreement, all material real property leases (the "Leases") pursuant to which any real property is leased by CLF&P, other than real property leases for which the aggregate annual rent is less than \$50,000. Each Lease

described in Schedule 4.8 is legal, valid, binding and enforceable against CLF&P and, to the Seller's Knowledge, against each other party to each such Lease, in accordance with their respective terms. During the 12 months prior to the date of this Agreement, CLF&P has not received any notice of default under any such Lease. To Seller's Knowledge, no event has occurred which, with notice or passage of time or both, would constitute a default, violation or breach under any such Lease by CLF&P, or by any other party to the Leases, except for such defaults that would not reasonably be expected to result in a Material Adverse Effect.

4.9 Contracts. Except as specified in Schedule 4.9, CLF&P has in all material respects performed or is performing all obligations required to be performed by it. CLF&P is not in default, in any material respect, under any material contract to which it is a party and, to Seller's Knowledge, no other party is in default thereunder. Schedule 4.9 sets forth a complete list of the contracts and agreements to which CLF&P is a party or otherwise relating to or affecting CLF&P or its operations, whether written or oral, calling for annual payments, individually or in the aggregate, contingent or otherwise, by or to CLF&P of amounts greater than \$200,000. Each such contract and agreement is legally valid and binding and enforceable against CLF&P and to the Knowledge of Seller, against each other party thereto.

4.10 Worker's Compensation. Except as set forth on Schedule 4.10, CLF&P is not in default of any material requirements under any applicable worker's compensation laws, and there are no pending or, to the Knowledge of Seller, threatened worker's compensation claims against CLF&P.

4.11 Employees and Employee Benefit Plans.

(a) Schedule 4.11(a)(i) lists all Employee Benefit Plans and Employee Programs sponsored by Seller or an ERISA Affiliate of Seller, other than CLF&P, providing material benefits or compensation to the current employees of CLF&P, as in effect as of the date of this Agreement. Schedule 4.11(a)(ii) lists all Employee Benefit Plans and Employee Programs sponsored by CLF&P providing material benefits or compensation to the current and former employees of CLF&P, as in effect as of the date of this Agreement. With respect to the current and former employees of CLF&P, all insurance premiums required to be paid, all benefits, expenses and other amounts due and payable, and all contributions, transfers or payments required to be made to or under the Employee Benefit Plans or Employee Programs will have been paid, made or accrued on the Records on or before the Closing.

(b) None of the current employees of CLF&P participate in any "multiemployer pension plan" within the meaning of ERISA Section 4001(a)(3).

(c) The Employee Benefit Plans and Employee Programs available to the current employees of CLF&P conform in all material respects to all laws, including the applicable provisions of ERISA and the Code, except where the failure to conform would not have a Material Adverse Effect.

(d) To the Knowledge of Seller, none of the Employee Benefit Plans, Seller or CLF&P has engaged in a transaction that would subject Seller or CLF&P to the Tax or penalty

on prohibited transactions imposed by Section 4975 of the Code or to a civil penalty imposed by Section 502 of ERISA.

(e) There are no material pending actions, claims or lawsuits that have been asserted or instituted against the Employee Benefit Plans or the Employee Programs with respect to any current or former employees of CLF&P other than routine claims for benefits, except as may be listed in Schedule 4.11(e).

(f) The transactions contemplated by this Agreement shall not result in any termination, retention or severance pay obligations payable by Buyer, except as set forth on Schedule 4.11(f).

(g) With respect to Employee Benefits Plans and Employee Programs listed on Schedule 4.11(a)(ii):

(i) As of the Closing Date, CLF&P does not sponsor or maintain, nor has any obligation or liability under or with respect to, any defined benefit plan within the meaning of Section 3(35) of ERISA.

(ii) Each Employee Benefit Plan intended to be qualified under Sections 401(a), 401(k) and/or 501(a) of the Code has been determined to be so qualified by the Internal Revenue Service and, to the Knowledge of Seller, nothing has occurred since the date of the last such determination which resulted or is likely to result in the revocation of such determination, other than changes in applicable law made by subsequent legislation, regulations and rulings. With respect to any such changes in applicable law, any such plan has been or may be retroactively amended to comply with such changes in order to avoid disqualification of the plan.

(iii) To the Knowledge of Seller, CLF&P has not participated, nor will participate prior to or after the Closing Date, in any conduct that could result in the imposition upon CLF&P of any excise tax under Section 4971 through 4980B of the Code or civil liability under Section 502(i) of ERISA.

(iv) No Employee Benefit Plan or Employee Program provides any health, life or other welfare coverage to employees of CLF&P beyond termination of their employment with CLF&P by reason of retirement or otherwise other than coverage as may be required under Section 4980B of the Code or Part 6 of Subtitle B of Title I of ERISA or under the continuation of coverage provisions of the laws of any state or locality.

(v) No amounts payable under any Employee Benefit Plan or Employee Program or any other contract, agreement or arrangement with respect to which CLF&P may have any liability could fail to be deductible for federal income tax purposes by virtue of Section 162(m) or 280G of the Code.

4.12 Labor Matters. Schedule 4.12 lists all collective bargaining agreements to which CLF&P is a party or bound by. Except as described on Schedule 4.12, CLF&P has not committed any unfair labor practices that would have a Material Adverse Effect. There have not been any material work stoppages, strikes or other labor disputes at or pertaining to CLF&P

during the past three years prior to the date of this Agreement. As of the date of this Agreement, no such work stoppage, strike or labor dispute is, to the Knowledge of Seller, threatened.

4.13 Legal Proceedings. Except as described on Schedule 4.13 and excluding matters arising under Environmental Laws, there are no claims, actions, suits, inquiries, investigations or proceedings pending before any Governmental Entity, arbitrator or mediator, or, to the Knowledge of Seller, threatened against CLF&P that would have a Material Adverse Effect.

4.14 Permits, Licenses, Tariffs and Certificates. Except as described on Schedule 4.14 and excluding matters arising under Environmental Laws, CLF&P has all material permits, licenses, tariffs, certificates and other governmental authorizations required to carry on its business as presently conducted. Assuming ongoing proper action by the other party thereto or by the issuer thereof, all such permits, licenses, tariffs, certificates and governmental authorizations are valid and in effect in all material respects.

4.15 Compliance With Laws. To the Knowledge of Seller, except as set forth on Schedule 4.15, and excluding matters arising under Environmental Laws, CLF&P's business, operations and activities are conducted in compliance with all Legal Requirements, except for any noncompliance that would not have a Material Adverse Effect.

4.16 Tax Matters. Except as disclosed on Schedule 4.16:

(a) CLF&P has filed (or joined in the filing of) when due all Tax Returns required by applicable law to be filed with respect to CLF&P. All such Tax Returns were true, correct and complete in all material respects as of the time of such filing. All Taxes relating to periods ending on or before the Closing Date owed by CLF&P (whether or not shown on any Tax Return) at any time on or prior to the Closing Date, if required to have been paid, have been or will be paid (except for Taxes which are being contested in good faith in appropriate proceedings). CLF&P has established adequate reserves clearly reflected on the Most Recent Interim Financial Statements (in accordance with GAAP) for Taxes not yet due and payable, or which are being contested in good faith in appropriate proceedings. There is no action, suit, proceeding, investigation, audit or claim now pending against, or with respect to, CLF&P in respect of any Tax or Tax assessment, nor is any claim for additional Tax or Tax assessment asserted in writing by any Tax authority. No claim has been made by any Tax authority in a jurisdiction where CLF&P does not currently file a Tax Return that it is or may be subject to Tax by such jurisdiction, nor, to the Knowledge of Seller, is any such assertion threatened. Seller has provided Buyer access to correct and complete copies of all federal income Tax Returns, examination reports, and statements of deficiencies, filed, assessed against, or agreed to by CLF&P since January 1, 1999. CLF&P does not have any outstanding requests for any extension of time within which to pay its Taxes or file its Tax Returns. There has been no waiver or extension of any applicable statute of limitations for the assessment or collection of any Taxes of CLF&P. CLF&P is not a party to any agreement, whether written or oral, providing for the payment of Taxes, payment for Tax losses, entitlements to refunds or similar Tax matters. CLF&P has withheld and paid all Taxes required to be withheld by it in connection with any amounts paid or owing to any employee, creditor, independent contractor or other third party. There are no liens, other than Permitted Encumbrances, on any of the assets of CLF&P that arose in connection with any failure (or alleged failure) to pay any Tax.

(b) CLF&P has not been a member of an Affiliated Group filing a consolidated federal income Tax Return other than a group the common parent of which is Seller. The Affiliated Group has filed all income Tax Returns that it was required to file for each taxable period during which CLF&P was a member of the group. All such Tax Returns were true, correct and complete in all material respects. All income Taxes owed by the Affiliated Group (whether or not shown on any Tax Return) have been paid for each taxable period during which CLF&P was a member of the group. There is no dispute or claim concerning any income Tax Liability of the Affiliated Group for any taxable period during which CLF&P was a member of the group either (i) claimed or raised by any authority in writing or (ii) as to which Seller has Knowledge based upon personal contact with any agent of such authority. The Affiliated Group has not waived any statute of limitations in respect of any income Taxes or agreed to any extension of time with respect to any income Tax assessment or deficiency for any taxable period during which CLF&P was a member of the group.

(c) Neither Seller nor CLF&P is a "foreign person" within the meaning of Section 1445 of the Code. CLF&P has not filed a consent under Code Section 341(f) concerning collapsible corporations. CLF&P has not made any payments, is not obligated to make any payments, and is not a party to any agreement, contract, arrangement or plan that could obligate it to make any payments that are not deductible under Code Section 280G or any corresponding or similar provision of any state, local or foreign tax law. CLF&P has not been a United States real property holding corporation within the meaning of Code Section 897(c)(2) during the applicable period specified in Code Section 897(c)(1)(A)(ii). CLF&P has no liability for Taxes of any Person (other than CLF&P) under Treasury Regulations Section 1.1502-6 (or any corresponding or similar provision of state, local or foreign law), as a transferee or successor, by contract or otherwise.

(d) CLF&P will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in method of accounting for a taxable period ending on or prior to the Closing Date under Code Section 481(c) (or any corresponding or similar provision of state, local or foreign income Tax law); (ii) "closing agreement" as described in Code Section 7121 (or any corresponding or similar provision of state, local or foreign income Tax law) executed on or prior to the Closing Date; (iii) intercompany transactions or any excess loss account described in the Treasury Regulations under Code Section 1502 (or any corresponding or similar provision of state, local or foreign income Tax law); (iv) installment sale or open transaction disposition made on or prior to the Closing Date; or (v) prepaid amount received on or prior to the Closing Date.

(e) CLF&P has not distributed stock of another Person, nor has its stock been distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code.

(f) The only representations and warranties given in respect of Tax matters are those contained in this Section 4.16, and none of the other representations and warranties contained in ARTICLE 4 of this Agreement are to be deemed to constitute, directly or indirectly, a representation and warranty in respect of any Tax matters.

4.17 Environmental Matters. Except as set forth on Schedule 4.17, to the Knowledge of Seller, (a) CLF&P is in compliance with all terms and conditions of its material permits, licenses and authorizations required by applicable Environmental Laws, except for any noncompliance that would not have a Material Adverse Effect; (b) CLF&P has not received any written notice of any alleged violation of Environmental Law from any Governmental Entity that has not been materially resolved; and (c) there is no material civil, criminal or administrative action, suit, demand, claim, hearing, notice, demand letter, notice of violation, investigation, or proceeding, pending or threatened against CLF&P relating to any Environmental Laws. Except as set forth on Schedule 4.17, to the Knowledge of Seller, there are no facts, circumstances, conditions or occurrences regarding CLF&P that would reasonably be expected (i) to form the basis of a claim of violation under any Environmental Law against CLF&P or result in the occurrence of any violation under any Environmental Law by CLF&P, or (ii) to cause CLF&P to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law inconsistent with the business of CLF&P, as conducted currently and in accordance with past practices, except for any such facts, circumstances, conditions or occurrences that would not have a Material Adverse Effect. Seller has made available to Buyer all correspondence, studies, audits, reviews, investigations, analyses and reports on material environmental matters relating to CLF&P or Seller in respect of CLF&P that are in possession of CLF&P. Except as set forth on Schedule 4.17, to the Knowledge of Seller, there are no underground storage tanks, active or abandoned, on the Owned Real Property. The only representations and warranties given in respect to environmental matters are those contained in this Section 4.17, and none of the other representations and warranties contained in ARTICLE 4 of this Agreement are to be deemed to constitute, directly or indirectly, a representation and warranty in respect of any matter relating to Environmental Laws.

4.18 Intellectual Property. To the Knowledge of Seller, except as set forth on Schedule 4.18, CLF&P owns all right, title and interest in and to, or has a valid and enforceable license or other right to use, all the material intellectual property used by it in connection with its business, which constitutes all intellectual property rights necessary for it to conduct its business as presently conducted, and no Person is challenging or, to the Knowledge of Seller, infringing or otherwise violating any intellectual property owned by CLF&P. To the Knowledge of Seller, the conduct of the businesses of CLF&P does not infringe upon or violate the intellectual property rights of any other Person, and neither Seller nor CLF&P has received any notice of any claim of any such infringement or violation within the 3 years preceding the date hereof.

4.19 Finders. Seller has not engaged or entered into any arrangement with any finder or broker in connection with the transactions contemplated by this Agreement, and it has taken no action that reasonably could give rise to a valid claim for a brokerage commission, finder's fee or other like payment against Buyer.

4.20 Transactions with Affiliates. Schedule 4.20 lists all contracts and agreements between CLF&P, on the one hand, and Seller or its Affiliates, on the other. Except as set forth on Schedule 4.20, neither Seller, any of its Affiliates (other than CLF&P) or any officer or director thereof provides any assets, services or facilities to CLF&P which assets, services or facilities are material to the operations of CLF&P.

4.21 Insurance. Schedule 4.21 lists all insurance policies under which CLF&P has coverage. CLF&P is covered by fire and casualty, general liability, professional liability, workers compensation, theft and automobile insurance in scope and amount customary and reasonable for the businesses in which it is engaged. To the Knowledge of Seller, each insurance policy to which CLF&P is a party is in full force and effect on the date hereof.

4.22 Holding Company Act Status. CLF&P is not a "holding company" as defined in the Public Utility Holding Company Act of 1935, as amended ("PUHCA"). Seller is registered as a holding company as defined under PUHCA. Subject to receipt of Required Regulatory Approvals, the execution and delivery of this Agreement by Seller does not violate any provision of PUHCA or any rule or regulation thereunder pertaining to Seller or CLF&P, except that Seller makes no representation with respect to Buyer's status or circumstances.

4.23 Absence of Certain Changes. Since the date of the Most Recent Interim Financial Statements to the date of this Agreement, except as set forth in Schedule 4.23, CLF&P has not and where applicable, the Seller and its Affiliates (other than CLF&P), on behalf of or with respect to CLF&P has not:

(i) suffered any adverse change in assets and properties, results of operation or financial condition which would result in a Material Adverse Effect,

(ii) except for distributions of cash, declared, set aside for payment or paid any dividend or other distribution in respect of its capital stock,

(iii) except for distributions of cash or dispositions in the ordinary course of business, sold, transferred or otherwise disposed of, any of its properties or assets having a book value in excess of \$50,000 individually or \$200,000 in the aggregate,

(iv) changed in any respect its accounting methods, principles or practices,

(v) entered into any settlement of pending or threatened litigation involving CLF&P (whether brought by a private party or a Governmental Entity) other than any settlement that is not reasonably likely to have a Material Adverse Effect,

(vi) incurred any indebtedness for borrowed money, issued or sold any debt securities except for borrowings in the ordinary course of business, or

(vii) incurred, assumed, guaranteed or otherwise become directly or indirectly liable with respect to any liability or obligation in excess of \$50,000 in each case or \$200,000 in the aggregate at any one time outstanding (whether absolute, accrued, contingent or otherwise and whether direct or indirect, or as guarantor or otherwise with respect to any liability or obligation to any other Person),

(viii) entered into, adopted or amended any employment, consulting, retention, change-in-control, collective bargaining, bonus or other incentive compensation, profit-sharing, health or other welfare, stock option or other equity, pension, retirement, vacation, severance, deferred compensation or other employment, compensation or benefit plan, policy,

agreement, trust, fund or arrangement for the benefit of any officer, director, agent, consultant or Affiliate of CLF&P, or

(ix) mortgaged, pledged or otherwise subjected to any Encumbrance, any of the Owned Real Property, Leases or other properties or assets of CLF&P, tangible or intangible, except for Permitted Encumbrances in the ordinary course of business.

4.24 Accounts Receivable. All accounts receivable reflected on the Most Recent Interim Financial Statements have been generated in the ordinary course of business and reflect a bona fide obligation for the payment of goods or services provided by CLF&P.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

5.1 Corporate Existence and Powers of Buyer. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of South Dakota. Buyer has the requisite power and authority to conduct its business as now conducted.

5.2 Authority. Buyer has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated by this Agreement. Buyer has duly and validly authorized the execution and delivery of this Agreement. This Agreement has been duly and validly executed and delivered by Seller and, subject to execution and delivery of this Agreement by Seller, this Agreement constitutes a valid and binding obligation of Buyer enforceable against it in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, or by general equitable principles.

5.3 Required Regulatory Approvals and Filings; Consents. Except as set forth on Schedule 5.3, no consent, approval, action or authorization of or Filing with any Governmental Entity or any other Person on the part of Buyer is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby, except for such consents, approvals, actions or authorizations that, if not made or obtained, would not have a material adverse effect on the business, financial condition or operations of Buyer or would not prevent the Parties from consummating the transactions contemplated by this Agreement.

5.4 No Conflicts. Subject to receipt of the Required Regulatory Approvals, and except as set forth on Schedule 5.4, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate any material Legal Requirements applicable to Buyer, or violate, conflict with, or result in breach of or constitute a default under, or result in the termination of any provision of Buyer's Organizational Documents, or any material note, bond, mortgage, indenture, deed of trust, contract, lease or other instrument, obligation or agreement of any kind to which Buyer is now a party or its properties are bound.

5.5 Legal Proceedings. Except as described on Schedule 5.5, there are no material claims, actions, suits, inquiries, investigations or proceedings pending or, to the Knowledge of Buyer, threatened against Buyer before any Governmental Entity that, in either such case, are reasonably likely to prevent Buyer from consummating the transactions contemplated by this Agreement.

5.6 Finders. Buyer has not engaged or entered into any arrangement with any finder or broker in connection with the transactions contemplated by this Agreement, and it has taken no action that reasonably could give rise to a valid claim for a brokerage commission, finder's fee or other similar payment against Seller.

5.7 Sufficient Funds. Buyer has sufficient cash, available lines of credit or other sources of funds to enable it to make payment of the Purchase Price and all other amounts payable pursuant to this Agreement and to perform all of its other obligations under this Agreement.

5.8 Investment. Buyer is an accredited investor within the meaning of Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended. The Shares will be acquired by Buyer for its own account for the purpose of investment and not with a view towards the resale, transfer or distribution of the Shares, nor with any intention of distributing the Shares in violation of the Securities Act of 1933, as amended, or other applicable federal or state securities or blue sky laws.

5.9 No Knowledge of Certain Conditions. Buyer has no Knowledge of any condition or event that would or may constitute a breach of any representation or warranty made by Seller in this Agreement. Buyer has no Knowledge of any condition or circumstance that would excuse Buyer from its timely performance of its obligations under this Agreement.

5.10 Due Diligence Investigation; No Representations or Warranties.

(a) Buyer acknowledges and agrees that it has fully conducted and, except as expressly provided in this Agreement, is relying exclusively upon its own inspections and investigation in order to satisfy itself as to the condition and suitability of the business, assets, real and personal properties, liabilities, results of operations, condition (financial or otherwise) and prospects of CLF&P. In addition, Buyer acknowledges and agrees that it has reviewed all of the Due Diligence Materials to its full and complete satisfaction.

(b) Buyer acknowledges and agrees that, except as expressly provided in ARTICLE 4, Seller makes no representations or warranties (express, implied, at common law, statutory or otherwise), including, without limitation, with respect to (i) the condition and suitability of the business, assets, real and personal properties, liabilities, results of operations, condition (financial or otherwise) and prospects of CLF&P; (ii) the accuracy or completeness of the Due Diligence Materials now, previously or hereafter made available to Buyer in connection with this Agreement; or (iii) the accuracy or completeness of that certain Confidential Information Memorandum for Cheyenne Light, Fuel & Power Company, or any supplement or amendment thereto.

**ARTICLE 6
COVENANTS OF SELLER**

6.1 Conduct of Business. Except as otherwise required by any Legal Requirement or by any Governmental Entity or as contemplated by this Agreement, until the Closing, Seller will own and operate CLF&P in accordance with its past practices and will not engage in material transactions relating to CLF&P, other than (y) making payments as such payments are due, including any prepayments required to be made as a result of the transactions contemplated by this Agreement, on the First Mortgage Bonds, or (z) taking actions or engaging in transactions in the ordinary and usual course of business as previously conducted. Seller shall not permit CLF&P to take actions or engage in transactions outside the ordinary and usual course of business, without consulting with Buyer. Without limiting the foregoing, except as otherwise required by any Legal Requirement, by any Governmental Entity or as contemplated or permitted by this Agreement, until the Closing, Seller will not, without the prior written consent of Buyer (which consent will not be unreasonably withheld or delayed), permit CLF&P to:

(a) make any change in its Organizational Documents or issue any additional equity securities or grant any option, warrant or right to acquire any equity securities or issue any security convertible into or exchangeable for its equity securities;

(b) (i) incur, assume or guarantee any indebtedness for borrowed money, issue any notes, bonds, debentures or other corporate securities in excess of \$200,000 individually or in the aggregate, other than pursuant to intercompany notes, or (ii) issue any of its securities convertible or exchangeable for debt securities;

(c) make any sale, assignment, transfer, abandonment or other conveyance of any of its assets or any part thereof in excess of \$200,000, individually or in the aggregate, except for dispositions of inventory or of worn-out or obsolete equipment for fair or reasonable value in the ordinary course of business consistent with past practices;

(d) subject any of its assets, or any part thereof, to any Encumbrance except Permitted Encumbrances;

(e) make any capital expenditure that exceeds 20% of the relevant major line item of the capital expenditure budget attached on Schedule 6.1 hereto (the "2004 Budget") or capital expenditures in the aggregate that exceed the total 2004 Budget by more than 10%, except that Seller may permit CLF&P to make a capital expenditure without obtaining Buyer's prior approval if such expenditure is reasonably determined by Seller to be necessary in the interest of health, safety or Good Utility Practices in circumstances in which Seller could not reasonably obtain Buyer's prior approval;

(f) enter into any contract or agreement or series of related contracts or agreements, or make any commitment, whether directly or by way of guarantee or otherwise, for expenditures not in the ordinary course of business in excess of \$200,000 individually, or except in the ordinary course of business make or permit to be made any material amendment or termination of any material contract to which it is a party;

(g) enter into any power purchase agreements or natural gas supply agreements for amounts in excess of \$200,000 and that have a term, including any extensions, of greater than one year;

(h) make any filing with any Governmental Entity that relates to changes in base rates for CLF&P;

(i) fail to use commercially reasonable efforts in accordance with past practice to maintain its material tangible properties in good condition and repair, reasonable wear and tear excepted, including failing to perform all reasonable maintenance when scheduled or otherwise appropriate;

(j) incur or agree to incur, or otherwise guarantee or become liable for, any commitment, obligation or liability, absolute or contingent, other than in the ordinary course of business;

(k) materially change its accounting practices or policies or its application thereof (other than in accordance with GAAP);

(l) make, change or revoke any Tax election relevant to it that is not consistent with past practice;

(m) (i) except as may be required by applicable Legal Requirements or to the extent consistent with amendments or modifications made to similar plans or arrangements of Seller, enter into, adopt or make any material amendments to or terminate any of the Employee Benefit Plans or the Employee Programs; or (ii) except for normal increases in the ordinary course of business consistent with past practice that, in the aggregate, do not result in a material increase in benefits or compensation expense to it, increase the benefits or compensation to any of its directors, officers or employees, if any (except as reasonably necessary in order to retain any existing director, officer or employee through the Closing);

(n) acquire any material assets or properties not contemplated in the 2004 Budget, except in the ordinary course of business consistent with past practices;

(o) except in the ordinary course of business consistent with past practices, pay, loan or advance any amount to, or sell, transfer or lease any properties or assets to, or enter into any agreement or arrangement with, any of its Affiliates;

(p) enter into any collective bargaining agreement or ratification package with any labor union, except on the terms and conditions substantially as set forth in the collective bargaining agreement and ratification package identified on Schedule 4.12 and provided to Buyer prior to the date hereof during its due diligence review, or enter into any material amendment thereto; or

(q) commit itself to do any of the foregoing.

In order to implement the provisions of this Section 6.1 and to facilitate on-going communications regarding the operations of CLF&P prior to the Closing, Seller and Buyer will

each designate a representative who shall be available to advise and consult with regarding the conduct of the business of CLF&P.

6.2 Insurance. Until the Closing, Seller will cause CLF&P to continue to carry insurance with respect to its material assets, insuring those assets against loss or damage by fire and other risks, consistent with and in accordance with past practices.

6.3 Investigation by Buyer. Until the Closing, Seller will (a) allow Buyer and its authorized representatives reasonable access, upon reasonable prior notice to Seller, during regular business hours, and consistent with the normal operation of CLF&P, to the assets of CLF&P and the Records, and to officers, employees and agents of Seller and CLF&P who have significant responsibility for the operation of CLF&P solely for purposes of providing Buyer with information regarding CLF&P's operations; provided, however, that neither Buyer nor its representatives is authorized to test or sample soil, sediment, groundwater, surface water or discharges; and (b) furnish Buyer such financial and operating data and other information with respect to CLF&P as Buyer may reasonably request, except to the extent that furnishing such information would violate any applicable Legal Requirements. Any information furnished hereunder or prior to the date of this Agreement in contemplation of Buyer's potential purchase of CLF&P will be subject to the Confidentiality Agreement. To the extent any such Records are either (x) used in connection with any of Seller's businesses other than CLF&P, or (y) are subject to a confidentiality agreement or other restrictions limiting Seller's ability to disclose them, Seller may present photocopies or other reproductions from which, in the case of Records referred to in clause (x), information concerning any of Seller's businesses other than CLF&P has been deleted, or in the case of Records referred to in clause (y), all confidential information has been redacted. Buyer will not use its rights to access granted hereunder to adversely interfere with CLF&P's business and operations and will not, without Seller's prior written consent, engage in communication with any employees of Seller or CLF&P for reasons other than to obtain information regarding CLF&P's business and operations.

6.4 Intercompany Obligations and Agreements. Immediately prior to the Closing, all receivables and payables outstanding between CLF&P, on the one hand, and Seller or its Affiliates, on the other hand, (other than with respect to the receivables and payables owing pursuant to the intercompany agreements identified on Schedule 6.4, which will remain outstanding following the Closing) will be forgiven in full. In addition, all of the intercompany contracts and agreements identified on Schedule 4.20 (other than the intercompany contracts and agreements listed on Schedule 6.4, which will continue in full force and effect following the Closing) will be terminated immediately prior to the Closing.

6.5 Employee Benefit Matters.

(a) Before the Closing, Seller will perform such acts, execute such documents, and provide such notices as are reasonably necessary to effectuate the termination of the Employees' and CLF&P's participation in those Employee Benefit Plans and Employee Programs listed on Schedule 4.11(a)(i), with such termination to be effective immediately prior to the Closing except as set forth on Schedule 6.5(a).

(b) Notwithstanding the foregoing, former employees of CLF&P will remain covered under the Employee Benefit Plans and the Employee Programs, to the extent provided by such plans and programs, for (i) continuation coverages pursuant to Section 4980B of the Code, Sections 601 through 608 of ERISA and applicable state law, and (ii) retiree benefits. Buyer will provide continuation coverages pursuant to Section 4980B of the Code, Sections 601 through 608 of ERISA and applicable state law for any Employees terminated from employment on or after the Closing Date. Employees who are disabled and receiving long-term disability payments as of the Closing Date under any Employee Benefit Plans of Seller will continue to receive benefits according to the terms of such Employee Benefit Plans. Those Employees who are receiving short-term disability or salary continuation benefits as of the Closing Date will continue to be the responsibility of CLF&P or will transition to Buyer on the Closing Date and receive benefits according to Section 8.5 of this Agreement.

6.6 Fulfillment of Conditions. Subject to the terms of this Agreement and fiduciary obligations under any Legal Requirements, Seller will do all such acts and things as reasonably may be required to satisfy Seller's covenants and obligations under this Agreement and to consummate and complete the transactions contemplated by this Agreement.

6.7 Notification to Buyer of Changes.

(a) Seller will give Buyer prompt written notice of any event, condition or fact that would cause any of its representations and warranties in this Agreement to be untrue in any material respect (or with respect to those representations and warranties qualified by materiality, untrue, after consideration of such qualifier, in any respect).

(b) Seller will, from time to time prior to the Closing, promptly supplement or amend the Schedules relating to ARTICLE 4 with respect to any matter that existed as of the date of this Agreement and should have been set forth or described in any such Schedules. No disclosure by Seller pursuant to this Section 6.7(b), however, will be deemed to amend or supplement such Schedules or to have qualified the representations and warranties contained in this Agreement, unless Buyer expressly consents to such supplement in writing.

(c) Seller will, from time to time prior to the Closing, promptly supplement or amend the Schedules relating to ARTICLE 4 with respect to any matter arising after the date of this Agreement, which, if existing as of the date of this Agreement, would have been required to be set forth or described in such Schedules in order to make any representation or warranty set forth in this Agreement true and correct as of such date. Any disclosure by Seller pursuant to this Section 6.7(c) will be deemed to amend and supplement such Schedules and to have qualified the representations and warranties contained in this Agreement. If the items disclosed on such supplemented or amended Schedules have had or could reasonably be expected to have a Material Adverse Effect and Seller shall not have cured such existing or potential Material Adverse Effect within 30 days of such amended disclosure, then Buyer may, in accordance with Section 13.1(e), terminate this Agreement, within 10 Business Days after the expiration of the 30 day cure period, by written notice thereof to Seller; provided, however, that if Buyer does not exercise such right to terminate this Agreement within such 10 Business Day period, then (i) Buyer will be deemed to have forever waived any right to terminate this Agreement based upon such amendment and supplement, (ii) Buyer will be deemed to have accepted such

amendment and supplement, and (iii) such amendment or supplement will be deemed to amend and supplement the Schedules relating to ARTICLE 4.

6.8 Exclusivity. Except with respect to this Agreement and the transactions contemplated hereby, until December 31, 2004, Seller, CLF&P and their respective affiliates directly or indirectly through their respective employees, agents and representatives (including, without limitation, any investment banking, legal or accounting firm retained by it or them and any individual member or employee of the foregoing) (each, an "Agent") shall not, (a) initiate, solicit or seek, directly or indirectly, any inquiries or the making or implementation of any proposal or offer with respect to a merger, acquisition, consolidation, recapitalization, liquidation, dissolution or similar transaction involving, or any purchase of all or any portion of the assets (except as permitted by Section 6.1) or any equity securities of, CLF&P (any such proposal or offer being hereinafter referred to as an "Acquisition Proposal"), or (b) engage in any negotiations concerning, or provide any confidential information or data to, or have any substantive discussions with, any Person relating to an Acquisition Proposal.

ARTICLE 7 COVENANTS OF BUYER

7.1 Fulfillment of Conditions. Subject to the terms of this Agreement and fiduciary obligations under any Legal Requirements, Buyer will do all such acts and things as reasonably may be required to satisfy Buyer's covenants and obligations under this Agreement and to consummate and complete the transactions contemplated by this Agreement.

7.2 No Solicitation by Buyer. Buyer covenants and agrees that Buyer will not until the later of (a) the Closing, or (b) 2 years from the date of this Agreement, directly or indirectly, solicit for employment or hire any employee of Seller or its Affiliates (other than CLF&P) or, if the Closing has not occurred, Seller or its Affiliates (including CLF&P), with whom Buyer had contact or who became known to Buyer in connection with the consideration of the transactions related to this Agreement; provided, however, that Buyer may employ any such person who contacts Buyer on his or her own initiative without any direct or indirect solicitation by or encouragement from Buyer or its representatives or who contacted Buyer in response to a general advertisement.

7.3 Replacement of Guaranty Agreements. Buyer will provide Black Hills Generation, Inc. with security that satisfies the requirements of Section 17.1 of the Black Hills Power Purchase Agreements, and will use commercially reasonable efforts to cause Black Hills Generation, Inc. to terminate the Guaranty Agreements or to amend such Guaranty Agreements to terminate automatically on the later of (a) the Closing Date, or (b) December 31, 2003.

7.4 Notification to Seller of Changes.

(a) Buyer will give Seller prompt written notice of any event, condition or fact that would cause any of its representations and warranties in this Agreement to be untrue in any material respect.

(b) Buyer will, from time to time prior to the Closing, promptly supplement or amend the Schedules relating to ARTICLE 5 with respect to any matter (i) that existed as of the

date of this Agreement and should have been set forth or described in such Schedules, or (ii) arising after the date of this Agreement, which, if existing as of the date of this Agreement, would have been required to be set forth or described in such Schedules in order to make any representation or warranty set forth in this Agreement true and correct as of such date. No disclosure by Buyer pursuant to this Section 7.4(b), however, will be deemed to amend or supplement such Schedules or to have qualified the representations and warranties contained in this Agreement, unless Seller expressly consents to such supplement in writing; provided that if the Closing shall occur, then any matters disclosed to Seller pursuant to any supplement or amendment at or prior to the Closing Date shall be deemed to be waived by Seller and Seller shall not be entitled to make a claim thereon under this Agreement.

ARTICLE 8 OTHER AGREEMENTS

8.1 Regulatory Filings. Each Party will employ its commercially reasonable efforts to promptly and properly prepare and file all necessary documentation to obtain its respective Required Regulatory Approvals. Each Party will promptly file any additional information requested by any Governmental Entity as soon as practicable after receipt of a request for additional information. The Parties will cooperate fully with each other in all reasonable respects in promptly seeking to obtain the Required Regulatory Approvals. Each Party will have the right to review and approve in advance, with such approvals not to be unreasonably withheld or delayed, all Filings with Governmental Entities to be made by the other Party in connection with the transactions contemplated by this Agreement; provided, however, that with respect to information filed under the HSR Act, each of the Parties may withhold from the other Party such information as it reasonably regards to be confidential. Each Party will coordinate and cooperate with one another in exchanging such information and providing such reasonable assistance as may be requested in connection with such Filings. Each Party will promptly supply the other with copies of all non-confidential correspondence, Filings or communications (or memoranda setting forth the substance thereof) between such Party or its representatives and any Governmental Entity or members of their respective staffs with respect to this Agreement or the transactions contemplated hereby. No Party will, in bad faith, take any action that will have the effect of delaying, impairing or impeding the receipt of any Required Regulatory Approvals. Each Party will bear its own costs for the preparation of any such Filings, except that the amount of any filing fees for all Filings made pursuant to the HSR Act shall be borne 50% by Buyer and 50% by Seller.

8.2 Further Assurances. From time to time after the Closing, each Party, upon the request of the other Party, will, without further consideration, execute, deliver and acknowledge all such instruments of transfer and conveyance and do and perform all such other acts and things as either Party may reasonably require to carry out the intent of this Agreement.

8.3 Financial and Business Records.

(a) As soon as practicable, but in no event later than 30 Business Days after the Closing, Seller will deliver to Buyer originals or copies of all material Records in its possession. To the extent any such Records are used in connection with any of Seller's

businesses other than CLF&P, Seller may deliver photocopies or other reproductions from which information concerning any of Seller's businesses other than CLF&P has been deleted.

(b) After the Closing, Buyer will afford to Seller and its representatives access during normal business hours with reasonable notice to all Records, and to such other information, and will furnish such cooperation relating to CLF&P, as Seller reasonably requests for financial reporting and accounting matters, the preparation of the Closing Date Balance Sheet and the calculation of the Preliminary Closing Date Net Working Capital and the Preliminary Closing Date Capital Expenditures, the preparation and filing of any Tax Returns, the defense of Tax and indemnity claims, and any other purposes related to this Agreement or the contemplated transactions.

8.4 Employment Matters. Buyer will be solely responsible for, and Seller will have no responsibility for, (a) all severance costs or change of control costs related to Employees incurred as a result of the Closing, (b) all liabilities to Employees pursuant to the Worker Adjustment Retraining and Notification Act (the "WARN Act") relating to matters occurring after the Closing, and (c) all liabilities to any Employees or former employees of CLF&P with respect to any employment or labor law matters, other than as expressly provided in Section 6.5(b).

8.5 Post-Closing Employee Benefits. Except as otherwise provided for in any of the agreements set forth on Schedule 4.12, effective as of the Closing Date, Buyer will provide or will cause CLF&P to provide all Employees with coverage under all employee benefit plans (within the meaning of Section 3(3) of ERISA) and all other employment related-benefits and programs currently provided by Buyer to its employees (without exclusion of or limitation as to any pre-existing conditions covered prior to the Closing under the health plans provided by Seller or CLF&P to the Employees), which coverage will include credit to all Employees for prior years of service to the extent Employees had such credit or seniority under the Employee Benefit Plans and the Employee Programs immediately prior to the Closing for purposes of eligibility and vesting in the employee benefit plans and other employment-related benefits and programs offered by Buyer to its employees. Buyer also will recognize and credit under such benefits and programs all accrued and unused paid time off and vacation balances of Employees immediately prior to the Closing.

8.6 Tax Matters.

(a) Seller will prepare and file all Tax Returns relating to CLF&P with the appropriate federal, state, local and foreign Governmental Entities, and pay all Taxes shown due on such Tax Returns for all periods, for which Tax Returns are due and Taxes are payable on or prior to the Closing Date. For periods ending on or prior to the Closing Date, but for which Tax Returns are not due and Taxes are not payable as of the Closing Date (other than income Tax Returns with respect to periods for which a consolidated, unitary or combined income Tax Return of an Affiliated Group will include the operations of CLF&P), Buyer will prepare and file or cause to be filed all such Tax Returns required to be filed by CLF&P. All such Tax Returns will be prepared and filed in a manner consistent with prior custom and practice, except as required by a Legal Requirement. Buyer will permit Seller to review and comment on each such Tax Return described in the preceding sentence prior to filing and will make such revisions to

such Tax Returns as are reasonably requested by Seller. Seller will reimburse Buyer for Taxes of CLF&P shown due on such Tax Returns within 15 days after payment by Buyer or CLF&P of such Taxes to the extent such Taxes are not reflected in the reserve for Tax liability shown on the Closing Date Balance Sheet.

(b) Buyer will prepare or cause to be prepared and file or cause to be filed any Tax Returns of CLF&P for Tax periods that begin before the Closing Date and end after the Closing Date (other than income Tax Returns with respect to periods for which a consolidated, unitary or combined income Tax Return of an Affiliated Group will include the operation of CLF&P). All such Tax Returns will be prepared and filed in a manner consistent with prior custom and practice, except as required by a Legal Requirement. Seller will pay to Buyer by the later of (x) 5 days before the Tax Return is due or (y) 10 days after the receipt of a request by Buyer, accompanied by supporting documentation, an amount equal to the excess of (i) the portion of the Taxes shown due on such Tax Returns that relates to the portion of such Tax period ending on the Closing Date over (ii) the Taxes reflected in any reserve for Tax liability (shown on the face of the Closing Date Balance Sheet). For purposes of this Section 8.6, in the case of any Taxes that are imposed on a periodic basis and are payable for a Tax period that includes (but does not end on) the Closing Date, the portion of such Tax which relates to the portion of such Tax period ending on the Closing Date will (i) in the case of any Taxes other than Taxes based upon or related to income or receipts, be deemed to be the amount of such Tax for the entire Taxable period multiplied by a fraction the numerator of which is the number of days in the Taxable period ending on the Closing Date and the denominator of which is the number of days in the entire Taxable period, and (ii) in the case of any Tax based upon or related to income or receipts be deemed equal to the amount which would be payable if the relevant Taxable period ended on the Closing Date pursuant to concepts similar to Treasury Regulation 1.1502-76(b).

(c) Seller will include the income of CLF&P (including any deferred items triggered into income by Treasury Regulation Section 1.1502-13 and any excess loss account taken into income under Treasury Regulation Section 1.1502-19) on Seller's consolidated federal income Tax Returns for all periods through the Closing Date and pay any federal income Taxes shown due on such Tax Returns to the extent such Taxes are not reflected in the reserve for Tax liability as shown on the Closing Date Balance Sheet. For all taxable periods ending on or before the Closing Date, Seller will cause CLF&P to join in Seller's consolidated federal income Tax Return. All such Tax Returns will be prepared and filed in a manner consistent with prior custom and practice, except as required by a change in applicable law. CLF&P will furnish Tax information to Seller for inclusion in Seller's consolidated federal income Tax Return for the period that includes the Closing Date in accordance with past custom and practice of CLF&P. The income of CLF&P for the taxable year in which the Closing occurs will be apportioned to the taxable period up to and including the Closing Date and the taxable period after the Closing Date by closing the books of CLF&P as of the end of the Closing Date pursuant to Treasury Regulation Section 1.1502-76(b).

(d) The Affiliated Group of which CLF&P was a member will include the income of CLF&P on such Affiliated Group's combined or unitary income Tax Returns for all periods ending on or prior to the Closing Date and pay any income Taxes shown due on such Tax Returns to the extent such Taxes are not reflected in the reserve for Tax liability as shown on

the Closing Date Balance Sheet. All such Tax Returns will be prepared and filed in a manner consistent with prior custom and practice, except as required by a change in applicable law. CLF&P will furnish Tax information to the Affiliated Group for inclusion in the Affiliated Group's combined or unitary income Tax Return for the period that includes the Closing Date in accordance with past custom and practice of CLF&P. To the extent allowed by applicable law, the income of CLF&P for the taxable year in which the Closing occurs will be apportioned to the taxable period up to and including the Closing Date and the taxable period after the Closing Date by closing the books of CLF&P as of the end of the Closing Date pursuant to concepts similar to Treasury Regulation Section 1.1502-76(b).

(e) The Affiliated Group of which CLF&P was a member will allow CLF&P and its counsel to participate (at CLF&P's cost and expense) in any audits of consolidated, combined or unitary income Tax Returns to the extent that such returns relate to CLF&P. Such Affiliated Group will not settle any such audit in a manner that would adversely affect CLF&P after the Closing Date (i) unless such settlement would be reasonable in the case of a Person that owned CLF&P before and after the Closing Date, and (ii) without the consent of Buyer, which consent shall not unreasonably be withheld.

(f) Any Tax refund attributable to CLF&P or its assets that are received by Buyer or CLF&P, and any amounts credited against Tax to which Buyer or CLF&P become entitled (with the exception of any Taxes paid pursuant to Section 3.4), that relate to Tax periods or portions thereof ending on or before the Closing Date will be for the account of Seller, and Buyer will pay over to Seller any such refund or the amount of any such credit within 15 days after receipt or entitlement thereto. In addition, to the extent a claim for refund or a proceeding results in a payment or credit against Tax by a Tax authority to Buyer or CLF&P of any amount accrued as a liability on the Closing Date Balance Sheet, Buyer will pay such amount to Seller within 15 days after receipt or entitlement thereto.

(g) Buyer and Seller will cooperate fully (and Buyer will cause CLF&P to cooperate fully), as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns pursuant to this Section 8.6 and any audit, litigation or other proceeding with respect to Taxes. Such cooperation will include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Buyer and Seller agree (i) to retain all books and records with respect to Tax matters pertinent to CLF&P relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by Buyer or Seller, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority, and (ii) to give the other Party reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other Party so requests, allow the other Party to take possession of such books and records.

(h) Buyer and Seller further agree, upon request, to use their commercially reasonable efforts to obtain (or cause their respective Affiliates to obtain) any certificate or other document from any authority or any other Person as may be necessary to mitigate, reduce or

eliminate any Tax that could be imposed (including, but not limited to, with respect to the transactions contemplated hereby).

(i) Any tax sharing agreement or similar arrangement with respect to Taxes involving CLF&P will be terminated effective as of the Closing Date, to the extent any such agreement or arrangement relates to CLF&P, and after the Closing Date, CLF&P will have no obligation under any such agreement or arrangement for any past, present or future period.

(j) Buyer will not file an amended Tax Return related to CLF&P for any period ending on or prior to the Closing Date without the consent of Seller. Buyer will not unreasonably withhold its consent to file claims at the request and expense of Seller for any period prior to the Closing Date while such period remains open under applicable statutes of limitations.

ARTICLE 9 CONDITIONS TO OBLIGATIONS OF BUYER

The obligations of Buyer under this Agreement are subject to the satisfaction (or waiver in writing by Buyer), on or prior to the Closing Date, of the following conditions:

9.1 Representations and Warranties of Seller. Each representation and warranty made in ARTICLE 4 by Seller will be true and correct in all material respects (and in all respects with respect to those representations and warranties qualified by materiality) when first made and on and as of the Closing Date (except for representations and warranties that expressly speak only as of a specific date or time, which need only be true and correct as of such date and time).

9.2 Performance of Seller's Obligations. Seller will have performed in all material respects all covenants, agreements and other obligations to be performed by it pursuant to this Agreement on or before the Closing Date.

9.3 Required Regulatory Approvals. All Required Regulatory Approvals will have been obtained and be in effect as of the Closing Date and such Required Regulatory Approvals shall be final and nonappealable, and shall not include terms or conditions that will have a Material Adverse Effect on CLF&P or a Buyer Material Adverse Effect. Any applicable waiting periods under the HSR Act will have expired or been terminated.

9.4 Third Party Consents. Seller will have received the written consent of all Persons, in form and substance reasonably satisfactory to Buyer and its counsel, that are necessary for Seller's consummation of the transactions contemplated by this Agreement, other than those that, if not obtained, would not have a Material Adverse Effect.

9.5 Litigation. As of the Closing Date, there will not be in effect any order, decree or injunction of a court of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement, and no action will have been taken, and no law, statute, rule or regulation will have been enacted, by any Governmental Entity that would prevent the consummation of such transactions.

9.6 Certified Resolutions. Seller will have delivered to Buyer copies of resolutions adopted by Seller's Board of Directors, certified as of the Closing Date by the Secretary or an Assistant Secretary of Seller, authorizing the execution and delivery of this Agreement and the performance by Seller of its obligations under this Agreement.

9.7 Officer's Certificate. Seller will have delivered to Buyer a certificate, dated as of the Closing Date and signed by one of its duly authorized officers, stating that the conditions set forth in Sections 9.1, 9.2, 9.3 and 9.4 have been fulfilled and that Seller has received all Required Regulatory Approvals listed on Schedule 4.3.

9.8 No Material Adverse Effect. Since the date of this Agreement, there will not have occurred any event, condition or circumstance that has a Material Adverse Effect (other than as disclosed to Buyer pursuant to Section 6.7(c) or as cured by Seller or waived by Buyer pursuant to Section 13.1(b)).

9.9 Title Insurance. Buyer shall be able to obtain at Closing, at Buyer's sole expense, owner's policies of title insurance (Current ALTA Form or equivalent) or "date down" endorsements to existing owner's policies of title insurance (in either case, individually a "Title Policy" and collectively "Title Policies") in amounts reasonably acceptable to the Buyer. The Title Policies shall cover the Owned Real Property. CLF&P shall be named as the insured under the Title Policies. The Title Policies shall be issued without the standard exceptions for material suppliers' liens and parties in possession, and shall contain exceptions only for Permitted Encumbrances. Seller shall have no obligation to provide any land surveys that the issuer(s) of the Title Policies may require in order to remove the standard exceptions for matters which would be disclosed by a current survey and for purposes of this Agreement such standard exceptions for survey matters shall be Permitted Encumbrances. Each Title Policy also shall include, if available for issuance in the State of Wyoming, a non-imputation endorsement insuring that the issuer of the Title Policy will not deny its liability thereunder on the grounds that CLF&P had knowledge of any matter by reason of notice thereof imputed to it through any person who is an officer or director of CLF&P prior to the Closing by operation of law. Buyer, at its expense, shall within five (5) business days order commitments for the Title Policies and direct the title company to deliver the commitments and copies of all exception documents referred to therein to Buyer and Seller concurrently. Buyer shall, within ten (10) business days of receipt of the commitments for the Title Policies (but in no event later than one hundred twenty (120) days after the date hereof) provide Seller with written notice of any claimed Objectionable Title Matters.

9.10 Seller's Closing Deliveries. Seller shall have executed and delivered, or cause to be executed and delivered, to Buyer the following:

- (i) duly endorsed stock certificates evidencing the Shares with duly executed stock powers attached thereto;
- (ii) original minute books for CLF&P;

- (iii) an opinion of Gray, Plant, Mooty, Mooty & Bennett, P.A., as counsel to Seller, and the General Counsel of Seller, in form and substance reasonably satisfactory to Buyer;
- (iv) a non-foreign affidavit as described in Section 1445(b)(2) of the Code;
- (v) the resignations of the members of the board of directors and all officers of CLF&P;
- (vi) evidence of receipt of Required Regulatory Approvals;
- (vii) a transition services agreement duly executed by Seller, in form and substance mutually agreed upon by Seller and Buyer relating to transition services to be provided by Seller to Buyer at a rate equal to Seller's costs therefor, and otherwise pursuant to the framework for transition services agreement attached as Schedule 9.10; and
- (viii) evidence of the transfer to Buyer of the FCC licenses held by Xcel Energy Services, Inc. and used by CLF&P.

ARTICLE 10 CONDITIONS TO OBLIGATIONS OF SELLER

The obligations of Seller under this Agreement are subject to the satisfaction (or waiver in writing by Seller), on or prior to the Closing Date, of the following conditions:

10.1 Representations, Warranties and Covenants of Buyer. Each representation and warranty made in ARTICLE 5 by Buyer will be true and correct in all material respects (and in all respects with respect to those representations and warranties qualified by materiality) when first made and on and as of the Closing Date (except for representations and warranties that expressly speak only as of a specific date or time, which need only be true and correct as of such date and time).

10.2 Performance of Buyer's Obligations. Buyer will have performed in all material respects all covenants, agreements and other obligations to be performed by it under this Agreement on or before the Closing Date.

10.3 Required Regulatory Approvals. All Required Regulatory Approvals will have been obtained and be in effect as of the Closing Date and such Required Regulatory Approvals shall be final and nonappealable, and shall not include terms or conditions that will have a Material Adverse Effect on CLF&P or a Seller Material Adverse Effect. Any applicable waiting periods under the HSR Act will have expired or been terminated.

10.4 Third Party Consents. Buyer will have received the written consent of all Persons, in form and substance reasonably satisfactory to Seller and its counsel, that are necessary for Buyer's consummation of the transactions contemplated by this Agreement.

10.5 Litigation. As of the Closing Date, there will not be in effect any order, decree or injunction of a court of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement, and no action will have been taken, and no law, statute, rule or regulation will have been enacted, by any Governmental Entity that would prevent the consummation of such transactions.

10.6 Certified Resolutions. Buyer will have delivered to Seller copies of resolutions adopted by Buyer's Board of Directors, certified as of the Closing Date by the Secretary or an Assistant Secretary of Buyer, authorizing the execution and delivery of this Agreement and the performance by Buyer of its obligations under this Agreement.

10.7 Officer's Certificate. Buyer will have delivered to Seller a certificate, dated as of the Closing Date and signed by one of its duly authorized officers, stating that the conditions set forth in Sections 10.1, 10.2, 10.3 and 10.4 have been fulfilled and that Buyer has received all Required Regulatory Approvals listed on Schedule 5.3.

10.8 Guaranty Agreements. The Guaranty Agreements will have been terminated in full, or will have been amended to automatically terminate on the later of (a) the Closing Date, or (b) December 31, 2003.

10.9 Buyer's Closing Deliveries. Buyer shall have executed and delivered, or cause to be executed and delivered, to Seller the following:

- (i) the Purchase Price;
- (ii) a non-foreign affidavit as described in Section 1445(b)(2) of the Code;
- (iii) evidence of receipt of Required Regulatory Approvals;
- (iv) opinions of Morgan, Lewis & Bockius LLP, as counsel to Buyer, and of the General Counsel of Buyer, in form and substance reasonably satisfactory to Seller, and
- (v) a transition services agreement duly executed by Buyer, in form and substance mutually agreed upon by Seller and Buyer relating to transition services to be provided by Seller to Buyer at a rate equal to Seller's costs therefor, and otherwise pursuant to the framework for transition services agreement attached as Schedule 9.10.

ARTICLE 11 CLOSING

The closing of the transactions contemplated by this Agreement (the "Closing") will take place at the offices of Seller, at 12:00 noon, Central Time, on the fifth Business Day following the receipt of the last of the Required Regulatory Approvals and the satisfaction of the conditions set forth in ARTICLE 9 and ARTICLE 10, or at such other place, at such other time, or at such later date, as Buyer and Seller agree in writing. At the Closing, Seller will deliver to Buyer the stock certificate(s) representing the Shares duly endorsed in blank or accompanied by stock

powers executed in blank transferring all record and beneficial ownership in the Shares to Buyer free and clear of all Encumbrances and otherwise in form and substance reasonably satisfactory to Buyer. In full consideration and exchange for the Shares, Buyer will simultaneously pay to Seller the Purchase Price in accordance with Section 3.1. The transfer of the Shares will be effective as of 11:59:59 p.m. Mountain Time on the Closing Date.

ARTICLE 12 INDEMNIFICATION; SURVIVAL PERIOD

12.1 Time Limitations. A claim for indemnification pursuant to Section 12.3(b) must be made in writing to Seller on or before the first anniversary of the Closing Date, other than with respect to claims based on a breach of (a) the representations and warranties set forth in Sections 4.11 or 4.17, which must be made in writing to Seller on or before the fifth anniversary of the Closing Date or (b) the representations and warranties set forth in Section 4.16, which must be made in writing to Seller within 30 days after the expiration of the applicable statute of limitations relating to the matters covered by such representations and warranties. A claim for indemnification pursuant to Section 12.4(b) must be made in writing to Buyer on or before the first anniversary of the Closing Date. Notwithstanding the foregoing or any other provision to the contrary contained herein, there will be no time limitation regarding claims (a) based on a breach of the representations and warranties set forth in Sections 4.1 or 4.2 or (b) for indemnification brought pursuant to Sections 12.3(a), 12.4(a) or 12.4(c).

12.2 Amount Limitations. No indemnification claim may be asserted by either Party pursuant to Sections 12.3(b) or 12.4(b) until such Party has suffered Losses in excess of an aggregate deductible equal to \$1,500,000 (after which point such Party will only be entitled to indemnification from and against such further Losses); provided, that such deductible amount shall not apply to breaches of the representations and warranties set forth in Sections 4.1, 4.2 and 4.16. Each Party's obligation to indemnify the other pursuant to Sections 12.3 or 12.4 (other than pursuant to Section 12.4(c)) will be limited to, and capped at an amount equal to, 30% of the Purchase Price (after which point such Party will have no obligation to indemnify from and against any further Losses); provided, that, the aggregate limitation set forth in the preceding clause shall not apply to breaches of the representations and warranties set forth in Sections 4.1, 4.2 and 4.16.

12.3 Indemnification by Seller. Subject to the limitations provided in Sections 12.1 and 12.2, Seller will indemnify, defend and hold harmless Buyer (and its former, present and future officers, directors, employees, agents, shareholders, members, contractors, subcontractors, licensees, invitees, attorneys and all of their heirs and representatives), and its successors and assigns from and against any Losses (excluding incidental and consequential damages) caused by or arising out of:

(a) Any breach or default in the performance by Seller of any covenant or agreement of Seller contained in this Agreement; or

(b) Any breach of any warranty or representation made by Seller herein or in any schedule or exhibit hereto, or in any certificate or other instrument delivered by or on behalf of Seller pursuant hereto.

12.4 Indemnification by Buyer. Subject to the limitations provided in Sections 12.1 and 12.2, Buyer will indemnify and hold harmless Seller (and its former, present and future officers, directors, employees, agents, shareholders, contractors, subcontractors, licensees, invitees, attorneys and all of their heirs and representatives), and its successors and assigns from and against any Losses (excluding incidental and consequential damages) caused by or arising out of:

(a) Any breach or default in the performance by Buyer of any covenant or agreement of Buyer contained in this Agreement;

(b) Any breach of warranty or representation made by Buyer herein or in any schedule or exhibit hereto, or in any certificate or other instrument delivered by or on behalf of Buyer pursuant hereto; or

(c) Any liability rising out of Buyer's ownership of CLF&P or CLF&P's operations after the Closing.

12.5 Environmental Response. If Buyer is required by Environmental Laws to perform any Response Action as a direct result of Seller's breach of Section 4.17:

(a) Buyer will promptly give notice to Seller of the alleged breach of Section 4.17 giving rise to the required Response Action. Seller will have 60 days from receipt of Buyer's notice to elect to perform the Response Action; except that, if Buyer is subject to a legal directive to implement any Response Action within a shorter time (the "Deadline"), then Seller will have up to 5 Business Days before the Deadline to elect to implement the Response Action;

(b) If Seller elects to perform such Response Action, it will have the exclusive right to negotiate all Response Action elements with the Governmental Entities, and Buyer will cooperate fully with Seller in the Response Action, including, without limitation, granting such easements, covenants and rights of access to Seller as may be necessary to complete the work; provided, however, that Seller and Buyer will consult in good faith to assure that the Response Action will not unduly interfere with Buyer's operations or result in material cost or prejudice to Buyer; and

(c) All amounts paid and expenses incurred by Seller pursuant to this Section 12.5 will be considered indemnification payments under Section 12.3, and will be limited by and included in, the limitations on Seller's indemnification obligations set forth in Sections 12.1 and 12.2.

12.6 Indemnification Procedures. Any Party that is or may be entitled to indemnification under any provision of this Agreement (the "Indemnitee") will promptly notify the Party who is or may be obligated to provide such indemnification (the "Indemnitor") in writing of any matter that relates or may relate to a claim for indemnification under this Agreement. The Indemnitor may contest and defend in good faith any claim of third parties covered by this Section 12.6, provided such contest is made without cost or prejudice to the Indemnitee, and provided that within 15 days of the Indemnitor's receipt of notice of such claim, the Indemnitor notifies the Indemnitee of its desire to defend and contest such claim. The

Indemnitee will reasonably cooperate with the Indemnitor in its investigation and response to any third party claim. If the Indemnitor does not notify the Indemnitee of its desire to contest the claim, (a) it will nonetheless be entitled to participate in any proceeding regarding a third party claim for which the Indemnitor may have indemnification obligations hereunder, and (b) the Indemnitor will reimburse the Indemnitee on demand for any payment actually made by the Indemnitee at any time after the Closing Date with respect to any Losses to which the obligation of indemnity relates and to which the Indemnitor has been duly notified in a timely manner under this Section 12.6 (subject to the limitations on indemnification obligations set forth in Section 12.1 and Section 12.2).

12.7 Other Indemnification Provisions. The Parties will make appropriate adjustments for actual Tax benefits and for proceeds actually received pursuant to insurance and third-party indemnification in determining Losses for purposes of this ARTICLE 12. All indemnification payments under this ARTICLE 12 will be deemed adjustments to the Purchase Price.

12.8 Exclusive Remedy. In the absence of fraud, and except as provided in Section 13.2, the right of the Parties to assert indemnification claims and receive indemnity payments under this Agreement is the sole and exclusive right and remedy exercisable by the Parties with respect to any Losses arising out of any breach by any Party of any representation, warranty, covenant or agreement of such Party set forth in this Agreement or otherwise relating to this Agreement and the contemplated transactions. No Party will have any other remedy (statutory, equitable, common law or otherwise) against any other Party with respect to such matters, and all such other remedies are hereby waived. Without limiting the foregoing, each of the Parties acknowledges and agrees that it will not have any remedy after the Closing for any breach of any representation, warranty, covenant or agreement set forth in this Agreement, except as expressly provided in this ARTICLE 12.

ARTICLE 13 TERMINATION

13.1 Termination. The Parties may terminate this Agreement prior to the Closing as provided below:

(a) Buyer and Seller may terminate this Agreement by mutual written consent at any time prior to the Closing;

(b) Buyer may terminate this Agreement by giving written notice to Seller at any time prior to the Closing in the event (i) Seller has breached any representation, warranty or covenant contained in this Agreement and such breach causes a *Material Adverse Effect*, (ii) Buyer has notified Seller of the breach (specifying in reasonable detail such breach), and (iii) the breach has continued without cure or written waiver by Buyer for a period of 30 days after the notice of breach; provided, however, that if Buyer has not exercised its right to terminate this Agreement pursuant to this Section 13.1(b) within 10 Business Days following the end of such 30 day cure period, Buyer will be deemed to have forever waived its right to terminate this Agreement pursuant to this Section 13.1(b) based upon such breach; provided, further, however, no such waiver shall affect or otherwise waive any rights of Buyer under Section 13.1(c) by virtue of such breach or otherwise;

(c) Buyer may terminate this Agreement by giving written notice to Seller at any time prior to the Closing if the Closing does not occur on or before December 31, 2004, by reason of the failure of any condition precedent under ARTICLE 9 (unless the failure results primarily from Buyer or any of its Affiliates breaching any representation, warranty or covenant contained in this Agreement);

(d) Buyer may terminate this Agreement by giving written notice to Seller at any time prior to the Closing if any of the Required Regulatory Approvals, the receipt of which is a condition to the obligation of Buyer to consummate the Closing, will have been denied (and a petition for rehearing or re-filing of an application initially denied without prejudice will also have been denied), and such denial was not caused by or the result of a breach of this Agreement by Buyer;

(e) Buyer may terminate this Agreement pursuant to Section 6.7(c);

(f) Seller may terminate this Agreement by giving written notice to Buyer at any time prior to the Closing in the event (i) Buyer has breached any representation, warranty or covenant contained in this Agreement in any material respect, (ii) Seller has notified Buyer of the breach (specifying in reasonable detail such breach), and (iii) the breach has continued without cure or written waiver by Seller for a period of 30 days after the notice of breach; provided, however, that if Seller has not exercised its right to terminate this Agreement pursuant to this Section 13.1(f) within 10 Business Days following the end of such 30 day cure period, Seller will be deemed to have forever waived its right to terminate this Agreement pursuant to this Section 13.1(f) based upon such breach; provided, further, however, no such waiver shall affect or otherwise waive any rights of Seller under Section 13.1(g) by virtue of such breach or otherwise;

(g) Seller may terminate this Agreement by giving written notice to Buyer at any time prior to the Closing if the Closing does not occur on or before December 31, 2004, by reason of the failure of any condition precedent under ARTICLE 10 (unless the failure results primarily from Seller or any of its Affiliates breaching any representation, warranty or covenant contained in this Agreement);

(h) Seller may terminate this Agreement by giving written notice to Buyer at any time prior to the Closing if any of the Required Regulatory Approvals, the receipt of which is a condition to the obligation of Seller to consummate the Closing, will have been denied (and a petition for rehearing or re-filing of an application initially denied without prejudice will also have been denied), and such denial was not caused by or the result of a breach of this Agreement by Seller; or

(i) Either Party may terminate this Agreement in the event that any Legal Requirement becomes effective and continues in effect for 90 days restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

13.2 Effect of Termination. Upon termination pursuant to Section 13.1, this Agreement will become void and of no further force and effect, except that (a) the final

paragraph of Section 6.3 and (b) Sections 12.8, 17.1 and 17.2 and ARTICLE 14 and ARTICLE 16 will survive indefinitely, and except that if either Party commits a breach of this Agreement prior to such termination, the other Party will be entitled to the remedy of specific performance in addition to any and all other available legal or equitable remedies (including, without limitation, damages).

ARTICLE 14 EXPENSES

Whether or not the transactions contemplated hereby are consummated, each of the Parties will pay, except as otherwise provided herein, its own expenses, income and other Taxes, and costs (including, without limitation, the fees, disbursements and expenses of its attorneys, accountants, consultants and financial advisors) incurred by it in negotiating, preparing, closing and carrying out this Agreement and the transactions contemplated by this Agreement.

ARTICLE 15 NOTICES

All notices or other communications regarding this Agreement that either Party may be required or desire to give to the other Party will be in writing, and will be deemed to have been duly given (a) when given by personal service, (b) within 1 Business Day after being sent by facsimile with facsimile or electronic confirmation of receipt, (c) within 3 Business Days of being sent by registered or certified mail, return receipt requested, postage prepaid, or (d) within 1 Business Day of being sent by overnight courier, to the Person and at the addresses specified below, or to such other Person at such other address as may be substituted by notice given as provided herein.

If to Seller: Xcel Energy Inc.
800 Nicollet Mall, 30th Floor
Minneapolis, Minnesota 55402
Attention: Paras Shah
Director, Business Development, Acquisitions
and Divestitures
Facsimile No.: (612) 215-4575

with a copy to: Xcel Energy Inc.
800 Nicollet Mall, 30th Floor
Minneapolis, Minnesota 55402
Attention: General Counsel
Facsimile No.: (612) 215-4615

If to Buyer: Black Hills Corporation
625 Ninth Street
Rapid City, South Dakota 57701
Attention: General Counsel
Facsimile No.: (605) 721-2550

with a copy to: Morgan, Lewis & Bockius LLP
300 South Grand Avenue, Suite 2200
Los Angeles, California 90071
Attention: Steven M. Ruskin
Facsimile No.: (213) 612-2501

Either Party may change the address to which notices are to be addressed by giving the other Party notice in the manner herein set forth.

ARTICLE 16 PUBLIC ANNOUNCEMENTS AND RELEASES

Except as otherwise required by applicable Legal Requirements or any applicable stock exchange rules, neither Party will make nor cause to be made any public announcement or release concerning this Agreement or the transactions contemplated hereby without the prior written consent of the other Party.

ARTICLE 17 OTHER MATTERS

17.1 Governing Law. The validity, interpretation and performance of this Agreement will be determined in accordance with the laws of the state of Minnesota applicable to contracts made and to be performed wholly within that state.

17.2 Venue. Any action arising out of or related to this Agreement will be brought in a state or federal court located in Minneapolis, Minnesota or an appellate court therefrom, and each Party hereby submits to the personal jurisdiction of such courts.

17.3 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute but one and the same instrument.

17.4 Schedules. The Exhibits and the Schedules attached hereto are hereby made a part of this Agreement as if set forth in full herein.

17.5 Successors and Assigns. This Agreement will be binding upon Seller and Buyer and their respective successors and assigns, except that no right, benefit or obligation hereunder may be assigned by either Party without the prior written consent of the other Party, except that (and without being released from any of its obligations hereunder) Buyer shall have the right, without the consent of Seller, (a) to transfer, pledge or assign this Agreement as security for any financing, or (b) transfer or assign this Agreement to any Affiliate of Buyer. In the event of an assignment by Buyer to an Affiliate, such assignee shall execute and deliver an agreement containing the assumption by such assignee of the performance and observance of each covenant and condition of this Agreement to be performed or observed by Buyer.

17.6 Entire Agreement. This Agreement and the Confidentiality Agreement contain the entire agreement between the Parties hereto with respect to their subject matter and supersede all negotiations, prior discussions, agreements, arrangements and understandings, written or oral,

relating to the subject matter hereof and thereof. There are no representations, warranties, covenants or agreements between or among the Parties with respect to the subject matter hereof other than those expressly set forth herein.

17.7 Construction and Interpretation. The table of contents and the headings of the Articles, Sections and subsections are for convenience only and will not affect the meaning of this Agreement. Unless the context of this Agreement or the Exhibits or the Schedules hereto clearly requires otherwise, (a) the words "includes" and "including" are used without limitation, and (b) the word "or" will have the inclusive meaning represented by the phrase "and/or." No presumption will apply in favor of any Party in the interpretation of this Agreement or the resolution of any ambiguity in any provision of this Agreement.

17.8 Waivers. Except as otherwise provided herein, Seller or Buyer may waive in writing compliance by the other Party hereto (to the extent such compliance is for the benefit of the Party giving such waiver) with any of the terms, covenants or conditions contained in this Agreement (except such as may be imposed by law). Any waiver by any Party of any violation of, breach of, or default under, any provision of this Agreement, by the other Party will not be construed as, or constitute, a continuing waiver of such provision, or waiver of any other violation of, breach of or default under any other provision of this Agreement.

17.9 Amendments. No amendment of any provision of this Agreement will be valid unless the same is in writing and signed by the Parties hereto.

17.10 No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended, or will be construed, to confer upon or give any Person or entity other than the Parties any rights or remedies under or by reason of this Agreement.

17.11 Severability. Any term or provision hereof that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

[Remainder of page intentionally blank. Signature page follows.]

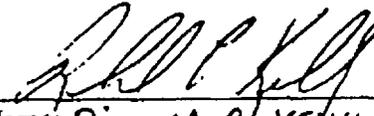
IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed and delivered as of the date first above written.

SELLER:

BUYER:

XCEL ENERGY INC.

BLACK HILLS CORPORATION

By: 
Name: RICHARD C KELLY
Title: PRESIDENT and COO

By: _____
Name:
Title:

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed and delivered as of the date first above written.

SELLER:

BUYER:

XCEL ENERGY INC.

BLACK HILLS CORPORATION

By: _____

Name:

Title:

By: *Daniel P. Landguth*

Name: Daniel P. Landguth

Title: Chairman and
Chief Executive Officer

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Black Hills Corporation)
Xcel Energy Inc.)
Cheyenne Light, Fuel & Power Company)
)

Docket No. EC04 118-000

APPLICATION OF
BLACK HILLS CORPORATION, XCEL ENERGY INC.,
AND CHEYENNE LIGHT, FUEL & POWER COMPANY
FOR AUTHORIZATION OF SALE AND PURCHASE OF PUBLIC UTILITY

FILED
OFFICE OF THE
SECRETARY
2008 JUN 14 12:35
FEDERAL ENERGY
REGULATORY COMMISSION

Pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b, and Part 33 of the Regulations of the Federal Energy Regulatory Commission ("FERC" or the "Commission"), 18 C.F.R. Part 33, Black Hills Corporation ("Black Hills"), Xcel Energy Inc. ("Xcel Energy"), and Cheyenne Light, Fuel & Power Company ("CLF&P") (collectively, the "Applicants") request authorization for Black Hills to acquire from Xcel Energy all of the outstanding capital stock of CLF&P (the "Transaction"). The sale will not have any impact on competition, cause any change in rates, nor impair the effectiveness of federal or state regulation. For these reasons the Applicants respectfully submit that the Transaction comports with the public interest and request the Commission to authorize it promptly and without an evidentiary hearing.

I. INTRODUCTION AND SUMMARY

CLF&P is a small electric and gas retail distribution company with a service area in and around Cheyenne, Wyoming. CLF&P serves approximately 38,000 electric retail customers and 31,000 retail gas customers. CLF&P does not own or operate any electric generating facilities, so it historically has obtained its full electric requirements from other suppliers. CLF&P makes no

wholesale sales of electricity and owns 25.5 miles of FERC-jurisdictional transmission facilities, which are so limited that no transmission user other than CLF&P has ever taken service over them.

CLF&P is a public utility under Section 201(e) of the Federal Power Act solely because of its ownership of these minimal transmission facilities. CLF&P is wholly-owned by Xcel Energy, a registered holding company which owns four other utility operating companies and several other non-utility subsidiaries.

Black Hills is an exempt utility holding company whose principal public utility operating company subsidiary is Black Hills Power, Inc. ("Black Hills Power"). Black Hills Power provides electric generation and distribution services to retail customers in South Dakota, Wyoming, and Montana, owns and operates a small transmission system in those states, and makes wholesale power sales to third party customers in the region. Black Hills also indirectly owns interests in subsidiaries engaged in electric power generation, each of which is an exempt wholesale generator ("EWG") with a market-based rate wholesale power sale tariff on file with FERC or a qualifying facility ("QF") exempt from FERC regulation; oil and natural gas marketing; natural gas exploration, production, and transportation; coal production and marketing; and telecommunications.

Black Hills has agreed to purchase 100% of the outstanding capital stock of CLF&P from Xcel Energy. As demonstrated in this application, the Transaction will fully satisfy the public interest standards promulgated in the Commission's Merger Policy Statement. Because CLF&P does not own or control any electric generation and only minimal transmission facilities, the Transaction will not have any effect on competition in the relevant markets. The Transaction also will not have any effect on rates or regulation. Black Hills, Xcel Energy, and CLF&P therefore request the Commission to approve the Transaction pursuant to Federal Power Act Section 203 promptly and without an evidentiary hearing.

II. THE PARTIES AND THE TRANSACTION

A. *Black Hills Corporation*

Black Hills is a South Dakota corporation which, through its subsidiaries, is engaged in the electric utility, unregulated power generation, energy supply and trading, and telecommunications businesses. Black Hills' principal public utility operating company subsidiary is Black Hills Power, a wholly-owned subsidiary 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. 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 the Commission.¹

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 also owns and operates a small transmission system of 230 kV and smaller transmission facilities located in Southwestern South Dakota and Northeastern Wyoming, with a small 69 kV extension into Southeastern Montana. 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 ("Black Hills Power Joint Tariff").² 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,

1. Black Hills Corp., 87 FERC ¶ 61,163 (1999).

2. 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 ("Basin Electric") and Powder River Energy Corporation

South Dakota (the "Rapid City Tie"), that interconnects the Western and Eastern interconnections.³ 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 provides transmission service to only a small number of third-party customers.

Black Hills' other principal subsidiaries are (a) Black Hills Energy, Inc. ("Black Hills Energy"), an integrated energy company engaged, through its subsidiaries, in the development, ownership, and operation of EWGs and QFs, the production, transportation, and marketing of natural gas, oil, coal, and other energy commodities, energy marketing, and other energy-related activities; and (b) Black Hills FiberCom, LLC ("Black Hills FiberCom"), a telecommunications company offering bundled telephone, high speed Internet and cable connections, and other broadband communications services.

B. Xcel Energy Inc.

CLF&P is wholly-owned by Xcel Energy, a registered holding company under the Public Utility Holding Company Act of 1935 ("PUHCA"). In addition to CLF&P, Xcel Energy wholly 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

("PRECorp").

3. The Rapid City Tie commenced commercial operations in October 2003.

Operating Companies”). The Xcel Energy Operating Companies collectively serve approximately 3.2 million retail electric customers and 1.7 million gas customers.

The Xcel Energy Operating Companies operate an integrated electric system within the meaning of PUHCA and coordinate their operations in certain respects in accordance with a Joint Operating Agreement (“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”).

Xcel Energy also owns Xcel Energy Services Inc. (“XES”), a services company that provides administrative, financial, legal, and other services to the Xcel Energy Operating Companies and non-utility subsidiaries.

C. Cheyenne Light, Fuel & Power Company

CLF&P, a wholly-owned subsidiary of Xcel Energy, 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 30,790 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,⁴ although Black Hills indirectly supplies a portion of CLF&P’s requirements. In 2001, Black Hills Wyoming, Inc. (“Black Hills Wyoming”), a Black Hills subsidiary that owns and operates electric generating

4. The Commission accepted the current requirements power purchase agreement between PSCo and CLF&P in Public Service Company of Colorado, 106 FERC ¶ 61,189 (2004). The current agreement replaces the parties’ prior full requirements power sales agreement, which also was on file with FERC. Public Service Co. of Colorado, Letter Order in Docket No. ER01-1311-000 (August 22, 2001).

facilities located in Wyoming,⁵ 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 ancillary services.

CLF&P subsequently assigned the power sales agreements to PSCo through 2003, and again from 2004 through 2007, both periods during which PSCo has served as the full requirements supplier of CLF&P.

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 Securities and Exchange Commission ("SEC") has allowed Xcel Energy to retain under PUHCA. CLF&P is not a party to the Xcel Energy JOA.

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 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 CLF&P's facilities 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 distribution system with the WAPA transmission system. Transmission service over the CLF&P transmission facilities is offered under the Xcel Energy OATT, but there have never been any requests for transmission service over these facilities.⁶

5. Black Hills Wyoming is an EWG.

6. Black Hills will file an application with FERC requesting a waiver of FERC's open access transmission tariff requirements with respect to CLF&P's limited transmission facilities. The Commission has held that it will grant requests for waiver of FERC's open access transmission tariff requirements by public utilities that own, operate, or control only limited and discrete transmission

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

D. The Transaction

Black Hills and Xcel Energy entered into the SPA on January 13, 2004. Under the SPA, Black Hills will acquire all of the issued and outstanding shares of CLF&P currently held by Xcel Energy for cash, with certain adjustments for outstanding indebtedness, working capital, and pre-closing capital expenditures. The purchase price is expected to approximate CLF&P's book value.

Following the close of the Transaction, CLF&P will be a direct wholly-owned subsidiary of Black Hills. CLF&P will be managed locally in Wyoming.

III. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST

The proposed Transaction satisfies the public interest criteria the Commission identified in its Merger Policy Statement: (i) it will have no effect on competition; (ii) it will have no effect on rates; and (iii) it will have no effect on regulation at either the state or federal level.⁷ The Commission therefore should authorize the Transaction pursuant to Federal Power Act Section 203.

facilities (facilities that do not form an integrated transmission grid) until such time as the public utility receives a request for transmission service on its facilities. See, e.g., Black Creek Hydro, et al., 77 FERC ¶ 61,232 (1996). CLF&P's limited transmission facilities do not constitute an integrated transmission grid, and therefore a waiver will be warranted until such time as CLF&P receives a request for transmission service over its facilities. In the event FERC denies the requested waiver, Black Hills will comply with FERC's open access transmission requirements for the CLF&P transmission facilities.

7. Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, FERC Stats. & Regs. ¶ 31,044 at 30,109 (1996).

The proposed acquisition of CLF&P represents an excellent fit with Black Hills' existing utility business and is consistent with Black Hills' overall business plan. The acquisition will allow Black Hills to significantly add to its retail presence in Wyoming and augment Black Hills' diversified energy activities in Wyoming, where it already generates electricity, mines coal, produces oil and natural gas, and markets wholesale electricity and natural gas.

Moreover, the Applicants expect that the Transaction will benefit Black Hills, Xcel Energy, CLF&P, and their customers. While Black Hills intends that CLF&P will be managed locally from its headquarters in Cheyenne, Black Hills will integrate CLF&P into its management, administrative, and financial structures to take advantage of operational and administrative efficiencies, which will accrue to Black Hills, CLF&P, and their customers. Likewise, the proposed Transaction will benefit Xcel Energy and its core Operating Company systems because Xcel Energy's sale of CLF&P will enable Xcel Energy to focus more on those core companies. Accordingly, the proposed Transaction will provide positive benefits and therefore will be in the public interest.

A. The Transaction Will Have No Effect on Competition

Because the Transaction will not cause a horizontal combination of generation or transmission facilities, nor a vertical combination of inputs and production, the Transaction can have no effect on competition.

The Transaction will not cause any horizontal market power impact. CLF&P does not own or control any generating facilities and does not make any wholesale sales of electric energy. To the contrary, CLF&P purchases its full electric requirements from an outside source. Similarly, CLF&P owns only minimal transmission facilities, which are used solely for the purpose of interconnecting its distribution system with WAPA's transmission system. Accordingly, the Transaction will not cause the combination of generating facilities, wholesale energy marketing capabilities, or networked

transmission facilities. The Transaction therefore can have no effect on the relevant product and geographic markets for wholesale power and related products or transmission service.

The Transaction will have no vertical market power impact either. The Transaction will not allow Black Hills and CLF&P to withhold inputs to production or limit or prevent entry of new generating resources into the region. While Black Hills does own electric and gas transmission systems, nothing about the Transaction would enhance Black Hills' ability or incentive to exercise market power in the supply of delivery services.

B. The Transaction Will Have No Effect on Rates

The proposed Transaction will have no effect on rates. None of Black Hills' jurisdictional subsidiaries' tariffs, rate schedules, or service agreements will be changed as a result of the Transaction, nor will CLF&P's rates for wholesale power purchases under its full requirements purchase contract with PSCo be affected by the Transaction.

C. The Transaction Will Have No Effect on Regulation

Finally, with respect to regulation, the proposed Transaction will not affect the ability of FERC or state regulators to regulate Black Hills and its subsidiaries.

In assessing proposed transactions under Section 203 of the Federal Power Act, FERC considers whether (1) the transaction would shift regulatory authority away from FERC to the SEC or otherwise diminish FERC authority, and (2) whether affected states have the authority to regulate the proposed transaction.⁸

With respect to the potential transfer of regulatory authority away from FERC and to the SEC, the Applicants recognize that the Transaction could result in Black Hills becoming a registered

8. Id. at 30,124-25.

public utility holding company. In such event, Black Hills commits to waive any immunity from FERC regulation of non-power affiliate sales to which it may potentially be entitled under the Ohio Power doctrine.⁹

IV. THE COMMISSION'S FILING REQUIREMENTS

Applicants provide the following information in compliance with 18 C.F.R. § 33.2.

A. Relevant Entities' Names and Addresses of Principal Business Offices

Black Hills Corporation
625 Ninth Street, 6th Floor
P.O. Box 1400
Rapid City, SD 57709

Xcel Energy Inc.
800 Nicollet Mall, 30th Floor
Minneapolis, MN 55402

Cheyenne Light, Fuel & Power Company
108 West Eighteenth Street
Cheyenne, WY 82001

9. Ohio Power Co. v. FERC, 954 F.2d 779, 782-86 (D.C. Cir. 1992), cert. denied 498 U.S. 73 (1992). Ohio Power raises the prospect that the operating and service company subsidiaries of a registered public utility holding company may escape FERC jurisdiction over inter-affiliate transactions within the holding company system by submitting such transactions to the SEC's jurisdiction, rather than to FERC jurisdiction.

B. Names and Addresses of Persons Authorized to Receive Notices and Communications with Respect to the Application

Applicants request that notices, correspondence, and other communications concerning this application be directed to the following persons:

For Black Hills Corporation

Steven J. Helmers
General Counsel
Black Hills Corporation
P.O. Box 1400
Rapid City, SD 57709-1400
T: (605) 721-2303
F: (605) 721-2550
shelmers@blackhillscorp.com

Theodore D. Matula
Black Hills Corporation
350 Indiana Street, Suite 400
Golden, CO 80401
T: (303) 256-1671
F: (303) 256-1667
tmatula@bh-corp.com

Michael C. Griffen
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
T: (202) 739-5257
F: (202) 739-3001
mgriffen@morganlewis.com

For Xcel Energy Inc. and Cheyenne Light, Fuel & Power Company

William M. Dudley
Assistant General Counsel
Xcel Energy Services Inc.
1099 18th Street, Suite 3000
Denver, CO 80220
T: (303)308-2742
F: (303)308-7683
bill.dudley@xemkt.com

Richard L. Kaysen
President & CEO
Cheyenne Light, Fuel & Power Company
108 West 18th Street
Cheyenne, WY 82001
T: (307) 778-2100
F: (307) 778-2106
richard.kaysen@xcelenergy.com

Applicants request that the foregoing persons be placed on the official service list for this proceeding and respectfully requests waiver of Rule 203(b)(3) of the Commission's Regulations, 18 C.F.R. § 385.203(b)(3), in order to permit designation of more than two persons for service in this proceeding.

C. Description of Applicants

1. Business Activities of Applicants. Applicants' business activities are identified in Exhibit A.

2. Energy Subsidiaries and Affiliates. Applicants' energy subsidiaries and affiliates are identified in Exhibit B.

3. Organizational Charts. Applicants submit pre-restructuring and post-restructuring organizational charts as Exhibit C.

4. Description of Joint Ventures etc. For the reasons explained in Exhibit D, Applicants request waiver of the requirement that they provide descriptions of joint ventures, strategic alliances, tolling arrangements, or other business arrangements.

5. Common Officers. Black Hills does not have any officers and directors in common with Xcel Energy or CLF&P. The current officers and directors of Xcel Energy and CLF&P are shown on Exhibit E. While Xcel Energy and CLF&P presently have common officers, they will not remain so following the consummation of the Transaction.

6. Wholesale Power Sales Customers and Unbundled Transmission Customers. For the reasons explained in Exhibit F, Black Hills and Xcel Energy request waiver of the requirement that they provide descriptions of their subsidiaries' wholesale power sales customers and unbundled transmission customers.

CLF&P has no wholesale power sales customers or unbundled transmission customers.

D. Description of Jurisdictional Facilities Owned, Operated, or Controlled by Black Hills or Parent Companies, Affiliates, and Associated Companies

Neither Black Hills nor Xcel Energy are FERC-jurisdictional public utilities. Rather, each directly or indirectly own interests in FERC-jurisdictional utilities. Descriptions of the jurisdictional

facilities owned or controlled by their subsidiaries, and by CLF&P, are provided in Section II and in Exhibit G.

E. Narrative Description of Proposed Transaction

See Section II.D, above, for a detailed discussion of the proposed Transaction.

1. Identity of All Parties Involved in the Transaction. Black Hills, Xcel Energy, and CLF&P are involved in the Transaction.

2. All Jurisdictional Facilities and Securities Associated With or Affected by the Transaction. The jurisdictional facilities and securities associated with or affected by the Transaction are identified in Exhibit H. They comprise CLF&P's jurisdictional transmission facilities, which are limited to facilities in two WAPA transmission substations, a switching station, and 25.5 miles of 115-kV transmission lines. CLF&P's transmission facilities serve solely to interconnect CLF&P's distribution system with WAPA's transmission system.

3. Consideration for the Transaction. The consideration for the transaction is identified in the SPA, a copy of which is provided as Exhibit I. Black Hills will acquire all of the issued and outstanding shares of CLF&P currently held by Xcel Energy for cash with certain adjustments for outstanding indebtedness, working capital, and pre-closing capital expenditures. The purchase price is expected to approximate CLF&P's book value.

4. Effect of the Transaction on Jurisdictional Facilities and Securities. The Transaction will effect a change in ownership and control over CLF&P and its limited jurisdictional facilities, but the change in ownership will have no substantive effect on those facilities. CLF&P's FERC-jurisdictional facilities are limited to the small number of transmission facilities described in Section IV.E.2. CLF&P will continue to use those facilities to interconnect its distribution system with WAPA's transmission system.

F. Contracts Related to Proposed Transaction

A copy of the SPA between Black Hills and Xcel Energy is provided as Exhibit I.

G. Explanation Demonstrating that the Transaction is Consistent with the Public Interest

As noted in Exhibit J, and for the reasons explained in Section III, above, the Transaction is consistent with the public interest.

H. Maps

The Applicants provide as Exhibit K a map depicting CLF&P's physical facilities and service area.

I. Licenses and Other Approvals

See Exhibit L.

V. PROPOSED ACCOUNTING ENTRIES

The Applicants provide their proposed accounting entries as Exhibit M.

VI. FORM OF NOTICE

A form of notice suitable for publication in the Federal Register is provided with this Application in paper and electronic formats.

VII. REQUEST FOR WAIVERS

Applicants request partial waiver of certain Commission informational requirements in the exhibits made part of this Application. The basis for each request for waiver is stated in the appropriate exhibit.

VIII. CONCLUSION

For the foregoing reasons, Black Hills, Xcel Energy, and CLF&P respectfully request authorization for Black Hills to acquire all of the outstanding capital stock of CLF&P from Xcel Energy. In addition, Applicants request the Commission to grant the waivers sought in this application and to consider the application promptly and without hearing.

Respectfully submitted,

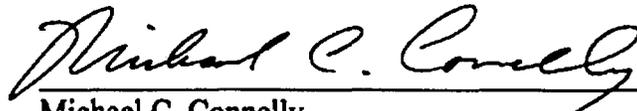


Michael C. Griffin
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Steven J. Helmers
General Counsel
Black Hills Corporation
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Rapid City, SD 57709-1400

Theodore D. Matula
Black Hills Corporation
350 Indiana Street, Suite 400
Golden, CO 80401

Attorneys for Black Hills Corporation



Michael C. Connelly
Xcel Energy Services Inc.
800 Nicollet Mall, Suite 3000
Minneapolis, MN 55402

Attorney for Xcel Energy Inc. and
Cheyenne Light, Fuel & Power Company

Dated: June 14, 2004

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Black Hills Corporation)
Xcel Energy Inc.)
Cheyenne Light, Fuel & Power Company)

Docket No. EC04 _____

VERIFICATION

STATE OF SOUTH DAKOTA)
COUNTY OF PENNINGTON) ss

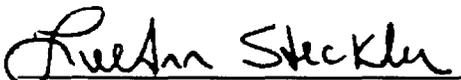
The undersigned, Steven J. Helmers, being first duly sworn, attests that I am Senior Vice President and General Counsel for Black Hills Corporation ("Applicant"); that as such I am legally authorized to bind Applicant; that I have read the foregoing Application of Black Hills Corporation, Xcel Energy Inc., and Cheyenne Light, Fuel & Power Company for Authorization of Sale and Purchase of Public Utility (the "Application") and know the contents thereof; and that the facts and representations set forth in the Application are true and correct to the best of my knowledge, information, and belief.



Name: Steven J. Helmers

Title: Senior Vice President and General Counsel

Subscribed and sworn to before me
this 14th day of May, 2004.



Notary Public, South Dakota

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Black Hills Corporation)
Xcel Energy Inc.)
Cheyenne Light, Fuel & Power Company)
)

Docket No. EC04 _____

VERIFICATION

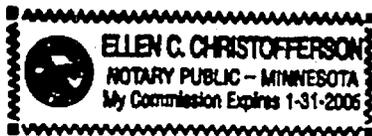
STATE OF MINNESOTA)
COUNTY OF HENNEPIN) ss

The undersigned, Cathy J. Hart, being first duly sworn, attests that I am VP & Corporate Secretary for Xcel Energy Inc. ("Applicant"); that as such I am legally authorized to bind Applicant; that I have read the foregoing Application of Black Hills Corporation, Xcel Energy Inc., and Cheyenne Light, Fuel & Power Company for Authorization of Sale and Purchase of Public Utility (the "Application") and know the contents thereof; and that the facts and representations set forth in the Application are true and correct to the best of my knowledge, information, and belief.

Name: *Cathy J. Hart*
Title: CATHY J. HART
VP & CORPORATE SECRETARY

Subscribed and sworn to before me
this 9th day of June, 2004.

Ellen C. Christofferson
Notary Public



UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

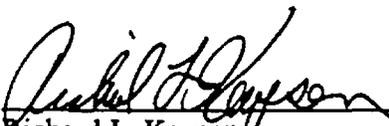
Black Hills Corporation)
Xcel Energy Inc.)
Cheyenne Light, Fuel & Power Company)

Docket No. EC04 _____

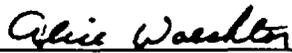
VERIFICATION

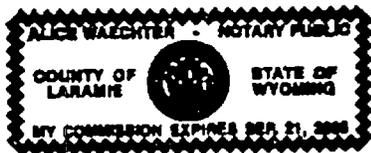
STATE OF WYOMING)
COUNTY OF LARAMIE) ss

The undersigned, Richard L. Kaysen, being first duly sworn, attests that I am President and Chief Executive Officer for Cheyenne Light, Fuel & Power Company ("Applicant"); that as such I am legally authorized to bind Applicant; that I have read the foregoing Application of Black Hills Corporation, Xcel Energy Inc., and Cheyenne Light, Fuel & Power Company for Authorization of Sale and Purchase of Public Utility (the "Application") and know the contents thereof; and that the facts and representations set forth in the Application are true and correct to the best of my knowledge, information, and belief.


Name: Richard L. Kaysen
Title: President and Chief Executive Officer

Subscribed and sworn to before me
this 8th day of June, 2004.


Notary Public



UNITED STATES OF AMERICA 108 FERC ¶ 62,247
FEDERAL ENERGY REGULATORY COMMISSION

Black Hills Corporation
Xcel Energy Inc.
Cheyenne Light, Fuel & Power Company

Docket No. EC04-118-000

ORDER AUTHORIZING DISPOSITION AND ACQUISITION
OF JURISDICTIONAL FACILITIES

(Issued September 20, 2004)

On June 14, 2004, Black Hills Corporation (Black Hills), Xcel Energy Inc. (Xcel Energy) and Cheyenne Light, Fuel & Power Company (CLF&P) (collectively, Applicants) filed an application pursuant to section 203 of the Federal Power Act (FPA)¹ requesting Commission authorization for Black Hills to acquire and for Xcel Energy to dispose of jurisdictional facilities relating to Black Hills' acquisition of all of the outstanding capital stock of CLF&P. The jurisdictional facilities consist of CLF&P's transmission facilities.

Black Hills, a South Dakota corporation which through its subsidiaries is engaged in the electric utility, unregulated power generation, energy supply and trading, and telecommunications businesses. It is an exempt utility holding company whose principal public utility operating company subsidiary is Black Hills Power, Inc. (Black Hills Power). Black Hills Power provides electric generation, transmission and distribution services to wholesale and retail customers in South Dakota, Wyoming, and Montana.² Black Hills' other principal subsidiaries are Black Hills Energy, Inc. (Black Hills Energy) and Black Hills FiberCom, LLC (Black Hills FiberCom). Black Hills Energy is an integrated energy company engaged through its subsidiaries, in the development, ownership, and operation of exempt wholesale generators and qualifying facilities, the production, transportation, and marketing of natural gas, oil, coal, and other energy

¹ 16 U.S.C. § 824b (2000).

² Black Hills Power 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 at market-based rates. It owns generating facilities located in its South Dakota service area and in Wyoming's Powder River Basin. Black Hills Power also owns and operates a small transmission system of 230 kV and smaller transmission facilities located in Southwestern South Dakota and Northeastern Wyoming, with a small 69 kV extension into Southeastern Montana. Black Hills Power provides transmission services over its system under a joint open access transmission tariff.

commodities, energy marketing, and other energy related activities. Black Hills FiberCom is a telecommunications company offering bundled telephone, high speed internet and cable connections, and other broadband communications services.

Xcel Energy wholly-owns CLF&P and is a registered holding company under the Public Utility Holding Company Act of 1935. It wholly-owns four other utility operating companies: (1) Northern States Power Company (NSP), a combination electric and gas utility that operates in Minnesota, North Dakota and South Dakota; (2) Northern States Power Company (Wisconsin) (NSP-W), a combination electric and gas utility that operates in Wisconsin and Michigan; (3) Public Service Company of Colorado (PSCo), a combination electric and gas utility that operates in Colorado; and (4) Southwestern Public Service Company (SPS), an electric utility which operates in Texas, New Mexico, Oklahoma, and Kansas (collectively, Excel Energy Operating Companies). The Xcel Energy Operating Companies offer transmission service under Xcel Energy's open-access transmission tariff. In addition, Xcel Energy owns Xcel Energy Services Inc., a services company that provides administrative, financial, legal, and other services to the Excel Energy Operating Companies and non-utility subsidiaries.

CLF&P is a wholly-owned subsidiary of Xcel Energy. It is a small electric and gas retail distribution company that operates in Wyoming. CLF&P does not own or operate any electric generating facilities and purchases all of its power requirements for its electric system from PSCo, its affiliate, under a power sales agreement. CLF&P owns two 115 kV transmission line segments that total 25.5 miles in length that are located within, and are operated by, Western Area Power Administration's (WAPA) Rocky Mountain Region control area. It also owns 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. CLF&P's transmission facilities do not comprise an integrated transmission system and serve only to allow CLF&P to deliver power to its distribution system in Cheyenne, Wyoming. The transmission service over the CLF&P transmission facilities is offered under Xcel Energy's open access transmission tariff, but there have never been any requests for transmission services over these facilities.

Pursuant to a Stock Purchase Agreement dated January 13, 2004, Black Hills will acquire all of the issued and outstanding shares of CLF&P held by Excel Energy for cash, with certain adjustments for outstanding indebtedness, working capital, and pre-closing capital expenditures. Following consummation, CLF&P will be a direct wholly-owned subsidiary of Black Hills. Applicants state the proposed acquisition will allow Black Hills to significantly add to its retail presence in Wyoming and augment its diversified energy activities in Wyoming.

Applicants state that the proposed transaction is consistent with the public interest and will not adversely affect competition, rates or regulation. With respect to

competition, Applicants state that CLF& P does not own or control any generating facilities and does not make any wholesale sales of electric energy. They state that CLF&P owns only minimal transmission facilities, which are used solely for the purpose of interconnecting its distribution system with WAPA's transmission system. Applicants indicate the proposed transaction will not cause the combination of generating facilities, wholesale energy marketing capabilities, or networked transmission facilities. Therefore, Applicants contend the transaction can have no effect on the relevant product and geographic markets for wholesale power and related products or transmission service. Applicants note that the transaction will not allow Black Hills and CLF&P to withhold inputs to production or limit or prevent entry of new generating resources into the region. In addition, Applicants state that the proposed transaction will not enhance Black Hills' ability or incentive to exercise market power in the supply of delivery services.

With respect to rates, Applicants state that the proposed transaction will have no effect on rates. Applicants note that none of Black Hills' jurisdictional subsidiaries' tariffs, rate schedules, or service agreements will be changed as a result of the transaction, nor will CLF&P's rates for wholesale power purchases under its full requirements purchase contract with PSCo be affected by the transaction.

With respect to regulation, Applicants state that the proposed transaction will not affect the ability of the Commission or state regulators to regulate Black Hills and its subsidiaries. Applicants indicate that the proposed transaction could result in Black Hills becoming a registered public utility holding company. In the such event, they state that Black Hills commits to waive any immunity from the Commission regulation of non-power affiliate sales to which it may potentially be entitled under the Ohio Power doctrine.

This filing was noticed on June 16, 2004, with comments, protests or interventions due on or before July 6, 2004. The International Brotherhood of Electrical Workers, Local No. 111 (Local 111) filed a timely motion to intervene and a protest. Municipal Energy Agency of Nebraska (MEAN), PacifiCorp and the City of Gillette, Wyoming (Gillette) filed timely motions to intervene raising no substantial issues. On August 20, 2004, Local 111 filed a motion to withdraw its protest. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedures, Local 111, MEAN, PacifiCorp and Gillette's unopposed motion to intervene serves to make them a party to this proceeding.

After consideration, it is concluded that the proposed transaction is consistent with the public interest and is hereby authorized, subject to the following conditions:

- (1) The proposed transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) The foregoing authorization is without prejudice to the authority of the

Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before the Commission;

- (3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA, to issue supplemental orders as appropriate;
- (5) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the transaction; and
- (6) Applicants shall notify the Commission within 10 days of the date that the disposition and acquisition of the jurisdictional facilities has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Tariffs and Market Development – West under 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713.

Jamie L. Simler
Director
Division of Tariffs and Market Development – West

MAR 22 2004

Public Service Commission
Wyoming

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF WYOMING

JOINT 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)

DOCKET NO. 20003 -EA-04-75 record No. 8984
30005 -GA-04-97 record No. 8985

JOINT PETITION FOR CONFIDENTIAL TREATMENT OF DOCUMENTS

1. Cheyenne Light, Fuel and Power Company ("Cheyenne Light") and Black Hills Corporation ("Black Hills") (hereinafter collectively referred to as "Joint Applicants"), pursuant to Section 120(a) and (b) of the Rules of Practice and Procedure of the Wyoming Public Service Commission (hereinafter the "WYPSC" or the "Commission"), hereby Petition the Commission to treat the following information submitted with the Joint 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 (the "Joint Application") as confidential:

- a. The un-redacted Stock Purchase Agreement pursuant to which Xcel Energy agreed to sell, transfer, assign and deliver to Black Hills Corporation and Black Hills Corporation agreed to purchase and accept from Xcel Energy, 100% of the outstanding capital stock of Cheyenne Light.
- b. All schedules and attachments to said Stock Purchase Agreement.

2. A redacted version of the Stock Purchase Agreement is being filed with the Joint Application herein. An un-redacted version of the Stock Purchase Agreement is being submitted herewith under seal. Due to the voluminous nature of the schedules and attachments, they are not being submitted at this time, but are available upon request. The Joint Applicants request that the un-redacted version of the Stock Purchase Agreement not be distributed until such time as the Commission has acted on this Joint Petition.

3. The un-redacted Stock Purchase Agreement contains commercial information which is highly proprietary and confidential and the disclosure of such information would jeopardize each of the parties' and their affiliates' competitive position and interests. The parties have taken every step to ensure that their commercial interests are protected and do not want to

be placed in the position of having the confidential and proprietary information disclosed through the regulatory process. The parties to the transaction have agreed to the confidential treatment sought by this Petition. Accordingly, the Applicants request that the Commission grant this Petition and treat the information identified above as confidential in accordance with Section 120(a) and (b) of the Commission's Rules.

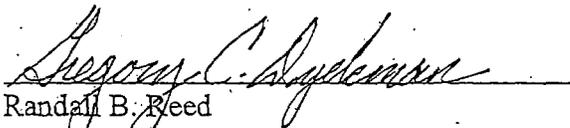
4. Pursuant to Section 120(b)(iii) of the Rules of Practice and Procedure of the Commission, the Joint Applicants request that the Commission approve the form of Order attached hereto, including the Nondisclosure Agreement.

5. The Joint Applicants request that any intervenor or other entity that desires access to the confidential information shall make application to the Commission for access thereto; that such information not be disclosed by the Commission until such time as Cheyenne Light, Fuel and Power Company and Black Hills Corporation receive notice thereof and a hearing on the request is held by the Commission; that any person to whom confidential information is disclosed pursuant to this Order be required to sign a non-disclosure agreement in the form that is attached hereto; that the original of each such agreement shall be filed with the Commission and copies delivered to both applicants; and that all persons who are afforded access to any information under seal shall take all reasonable precautions to keep the confidential information secure.

6. At such time as an order is issued by the Commission which is not subject to review, the Joint Applicants request that the Commission return all confidential information and documents to counsel for Black Hills Corporation.

Dated this 22nd day of March, 2004.

BLACK HILLS CORPORATION



Randall B. Reed

Gregory C. Dyekman

DRAY, THOMSON & DYEKMAN, P.C.

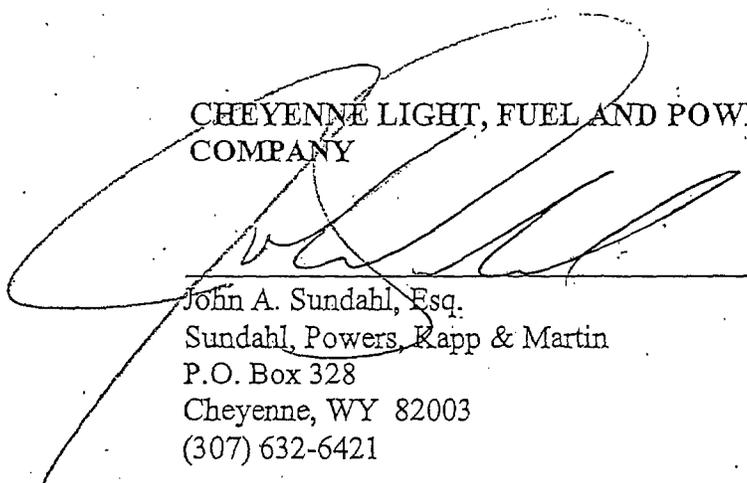
204 East 22nd Street

Cheyenne, WY 82001

Phone: (307) 632-8891

Attorneys for Black Hills Corporation

CHEYENNE LIGHT, FUEL AND POWER
COMPANY



John A. Sundahl, Esq.
Sundahl, Powers, Kapp & Martin
P.O. Box 328
Cheyenne, WY 82003
(307) 632-6421

Paula M. Connelly, Esq.
Assistant General Counsel
Xcel Energy Services Inc.
1225 17th Street, Suite 900
Denver, CO 80201-0840
(303) 294-2222

*Attorneys For Cheyenne Light, Fuel and Power
Company*

the documents identified above is highly commercially sensitive, and disclosure of this information should be prohibited. The Commission directs that the un-redacted Stock Purchase Agreement shall be submitted under seal. The schedules and attachments to the un-redacted Stock Purchase Agreement shall be held at the offices of Dray, Thomson & Dyekman, P. C. and shall not be delivered until further order of the Commission.

2. Any intervenor or other entity that desires access to the confidential information shall make application to the Commission for access thereto. Such information shall not be disclosed by the Commission until such time as Cheyenne Light, Fuel and Power Company and Black Hills Corporation receive notice thereof and a hearing on the request is held by the Commission. Any person to whom confidential information is disclosed pursuant to this Order shall sign a non-disclosure agreement in the form that is attached hereto. The original of each such agreement shall be filed with the Commission and copies delivered to both applicants. All persons who are afforded access to any information under seal shall take all reasonable precautions to keep the confidential information secure.

3. Confidential information, if filed with the Commission, will be sealed by the Director of the Commission, segregated in the files of the Commission, and withheld from inspection by any person except as ordered by the Commission.

4. At the conclusion of the proceedings, all documents and information subject to this Order, except the original and copies required by Staff to carry out its regulatory responsibilities, shall be redelivered to such person(s) as Black Hills Corporation shall designate.

5. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming _____, 2004.

PUBLIC SERVICE COMMISSION OF WYOMING

ROB HURLESS, Chairman

STEVE FURTNEY, Deputy Chair

STEPHEN G. OXLEY, Secretary and Chief Counsel

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF WYOMING

JOINT APPLICATION OF CHEYENNE)
LIGHT, FUEL AND POWER COMPANY)
AND BLACK HILLS CORPORATION)
FOR AUTHORITY TO TRANSFER ALL) DOCKET NO. _____ -EA-04-_____
OF THE ISSUED AND OUTSTANDING) _____ -GA-04-_____
STOCK IN CHEYENNE LIGHT, FUEL)
AND POWER COMPANY TO BLACK)
HILLS CORPORATION)

NONDISCLOSURE AGREEMENT
RELATING TO CONFIDENTIAL DOCKETED INFORMATION

I hereby state that I have read the Protective Order of Confidentiality which was ordered and entered by the Wyoming Public Service Commission in the above entitled matter, and I agree to be bound by the terms of its provisions with respect to all evidence and information produced or arising in the course of Docket Nos. _____ -EA-04-____ and _____ -GA-04-_____.

I further state or affirm that I will not at any time before or after the entry of a final order in this docket, discuss or disclose to anyone who has not executed this same Agreement the confidential information reviewed by me and I will confirm the prior execution of this Agreement by any person with whom I propose to engage in any such discussion or disclosure.

I further state or affirm that, upon the entry of a final non-appealable order in this docket, I will return all confidential materials reviewed by me to the Black

Hills Corporation within thirty (30) days of the entry of that order, directed to the attention of the person(s) designated by Black Hills Corporation to receive such material. No copies of the information referred to herein will be retained by me or my firm.

Dated this _____ day of _____, 2004.

Name

Title

Employer or Firm

Business Address

Party in Case

STATE OF _____)

) ss.

COUNTY OF _____)

Subscribed and sworn to before me this ___ day of _____, 2004, by _____

Notary Public

My commission expires: _____

Dray, Thomson & Dyekman, P.C.

W. PERRY DRAY
WILLIAM J. THOMSON
GREGORY C. DYKMAN
RANDALL B. REED
NICHOLAS G. J. HEALEY*
MICHELLE L. BUSH**
BRIAN J. HANIFY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
204 EAST 22ND STREET
CHEYENNE, WYOMING 82001-3799

TELEPHONE
(307) 634-8891
TELEFAX
(307) 634-8902
E-MAIL

Randy.Reed@draylaw.com

* ALSO ADMITTED IN OKLAHOMA
** ALSO ADMITTED IN COLORADO

RECEIVED

MAR 22 2004

Public Service Commission
Wyoming

March 22, 2004

Mr. Steven Oxley
Secretary and Chief Counsel, Wyoming Public Service Commission
2515 Warren Avenue, Suite 300
Cheyenne, WY 82002

RE: In the Matter of the Joint 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; DOCKET NO. 20003 -EA-04-75 record No. 8984
30005 -GA-04-97 record No. 8985

Dear Mr. Oxley:

In accordance with Sections 208 and 209 of the Wyoming Public Service Commission's Rules of Practice and Procedure, Black Hills Corporation and Cheyenne Light, Fuel and Power Company submit the enclosed "Joint 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."

The Application has three attachments, one of which is a redacted version of the Stock Purchase Agreement (without its Schedules) related to this transaction. The Joint Applicants consider the information redacted from the Stock Purchase Agreement to be confidential. Thus, the Joint Applicants have filed Petition for Confidential Treatment of Documents in accordance with Rule 120 setting forth the basis for seeking confidential treatment of the un-redacted Stock Purchase Agreement and its schedules. In the event the Petition is granted by the Commission, the Joint Applicants will submit the un-redacted document to the Commission to be treated as confidential in keeping with the Commission's Order. Due to their length, Joint Applicants do not intend to submit the schedules to the Stock Purchase Agreement at this time (except for Schedule 9.10 which

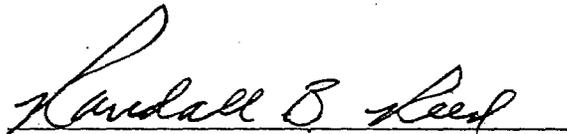
Mr. Steven Oxley
March 22, 2004
Page 2

is referred to in the pre-filed testimony). The Schedules will be made available to the Commission and its staff on a confidential basis upon request.

The Applicants are also submitting under separate cover pre-filed testimony in support of the Joint Application.

Should you require additional information or have any questions regarding this matter, please contact us at the addresses or telephone number below.

Respectfully submitted,



Randall B. Reed
DRAY, THOMSON & DYEKMAN
Attorneys for Black Hills Corporation
204 East 22nd Street
Cheyenne, Wyoming 82001-3799
Tel: (307) 634-8891

cc: John A. Sundahl, Esq.
Paula M. Connelly, Esq.
Judy Matlock, Esq.

RECEIVED

MAR 22 2004

Public Service Commission
Wyoming

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF WYOMING

JOINT 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)

DOCKET NO. 20003 -EA-04-75 record No. 89
30005 -GA-04-97 record No. 898

APPLICATION

Pursuant to Wyoming Statute §37-1-104 and Section 209 of the Rules of Practice and Procedure of the Public Service Commission of Wyoming ("Commission"), the Applicants, Cheyenne Light, Fuel and Power Company ("Cheyenne Light") and Black Hills Corporation ("Black Hills") respectfully show the Commission as follows:

1. Addresses of Applicants. The address of Cheyenne Light is 108 West 18th Street, Cheyenne, Wyoming 82001. The address of Black Hills is 625 Ninth Street, P.O. Box 1400, Rapid City, South Dakota 57709.

2. Controlling Interest Proposed to be Transferred.

Cheyenne Light is a public utility furnishing both electric and natural gas service in Cheyenne, Wyoming, and in a major portion of Laramie County, Wyoming. Cheyenne Light also distributes natural gas to customers in the communities of Pine Bluffs, Burns, and Carpenter located in the eastern portion of Laramie County. These areas make up more than 1,200 square miles of certificated territory with approximately 80,000 residents. Cheyenne Light is a wholly-owned subsidiary of Xcel Energy Inc. ("Xcel Energy"). Xcel Energy proposes to transfer all of the issued and outstanding stock of Cheyenne Light to Black Hills.

3. Financial Condition of Cheyenne Light. In 2003, Cheyenne Light had consolidated revenues totaling approximately \$97.0 million with net income of approximately \$2.2 million. At year-end 2003, Cheyenne Light employed approximately 84 people. Cheyenne Light maintains its corporate headquarters in Cheyenne, Wyoming. Cheyenne Light will be filing with the Commission on or before April 15, 2004, its latest FERC Form No.-1-F, Annual Report of Non-major Public Utilities and Licensees.

4. Brief Description of Black Hills and Financial Condition of Black Hills. Black Hills Corporation is a South Dakota corporation headquartered in Rapid City, South Dakota. The corporation is a public utility holding company and is the ultimate parent corporation of the Black Hills organization. Subsidiaries of Black Hills Corporation are engaged in the generation, transmission, distribution and sale of electricity, the production, marketing, and transportation of natural gas, oil, and coal, and the provision of communications, cable television, and Internet services. Attachment 1 is a copy of the corporate organizational chart for Black Hills Corporation. Black Hills Corporation is a publicly-traded company and its shares are listed on the New York Stock Exchange under the symbol "BKH".

Black Hills Corporation is currently an exempt holding company under the Public Utility Holding Company Act. Black Hills Corporation has two subsidiaries: Black Hills Power, Inc., a public utility, and Black Hills Energy, Inc. which is engaged in non-utility businesses.

Black Hills Power is a public utility engaged in the generation, transmission, distribution and sale of electricity to approximately 61,000 customers in eleven counties in Western South Dakota, Northeastern Wyoming, and Southeastern Montana. Black

Hills Power is the only regulated, non-EWG (exempt wholesale generator) public utility subsidiary of Black Hills Corporation. Black Hills Power serves 2,466 electric customers in Wyoming. Its Wyoming service territory encompasses the communities of Newcastle, Osage and Upton. In addition, Black Hills Power is certified to serve certain electric loads within the boundary of the Wyodak coal mine near Gillette. Its total retail electric energy sales in Wyoming during the year ending December 31, 2003, were 143,781,000 kwh, with total retail revenues of approximately \$8,300,000.

The transaction by which Black Hills Corporation became a holding company was approved by this Commission by Order issued September 26, 2000, in Docket No. 20002-ES-99-61.

At year end 2003, Black Hills Corporation and its subsidiaries had total assets of \$2,059,680,000 and consolidated revenues totaling approximately \$1,250,052,000 with net income of approximately \$60,964,000. Attachment 2 is a copy of the Black Hills Corporation's annual report on Form 10-K for 2003 filed with the Securities and Exchange Commission on March 15, 2004. Included in the Form 10-K is the consolidated balance sheet for Black Hills Corporation as of December 31, 2003.

5. Terms and Conditions of the Proposed Sale. On January 13, 2004, Xcel Energy Inc., a Minnesota corporation, as Seller and Black Hills Corporation, a South Dakota corporation, as Buyer entered into a stock purchase agreement ("Stock Purchase Agreement") pursuant to which Xcel Energy agreed to sell, transfer, assign and deliver to Black Hills Corporation and Black Hills Corporation agreed to purchase and accept from Xcel Energy, 100% of the outstanding capital stock of Cheyenne Light (the "Shares") for cash with certain adjustments for outstanding indebtedness, working capital, and pre-

closing capital expenditures as more fully described in the Stock Purchase Agreement. A complete copy of the Stock Purchase Agreement is being submitted under seal and a redacted copy of the Stock Purchase Agreement is attached hereto as Attachment 3.

6. Effect of the Proposed Transaction on Cheyenne Light's Service. Black Hills Corporation intends to maintain the separate corporate identity of Cheyenne Light. Therefore, Cheyenne Light will retain its existing filed rates, rules, regulations, and classifications of service. The stock transfer should have no impact on the service of Cheyenne Light.

7. Method by Which the Proposed Transaction is to be Financed. The proposed transaction will be financed with cash and assumption of debt.

8. Effect on Other Utilities. The proposed transaction will not have any material effect on any other utility.

9. Testimony. The following testimony and exhibits are submitted in support of this application:

David R. Emery, President and Chief Executive Officer of Black Hills Corporation, will provide an overview of Black Hills Corporation and its subsidiary Black Hills Power.

Richard L. Kaysen, President and Chief Executive Officer of Cheyenne Light, will provide an overview of Cheyenne Light's utility operations and regulatory status.

Mark T. Thies, Executive Vice President and Chief Financial Officer of Black Hills Corporation, will provide information regarding the financial condition of Black Hills Corporation. He will summarize the proposed

transaction, describe the process necessary to complete the transaction, including the required regulatory approvals, and will specifically discuss the regulatory approvals Black Hills Corporation is seeking from the Securities and Exchange Commission. Mr. Thies will also describe Black Hills Corporation's methodology for allocating common costs.

Thomas M. Ohlmacher, President and Chief Operating Officer of Black Hills Energy, will provide information regarding the direct and indirect subsidiaries of Black Hills Corporation and their activities in Wyoming, and other information related to Black Hills' generation, transmission and distribution activities.

Kyle D. White, Vice President – Corporate Affairs for Black Hills Corporation will discuss the experience the Company has acquired in its 120 years of providing electricity to retail and wholesale customers and the customer service philosophy of the Company which will be applied to Black Hills' ownership of Cheyenne Light.

10. Notices. Applicants request that the following persons be placed on the official service list in this proceeding:

Cheyenne Light:

Richard L. Kaysen
President and Chief Executive Officer
Cheyenne Light, Fuel and Power Company
108 West 18th Street
Cheyenne, WY 82001
(307) 778-2100

John A. Sundahl, Esq.
Sundahl, Powers, Kapp & Martin
P.O. Box 328
Cheyenne, WY 82003
(307) 632-6421

Paula M. Connelly, Esq.
Assistant General Counsel
Xcel Energy Services Inc.
1225 17th Street, Suite 900
Denver, CO 80201-0840
(303) 294-2222

Black Hills

Randall B. Reed
Gregory C. Dykeman
Dray, Thompson & Dykeman
204 E. 22nd Street
Cheyenne, WY 82001
(307) 634-8891

Judith M. Matlock
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, CO 80202
(303) 892-7380

Theodore D. Matula
Associate Counsel
Black Hills Corporation
350 Indiana Street, Suite 400
Golden, CO 80401

Steve J. Helmers
General Counsel
Black Hills Corporation
625 Ninth Street
P.O. Box 1400
Rapid City, South Dakota 57709

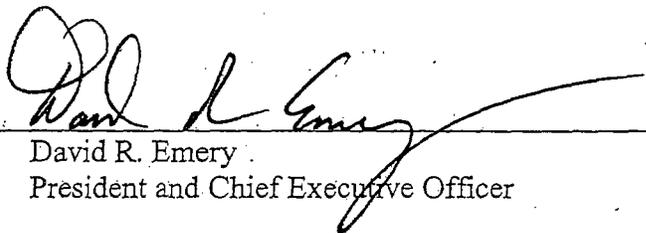
1 WHEREFORE, Cheyenne Light, Fuel and Power Company and Black Hills Corporation
2 pray for an order authorizing the transfer of all of the issued and outstanding stock of
3 Cheyenne Light from Xcel Energy Inc. to Black Hills Corporation.

4
5 Dated this 17 day of March, 2004.

6
7 CHEYENNE LIGHT, FUEL AND POWER COMPANY

8
9
10 By: 
11 _____
12 Richard L. Kaysen
13 President and Chief Executive Officer
14
15
16

17 BLACK HILLS CORPORATION

18
19 By: 
20 _____
21 David R. Emery
22 President and Chief Executive Officer
23

LIST OF ATTACHMENTS

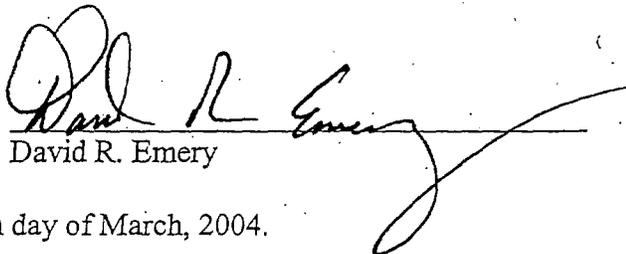
<u>Attachment</u>	<u>Description</u>
1	Corporate organizational chart for Black Hills Corporation
2	Black Hills Corporation's annual report on Form 10-K for 2003 filed with the Securities and Exchange Commission on March 15, 2004
3	Redacted copy of the Stock Purchase Agreement

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF WYOMING

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

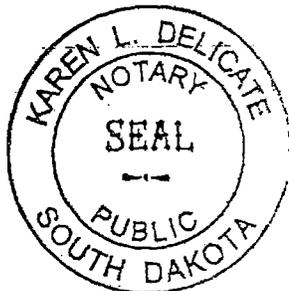
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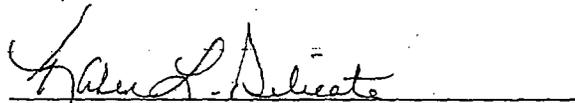
I, David R. Emery, being duly sworn, do hereby depose and state that I am President and Chief Executive Officer of Black Hills Corporation, Joint Applicant in the foregoing Application, that I have read such Application, and that the facts set forth therein are true and correct to the best of my knowledge, information, and belief.



David R. Emery

Subscribed and sworn to before me this 17th day of March, 2004.





Notary Public, State of South Dakota

My commission expires: 03/21/2008

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE JOINT)
APPLICATION OF CHEYENNE LIGHT)
FUEL AND POWER COMPANY AND) Docket No. 20003-EA-04-75
BLACK HILLS CORPORATION FOR) (Record No. 8984)
AUTHORITY TO TRANSFER ALL OF)
THE ISSUED AND OUTSTANDING) Docket No. 30005-GA-04-97
STOCK IN CHEYENNE LIGHT, FUEL) (Record No. 8985)
AND POWER COMPANY TO BLACK)
HILLS CORPORATION)

APPEARANCES

For Applicant, Cheyenne Light, Fuel & Power Company (Cheyenne Light)
JOHN A. SUNDAHL of Sundahl, Powers, Kapp & Martin, Cheyenne,
Wyoming.

For the Applicant, Black Hills Corporation (Black Hills):
RANDALL B. REED of Dray, Thomson & Dyekman, Cheyenne, Wyoming;
and Judith M. Matlock of Davis, Graham & Stubbs, Denver, Colorado.

For the Intervenor, Wyoming Office of Consumer Advocate (Office of Consumer
Advocate):
CHRISTOPHER PETRIE, Senior Counsel, Office of Consumer Advocate,
Cheyenne, Wyoming.

HEARD BEFORE

Chairman ROB HURLESS
Deputy Chair STEVE FURTNEY
Commissioner KATHLEEN A. LEWIS

Stephen G. Oxley, presiding as hearing officer
pursuant to Commission order

ORDER APPROVING STOCK SALE TRANSACTION AND STIPULATION
(Issued August 26, 2004)

This matter is before the Public Service Commission (Commission) upon the
joint application of Cheyenne Light and Black Hills, filed simultaneously in the
above-captioned dockets, for authority to transfer all of the issued and outstanding
stock of Cheyenne Light to Black Hills, under which Cheyenne Light, currently a
wholly-owned subsidiary of Xcel Energy Inc. (Xcel Energy), would become a wholly-

owned subsidiary of Black Hills (the Application), and upon the interventions of the Office of Consumer Advocate, the International Brotherhood of Electrical Workers, Local No. 111 (the Union), and Frontier Oil and Refining Company (Frontier). The Commission, having heard the testimony, reviewed its files concerning Cheyenne Light and Black Hills and applicable Wyoming utility law, and being otherwise fully advised in the premises, **HEREBY FINDS AND CONCLUDES:**

The Facts of the Case: Procedural Matters

1. Cheyenne Light and Black Hills filed the Application and supporting documentation in this proceeding on March 22, 2004. With the Application, Cheyenne Light and Black Hills filed the prepared direct testimony and exhibits of David R. Emery, Richard L. Kaysen, Mark T. Thies, Thomas M. Ohlmacher, and Kyle D. White, describing the proposed stock sale transaction and the benefits proposed to be derived therefrom.
2. On March 30, 2004, the Commission issued its Order on Protection of Confidential Information, determining that the unredacted Stock Purchase Agreement and all schedules and attachments were shown to contain information "... of such sensitive nature that disclosure of the information would jeopardize the interests of the person filing the application" as that criterion is used in Section 120 of the Commission's Rules. This order also provided a mechanism for the identification and use of other confidential information in the case under Section 120 and approved a form of Nondisclosure Agreement for use therewith.
3. On April 16, 2004, the Commission issued its Notice of Application, establishing May 17, 2004, as the deadline for the filing of petitions to intervene in this proceeding. The Notice of Application was published in the Wyoming Tribune-Eagle in Cheyenne, Wyoming, and broadcast on KGAB-AM radio in Cheyenne, Wyoming.
4. On May 5, 2004, the Commission issued its Order Authorizing Intervention, admitting the Union as a party for all purposes in the proceeding.
5. On June 1, 2004, the Commission issued its Order Authorizing Intervention, admitting Frontier as a party for all purposes in the proceeding.
6. On June 11, 2004, the Commission issued its Order Setting Pre-Hearing Conference, setting the conference for June 23, 2004.
7. On June 17, 2004, Dale W. Cottam and Kevin C. Cook of Hirst & Applegate entered their appearance for the Union.

8. On June 22, 2004, the Commission issued orders granting Motions for Admission pro hac vice:

- a. by Cheyenne Light for the admission of Paula M. Connelly, Esq.;
- b. by Frontier for the admission of Thorvald A. Nelson, Esq.;
- c. by the Union for the admission of Ellen Kelman, Esq.

On that day and under W.S. §§ 37-2-102 and 16-3-112, it also issued a Special Order allowing one commissioner or hearing examiner to conduct the pre-hearing conference in this case.

9. On June 23, 2004, the Commission issued an order granting the Motion of Black Hills for admission pro hac vice of Judith M. Matlock, Esq.

10. Pursuant to due notice, the Commission held a pre-hearing conference on June 23, 2004, with counsel for Cheyenne Light, Black Hills, the Office of Consumer Advocate, Frontier, and the Union, appearing and participating. Cheyenne Light and Black Hills advocated holding a hearing as soon as reasonably possible in view of the requirement for other approvals which could not be given without the prior approval of the Application by the Commission. Cheyenne Light therefore advocated the early identification of any issues which might involve disputes regarding the Commission's jurisdiction. On June 25, 2004, the Commission issued its Pre-Hearing Conference Order, inter alia, establishing discovery parameters, providing for notice of the public hearing, and propounding to Cheyenne Light and Black Hills a series of questions by the Commission's Facilities Engineering staff. With the agreement of the parties, the order established the following procedural schedule:

July 16, 2004	Applicants file and serve written responses to questions from the Commission Facilities Engineering staff
August 5, 2004	Intervenors file and serve their prepared direct testimony and exhibits
August 13, 2004	Parties file and serve discussion of any issues which are alleged to have Commission jurisdictional implications
August 20, 2004	Parties file and serve: i. responses to any jurisdictional issues ii. prefled rebuttal testimony iii. prehearing legal briefs
August 24, 2004	Public hearing begins

11. Notice of the public hearing was published in the Wyoming Tribune-Eagle in Cheyenne, Wyoming, and broadcast on KGAB-AM, Cheyenne, Wyoming, and on KUWR-FM in Laramie, Wyoming.

12. On July 6, 2004, Black Hills requested clarification by the Commission of question 6.b.vi asked in the Pre-Hearing Conference Order. The Commission made the requested clarification by its letter of July 8, 2004, providing copies to all parties. On July 12, 2004, Cheyenne Light and Black Hills filed their written responses to the questions.

13. On July 30, 2004, Black Hills filed a Motion to Compel Discovery Responses and for Attorney's Fees and Costs, asking the Commission to require the Union to respond to Black Hills's first set of data requests and for costs. On August 4, 2004, Black Hills filed its Motion to Withdraw Motion to Compel Discovery Responses and for Attorney's Fees and Costs, contingent on Commission approval of the Union's motion to withdraw discussed, *infra*. The Commission granted the Black Hills Motion to Withdraw by open meeting action taken on August 17, 2004, confirmed in its order thereon of that day, after allowing the Union to withdraw as a party.

14. On August 4, 2004, the Office of Consumer Advocate filed its Notice of Intervention in the case, formally confirming, pursuant to W.S. § 37-2-402(a)(i), its continuing participation as a party to this case.

15. On August 4, 2004, the Union filed its Motion to Withdraw as Intervenor, asking to be excused from further requirements for filing or participation in the case. The Commission granted the Union's Motion to Withdraw by open meeting action taken on August 17, 2004, confirmed in its order thereon of August 17, 2004.

16. On August 4, 2004, Black Hills, Cheyenne Light and the Office of Consumer Advocate filed a Stipulation and Agreement (Stipulation) proposing, *inter alia*, that the stock sale transaction and the changes contemplated thereby be subject to certain agreements, safeguards and specific undertakings described in the Stipulation if approved by the Commission. Black Hills Power, Inc., also signed the Stipulation, joining specifically in three paragraphs applicable to it.

17. On August 5, 2004, the Office of Consumer Advocate filed the prepared direct testimony and exhibits of Amy J. Zamora, with a copy of the Stipulation attached as Exhibit 1 thereto. Neither Frontier nor the Union filed testimony or exhibits.

18. On August 12, 2004, Frontier filed its Motion to Withdraw as Intervenor, stating that it had participated in discovery to the extent it deemed necessary and supported the relief sought by Cheyenne Light and Black Hills in

this case. The Commission granted Frontier's Motion to Withdraw by open meeting action taken on August 17, 2004, confirmed in its order thereon of that day.

19. No party filed a written discussion of any issues alleged to have Commission jurisdictional implications by the August 13, 2004, deadline established in the Pre-Hearing Conference Order.

20. On August 17, 2004, and pursuant to W.S. §§ 37-2-102 and 16-3-112, the Commission entered its Special Order Authorizing One Commission and/or Hearing Examiner to Conduct Public Hearing with respect to the August 24, 2004, public hearing herein.

21. On August 20, 2004, Black Hills filed the prepared supplemental testimony of Kyle D. White and David Rhodes, and Cheyenne Light filed the prepared supplemental testimony of Richard L. Kaysen. No party then filed a prehearing legal brief as allowed by the Pre-Hearing Conference Order

22. Pursuant to the public notice and under the Wyoming Administrative Procedure Act and the Commission's Rules, the Commission held the public hearing in this matter beginning on August 24, 2004, at its hearing room in Cheyenne. At the public hearing, Cheyenne Light, Black Hills and the Office of Consumer Advocate were given the opportunity to participate fully at the hearing. Black Hills offered the prepared testimony and exhibits of Emery, Thies, Ohlmacher and White, the prepared supplemental testimony of White and Rhodes and oral testimony in support of the Application and the Stipulation by Emery, Thies, Ohlmacher, White, and Rhodes. Cheyenne Light offered the prepared direct testimony of Kaysen, his prepared supplemental testimony and his oral testimony in support of the Stipulation. The Office of Consumer Advocate offered the prepared testimony and exhibits of Amy J. Zamora and her oral testimony in support of the Application explaining more fully why the Application should be granted, but only with the necessary additional undertakings, safeguards and agreements contained in the Stipulation.

23. At the hearing, the Commission accepted into the record the Stipulation, the prefiled direct and rebuttal testimony and exhibits of the parties in their entirety. At the conclusion of the public hearing, the Commission made a bench decision approving the Stipulation and the Application (subject to the undertakings, safeguards and agreements of the Stipulation, as clarified hereinbelow. Aside from brief closing arguments by the parties in which each advocated acceptance of the Application and the Stipulation, no further or supplemental information, hearing, briefing or argument was requested by any party or required by the Commission. No member of the public offered any comments in support of or in opposition to the Application. After making its

decision, the Commission directed the preparation of an order consistent with its decision.

The Facts of the Case: Party Positions

24. For Cheyenne Light, Richard L. Kaysen, President and Chief Executive Officer, testified in support of the Application. Cheyenne Light is one of five first-tier wholly owned public utility subsidiaries of Xcel Energy, a registered holding company under the Public Utility Holding Company Act of 1935 (PUHCA). At the end of calendar year 2003, Cheyenne Light served 37,806 electric customers and 30,709 natural gas customers in Cheyenne and a large portion of Laramie County, Wyoming, including natural gas service to Pine Bluffs, Burns and Carpenter in eastern Laramie County. Cheyenne Light's electric system has begun to experience its peak demand in the summer, with the 2003 summer peak totaling 163.5 MW. Its winter-peaking natural gas system experienced peak demand of 71,725 DTh in 2003. During that year, Cheyenne Light sold 92,642,800 kwh of electricity and 4,542,191 MMBTU of natural gas. It transported 11,844,838 MMBTU of natural gas for transportation-only customers in 2003. This produced consolidated revenues of \$97 million and a net income of about \$2.2 million. [Cheyenne Light Exhibit 1, pp. 2-4.]

25. Kaysen explained that Cheyenne Light does not own any electric generating facilities and that it purchases its electricity needs under contracts with [i] Black Hills Wyoming, Inc., (two contracts for electricity from its Wygen and Gillette plants), [ii] several small independent producers which are Qualifying Facilities under the Public Utilities Regulatory Policies Act of 1978 (PURPA), and [iii] Public Service Company of Colorado (PSCo) (under a four-year all-requirements contract effective January 1, 2004). As part of the stock sale transaction in this case, Cheyenne Light has asked Black Hills Wyoming, Inc., to agree to the temporary assignment of the Wygen and Gillette contracts to PSCo through December 31, 2007, when the all-requirements contract will expire. Kaysen noted that the Wygen assignment remains subject to lender approval. He discussed the Commission's prior determination concerning the effect of temporary assignments of the Gillette and Wygen contracts. [Cheyenne Light Exhibit 1, pp. 4-6.] In the examination of Cheyenne Light's 2002 electric resources plan in Docket No. 20003-EA-02-67, the Commission stated:

"71. We conclude that the Gillette and Wygen Contracts will again be the obligation of Cheyenne Light on January 1, 2004, based upon the express language of the Temporary Assignments as discussed, supra. If the Gillette and Wygen Contracts are again temporarily assigned, if these subsequent temporary assignments contain self-termination provisions to the same effect as those under consideration here, and if the circumstances are the same as they are in the instant case, those contracts, or any remaining portions thereof, should be the legal and enforceable obligations of Cheyenne Light upon the termination of the Temporary Assignments. We must add that any decision on future temporary assignments must be made on the facts as they then appear." [Final Order of February 28, 2004.]

26. Kaysen testified that Cheyenne Light obtains its wholesale natural gas supplies under a portfolio of contracts, including a no-notice contract with Colorado Interstate Gas Company which allows Cheyenne Light to meet its peak day needs. The gas is transported on the system of PSCo or WestGas InterState. Its intent is to create a portfolio emphasizing reliable supplies and stable prices based on minimized delivered costs. [Cheyenne Light Exhibit 1, p. 7.]

27. Kaysen reviewed the regulatory history of Cheyenne Light's natural gas rates as established in Commission proceedings, including both general rate changes and commodity cost adjustments. He testified that he was not aware of any rate or regulatory matters which would affect Cheyenne Light's rates or terms and conditions of service in the near future and shared his opinion that the proposed stock sale transaction is in the public interest. [Cheyenne Light Exhibit 1, pp. 7-10.]

28. In his supplemental prefiled testimony, Kaysen advocated approval of the Application and the Stipulation, noting that the Stipulation requires that Cheyenne Light's customers will bear none of the costs of the stock transfer. He described transition meetings between Cheyenne Light and Black Hills on all phases of the transition and opined that the parties are committed to a smooth and seamless transition. He testified that the Stipulation resolved issues identified by the Office of Consumer Advocate during discovery and provided for a base rate moratorium. Kaysen anticipated no changes in Cheyenne Light's operations, customer service or rules and regulations after the transfer. [Cheyenne Light Exhibit 2, pp. 2-3.]

29. At the public hearing, Kaysen clarified that the handling of telephone communications with the public will be through local Cheyenne Light personnel during week days and that non-emergency calls at other times would be handled directly through the Black Hills dispatch center, greatly shortening the time needed to address customer issues. He noted that 911 emergency calls would be routed immediately to local Cheyenne Light staff capable of addressing emergency situations and that customer calls to Cheyenne Light placed during weekday evenings and during the day on Saturday would be answered in Cheyenne. Such calls to Cheyenne Light, if they concerned trouble calls or an emergency, would be addressed directly by Cheyenne Light personnel. Kaysen also stated that the computerized customer information system to be employed after the closing is in the process of being tested and refined by the Black Hills internal information technology staff in consultation with Cheyenne Light. The system is being constructed on the same platform as that formerly used successfully by Cheyenne Light for ten years prior to the implementation of the Xcel Energy consolidated system which has generated substantial delays and errors. Kaysen was of the opinion that the new system will greatly reduce the time needed to obtain

information for customers and would result in increased satisfaction. He assured the Commission that financial resources sufficient to meet growth and other needs would be available to Cheyenne Light from Black Hills after the closing.

30. David R. Emery, President and Chief Executive Officer of Black Hills, testified about the corporation. Black Hills is a public utility holding company with two direct subsidiaries: [i] Black Hills Power, Inc. (Black Hills Power) a public utility providing electric service in Wyoming, Montana and South Dakota, and therefore subject in part to the jurisdiction of the Commission; and [ii] Black Hills Energy, Inc, which is engaged in a number of non-utility energy, communications and other businesses. Black Hills is an exempt holding company under PUHCA. It has no significant assets except for the stock of its subsidiaries, and its status as a holding company was approved by the Commission in its order of September 26, 2000, in Docket No. 20002-ES-99-61. [Black Hills Exhibit 1, pp. 2-3.]

31. Emery stated that Black Hills Power is a public utility engaged in the generation, transmission and distribution of electricity to approximately 61,000 customers in Wyoming, Montana and South Dakota, including about 2,466 customers in Wyoming, including the towns of Newcastle, Osage and Upton. For calendar year 2003, Black Hills Power sold 143,781,000 kwh in Wyoming and had total Wyoming retail revenues of \$8,300,000. During that time, it sold an additional 2,939,794,000 kwh of electricity in South Dakota and Montana. [Black Hills Exhibit 1, pp. 3-4.]

32. In his prepared testimony and at the hearing, Emery explained Black Hills' great interest in acquiring Cheyenne Light. The company and its predecessors have been in the business of furnishing utility service since 1883; and it has been present in Wyoming since 1946, producing coal and natural gas and generating electricity. He attributed the success of Black Hills to its electric utility origins and expressed the company's desire to provide natural gas and electric service in Cheyenne Light's service areas. [Black Hills Exhibit 1, p. 4.]

33. Mark T. Thies, Executive Vice President and Chief Financial Officer of Black Hills, testified to Black Hills' financial condition, and the process necessary to complete the stock sale transaction, including regulatory approvals. He also described Black Hills' methods used to allocate common costs.

34. Regarding Black Hills' financial condition, he stated that, at the end of calendar year 2003, Black Hills and its subsidiaries had total assets of \$2,059,680,000, consolidated revenues of about \$1,250,052,000 and a net income of about \$60,964,000. Thies noted that Attachment 2 to the Application is the Black Hills form 10-K for 2003 containing a consolidated balance sheet for Black Hills as of the end of the year. [Black Hills Exhibit 2, pp. 2-3.] At the public hearing Thies confirmed that rating agencies were cognizant of the proposed purchase of

Cheyenne Light, no downgrades were contemplated as a result, the transaction was viewed favorably and Black Hills has not been informed that it is subject to a ratings watch. He expected Black Hills securities to retain its investment grade ratings after the closing.

35. Thies described the proposed transactions. According to him, the transaction would be accomplished by the transfer of all of the issued and outstanding capital stock of Cheyenne Light by Xcel Energy to Black Hills for cash with adjustments for certain outstanding indebtedness, working capital and pre-closing capital expenditures. The transaction would be governed by the Stock Purchase Agreement, dated January 13, 2004, between Xcel Energy and Black Hills (the Agreement, a redacted version of which was filed as Attachment 3 to the Application and a complete copy of which is retained in the Commission's confidential files). Thies described the conditions on the obligations of Xcel Energy and Black Hills. The necessary approvals with respect to Xcel Energy include:

- a. an order of the Securities and Exchange Commission (SEC) under PUHCA approving the sale;
- b. orders of this Commission and the Federal Energy Regulatory Commission approving the proposed stock sale transaction;
- c. the expiration of the applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976; and
- d. approval by the Federal Communications Commission of the transfer to Black Hills of certain licenses held by Xcel Energy and used by Cheyenne Light.

Required regulatory approvals for Black Hills include those described in subparagraphs a-d above, SEC approval of the application to be a registered holding company. For a successful closing, the Agreement requires all approvals to be final and nonappealable and without conditions having a "Material Adverse Effect" on a party. At Schedule 9.10, the Agreement provides for a Transition Services Agreement (TSA) with Xcel Energy to assist in an orderly transition of ownership, especially with natural gas local distribution utility issues. The Agreement may be terminated if closing does not occur by December 31, 2004. [Black Hills Exhibit 2, pp. 3-6.]

36. Black Hills seeks to acquire Cheyenne Light as a separate utility subsidiary and to have it continue to operate with relative autonomy as a wholly-owned subsidiary. Because it already owns another utility subsidiary (Black Hills Power), it must obtain SEC approval under Section 9(a)(2) of PUHCA. Black Hills must therefore qualify for an exemption under Section 3(a) of PUHCA or become a

registered holding company under Section 5(a) thereof. Thies described the considerations which would bear on the decision. [Black Hills Exhibit 2, pp. 6-9]. As described by Thies at the public hearing and in the supplemental testimony of Kyle White, Black Hills has elected to apply to become a registered holding company. Thies confirmed at the hearing that Black Hills would also create a service company.

37. Thies testified that Black Hills and its subsidiaries incur common costs for a variety of services; and they are, to the extent possible, directly assigned to the subsidiary receiving the service. Costs that cannot be directly assigned are allocated among affected subsidiaries on a formula which considers net fixed assets, net income less common expense allocation and head count. All costs are without markup and are reviewed annually in the budgeting process. Cheyenne Light would participate in these allocations; and, Thies agreed, the entire process would be subject to the Commission's jurisdiction and review. [Black Hills Exhibit 2, pp. 9-10.] At the public hearing Thies confirmed that the capital costs of Cheyenne Light and Black Hills Power would be determined by prudent utility business practices and that they would remain subject to the jurisdiction and determination for regulatory purposes by the Commission.

38. Thomas M. Ohlmacher, President and Chief Operating Officer of Black Hills Energy, Inc., testified regarding the non-utility subsidiaries of Black Hills, which exist under the corporate umbrella of Black Hills Energy, an intermediate holding company. These subsidiaries are engaged in generation and sale of electricity, production, marketing and transportation of natural gas, oil and coal, and provision of communications, cable television and Internet services. Black Hills Exploration and Production, Inc., engages in natural gas and oil exploration and production in nine states, including Wyoming. Wyodak Resources Development Corporation produces coal at the Wyodak mine near Gillette, Wyoming, supplying the Wyodak generating plant, other Black Hills Power plants and unrelated third party purchasers. A Wyodak subsidiary operates the 90 MW coal-fired Wygen generating plant near Gillette, Wyoming, and associated transmission. Some of the energy from Wygen is now sold under contract to Cheyenne Light. It also operates a 40 MW gas-fired combustion turbine (Neil Simpson CT 2) near Gillette, the output of which is also sold under contract to Cheyenne Light. Another subsidiary of Wyodak markets natural gas at wholesale in the central and western United States and Canada. It exports natural gas from Wyoming and provides some of the gas used in the Kinder Morgan, Inc., Choice Gas Service Program in Wyoming. Black Hills Generation, Inc., produces power at gas-fired facilities in four states. In all, Black Hills has about 150 energy industry employees in Wyoming with a payroll of about \$7.5 million. [Black Hills Exhibit 3, pp. 2-7.]

39. Regarding natural gas utility service, Ohlmacher concluded that Black Hills has experience with procurement, risk management, transportation, storage

and administration. It plans no changes in Cheyenne Light's personnel involved in natural gas utility distribution system operation, maintenance and repair. [Black Hills Exhibit 3, p. 13.]

40. Ohlmacher testified that the electric utility experience of Black Hills subsidiaries qualifies it to address Cheyenne Light's long-term transmission and power needs. The company has experience with constructing, owning and operating generation, transmission and distribution facilities at wholesale and retail. It works with the Western Area Power Administration (WAPA) and competes for wholesale business, including successful competition for part of Cheyenne Light's needs. In all, Black Hills Power has almost 435 MW of installed generation capacity using a variety of technologies, including about 260 MW of capacity located in eastern Wyoming. Black Hills Power operates its own 24 hour dispatch facility and is a member of the Rocky Mountain Power Pool, contributing spinning reserves to the pool and allowing Black Hills Power to obtain backup power from it. [Black Hills Exhibit 3, pp. 7-9.] At the hearing, Ohlmacher testified that both Cheyenne Light and Black Hills have ancillary services agreements with WAPA which should continue. Should the need arise, Black Hills could provide ancillary services through its own facilities.

41. According to Ohlmacher, Black Hills Power has 67 miles of distribution lines serving Wyoming retail customers; and it owns 289 line miles of transmission in Wyoming which are used to export power to South Dakota load centers. It also owns and operates lines in Montana and South Dakota. With Basin Electric Power Cooperative, Black Hills Power constructed and operates a 200 MW AC/DC/AC facility connecting the eastern and western power grids. It has applied to the Federal Energy Regulatory Commission for approval of a joint open access transmission tariff covering its 230 KV system and the connected 230 KV systems of Basin Electric and Powder River Energy Corporation. Black Hills Power's system connects to the WAPA transmission system over 94 miles of lines to Stegall, Nebraska. It has a network services agreement with WAPA as does Cheyenne Light. Ohlmacher stated that the systems of Black Hills Power and Cheyenne Light are interconnected through WAPA's Stegall West facility. [Black Hills Exhibit 3, pp. 9-12.] At the hearing, he noted that Cheyenne Light's electricity needs are transmitted over WAPA's system. No direct transmission link between Cheyenne Light and Black Hills is now planned, but he remained open to the possibility of creating one at a later time. Ohlmacher pointed to the joint open access transmission tariff of Black Hills, Basin Electric and Powder River Energy Corporation as evidence of Black Hills' involvement with transmission in the area and its good relationships with other utility companies.

42. In addition to the two wholesale supply contracts serving Cheyenne Light, Black Hills also provides 23 MW of firm power to the City of Gillette and provides Montana-Dakota Utilities Company all of the electricity needed by it to

serve its retail customers in the Sheridan area. Ohlmacher stated that Black Hills has wide experience in working with cooperative, municipal and investor owned utilities in Wyoming in providing reliable electricity supplies. He provided a list of 24 of the more significant relationships. [Black Hills Exhibit 3, pp. 10-11, 13 and attached Schedule TMO-1.]

43. Kyle D. White, Vice President of Corporate Affairs for Black Hills, described the retail and wholesale electric service experience of Black Hills and its customer service philosophy. Black Hills owns a vertically integrated electric utility company which, in one form or another, has been providing electric utility service for over 120 years. The company maintained a work force of 280 despite record customer growth of 1200 (2%) in 2003. It is regulated by state commissions in Wyoming, South Dakota and Montana and by the Federal Energy Regulatory Commission. Black Hills serves 20 communities and maintains 10 local offices open to the public. Its winter peak demand was 344 MW, and a system-high summer peak of 392 MW occurred in 2001. This demand is supported by 435 MW of owned generation and 50 MW of long-term purchased power used to meet peak and reserve margin requirements. Its Wyoming retail rates have been under an agreed-to long-term rate freeze which will expire at the end of this year. During the freeze, the company invested in its new 80 MW natural gas-fired combustion turbine and its 70 MW share of the 200 MW AC/DC/AC intertie facility allowing power to flow between the western and eastern grids. [Black Hills Exhibit 4, pp. 2-5.]

44. Regarding the involvement of Black Hills with Cheyenne Light, White testified to Black Hills' understanding of the need to continue to address Cheyenne Light's electricity supply and transmission needs in the future, stating that Black Hills had the experience to do so effectively. He acknowledged that Cheyenne Light's resource plans will continue to be filed annually. White confirmed that Black Hills intends that Cheyenne Light remain a separate and distinct subsidiary operating under the name of Cheyenne Light, Fuel & Power Company. White made the following commitments with respect to the stock sale transaction:

a. all current employees will have the opportunity to remain Cheyenne Light employees;

b. Cheyenne Light will operate autonomously to the greatest extent possible, but with operational support from Black Hills and subsidiary employees;

c. the transition should cause no material differences for customers. Xcel Energy will provide transition services for several months after closing and an integration team is tasked with making a smooth transition;

d. Black Hills will seriously consider all resource planning options and present the results to the Commission in annual resource planning filings; and

e. the management and delivery of essential services will be maintained at their present levels.

White found no detriment to Cheyenne Light's customers and opined that the transaction is in the public interest. [Black Hills Exhibit 4, pp. 5-8.]

45. At the hearing, White confirmed that all of Cheyenne Light's tariffs, rules and regulations on file with the Commission would be retained verbatim. He also confirmed the obligation of Cheyenne Light and Black Hills to keep customers informed and thoroughly aware of the transition to new corporate ownership through the use of bill stuffers and otherwise. Regarding Energy Affiliates, as the term is used by the Federal Energy Regulatory Commission, he confirmed that he has identified no problems arising in this context concerning the transaction.

46. In his supplemental prepared testimony, White testified to the decision of Black Hills to become a registered holding company under PUHCA, noting that recent decisions by the SEC regarding the "intrastate" exemption, the cost of restructuring debt to qualify under other exemptions, and the December 31, 2004, optional termination date for the stock transfer transaction favored this decision. White said that Black Hills has already filed a preliminary application to pave the way for obtaining registered holding company status and that he expected Black Hills to become a registered holding company by September or October 2004. This would allow Black Hills to acquire Cheyenne Light as a separate utility subsidiary and allow Cheyenne Light to operate as a wholly-owned subsidiary of Black Hills. White noted that the regulatory oversight of the SEC would not change as a result of this decision. [Black Hills Exhibit 5, pp. 2-5.] White noted at the hearing that the SEC would contact the Commission seeking its comments on the registered holding company application. He confirmed that the South Dakota Public Utility Commission would not be required to approve the transaction.

47. At the hearing and in his supplemental testimony, White advocated approval of the Stipulation, noting the provisions for monitoring of the transition to Black Hills ownership and the rate moratorium (which does not apply to wholesale commodity costs). He stated that Black Hills Power joined in portions of the Stipulation to assure that no Wyoming customers of Black Hills Power will experience rate changes or lessened levels of service. White testified that the change of ownership will help to further improve the support and operations of Cheyenne Light and that the Stipulation was consistent with these goals. [Black Hills Exhibit 5, pp. 5-8.]

48. David Rhodes, Director of Corporate Development for Black Hills, testified concerning the transition process. Black Hills and Cheyenne Light have

worked together in transition teams for five months on all aspects of the natural gas and electric utility business of Cheyenne Light. Computer programming for customer service activities is nearly complete. The existing Cheyenne Light offices and payment locations will be retained, and daytime customer service telephone numbers will remain local. Black Hills personnel will be trained in the Cheyenne Light system to allow them to offer higher quality support for customer problems arising outside of regular working hours. Natural gas operations would not be substantially changed, with Black Hills retaining Cheyenne Light's existing natural gas management, operations and maintenance personnel. Some functions now being performed by others will be performed by Cheyenne Light in the future (including, e.g., cathodic protection, integrity management and management of its Standards Manual) and Cheyenne Light will hire a management level engineer to supervise many aspects of the Cheyenne Light natural gas operation. Cheyenne Light will still be able to contract with others for services as needed and will be supported by the TSA which will cover items that cannot be transitioned from Xcel Energy by the time the transaction closes. The Stock Purchase Agreement lists the subject matter potentially to be covered by the TSA, but Rhodes noted that, for example, information systems are expected to be "fully functional and integrated by the time of closing." He testified that monitoring the transition by the Commission is further facilitated by the three and 15 month confidential reports to be filed pursuant to the Stipulation and which will include a copy of the final form of TSA. [Black Hills Exhibit 6, pp. 3-7.] He confirmed at the hearing that the reports would include specific information supplementing the answers to questions propounded in the Pre-Hearing Conference Order.

49. Amy J. Zamora, Rate Analyst for the Office of Consumer Advocate, supported the Application, explaining her view that the stock sale transaction is in the public interest and the transition to ownership by Black Hills is expected to be seamless and transparent to customers. She concluded the transaction would not have an adverse effect on the service now being provided by Cheyenne Light. She recommended that the Commission approve the Stipulation and gave her insights into the value of the various agreements and safeguards in the Stipulation. She stated that the Office of Consumer Advocate analyzed the transaction with three standards in mind: [i] Cheyenne Light must remain capable of providing safe, adequate and reliable service at reasonable rates (i.e., that the sale will not adversely affect the level of service provided); [ii] the transfer of ownership should be seamless and the current level of service quality should be maintained; and [iii] there should be sufficient technical, financial and managerial resources to operate the utility successfully after acquisition, i.e., that the ability of the utility to serve should be maintained. She found the business and operations of Cheyenne Light and Black Hills, both companies with very long histories of providing utility services to small markets in the west, to be a "good fit." [Office of Consumer Advocate Exhibit 1, pp. 5, 9-10, and 13.]

50. According to Zamora, the successes of Black Hills in providing electric utility service demonstrate the sufficiency of its technical and managerial resources to oversee the electric operations of Cheyenne Light. Black Hills's 2003 SEC Form 10-K, its industry-average bond ratings, and its debt service ratio all showed its financial resources to be substantial. She noted that Black Hills consistently earns revenue, pays dividends and increases its plant investment. Net income is also consistent. She concluded that Black Hills has the necessary financial resources to be successful in owning and operating Cheyenne Light as a separate subsidiary. [Office of Consumer Advocate Exhibit 1, pp. 5-6.]

51. She noted that Black Hills' past experience with natural gas utility operations was mostly with production, transportation and wholesale marketing activities and not with local natural gas distribution utility operations. However, this situation is addressed through the retention by Black Hills of Cheyenne Light's experienced local gas distribution personnel and by continuing service as it is now offered. Services at the corporate level will be supported after the sale by the TSA under which Xcel Energy will provide such services as natural gas commodity procurement, and assistance with natural gas commodity pass-on applications. Xcel Energy will also provide corporate support for regulatory matters, outage reporting, billing, information services and other activities. In Zamora's opinion, the TSA will allow Black Hills and Cheyenne Light to gain the necessary additional experience to operate the natural gas utility business successfully. She expected the TSA to be finalized in December 2004 after the necessary regulatory approvals are granted. [Office of Consumer Advocate Exhibit 1, pp. 6-8.]

52. Zamora discussed the regulatory approvals required from the FERC, the FCC, the SEC and the Commission before the transaction could proceed. She noted that required applications have been filed with the FCC and the FERC. She stated Black Hills filed a Form U-1 application with the SEC on July 19, 2004, seeking to register Black Hills as a holding company under PUHCA. This registration would allow Black Hills to continue to implement its growth-oriented business strategies but would require SEC approval of its intercompany allocation methodology and add additional financial reporting requirements. Zamora stated the additional reporting would increase the ability of the Commission to review and understand allocations through the SEC auditing process. [Office of Consumer Advocate Exhibit 1, pp. 8-9.] She confirmed at the public hearing that the Office of Consumer Advocate supported Black Hills' decision to become a registered holding company.

53. Zamora found the Stipulation to be a useful and important component of the transaction. According to Zamora, although Black Hills lacks experience with retail natural gas utility operations, it is likely that Black Hills can successfully integrate the Cheyenne Light natural gas operations into the corporation through the structured transition process and because of the strong managerial and technical capabilities of Black Hills. Zamora noted that the TSA has not been

finalized and that the Stipulation will facilitate regulatory monitoring of the transition and the development of the TSA. The Stipulation also provides further assurances regarding the continuity of the utility operations of Cheyenne Light and for the Wyoming customers of Black Hills Power. [Office of Consumer Advocate Exhibit 1, pp. 10-11.] She confirmed at the public hearing that the determination of costs related to the transaction to be recovered or disallowed in future rate cases remains within the jurisdiction of the Commission.

The Stipulation

54. Cheyenne Light, Black Hills and the Office of Consumer Advocate submitted the Stipulation to the Commission as a means of resolving areas of concern with the transaction; and, at the public hearing, each party urged its approval by the Commission. The parties assert that approval of the Stipulation is appropriate and in the public interest; and they agree that approval of the transaction, with the protections provided by the Stipulation, will not adversely affect Cheyenne Light's ability to serve the public. Some of the important points in the Stipulation are discussed below. This summary is for discussion purposes only and is not intended to modify the Stipulation, a copy of which is attached hereto and incorporated herein by reference as Attachment 1.

a. Although the SEC has jurisdiction over the allocation of costs among Black Hills and its subsidiaries, no party will in the future assert before the Commission that SEC approval would either make costs automatically recoverable or impinge on the Commission's jurisdiction to determine which, if any, of such costs could be recovered in the rates of any public utility operating in Wyoming. If PUHCA were repealed, Black Hills and Cheyenne Light will discuss any proposed changes in cost allocations with the Commission and the Office of Consumer Advocate. Costs will be allocated to the company receiving the benefit of the cost, and costs incurred by or for more than one entity will be fairly allocated among them. In rate proceedings, Cheyenne Light will provide the Office of Consumer Advocate with access to books and records of the Black Hills service company and affiliated entities transacting business with Cheyenne Light to allow it to examine affiliate transactions and costs. The Stipulation provides similar access to information relevant to Black Hills Power in rate proceedings, and Black Hills Power specifically agreed to this by executing the Stipulation. The parties confirmed that the Commission will have access to all data concerning such transactions as the Commission may require.

b. Three months after closing of the transaction, Black Hills and Cheyenne Light will make a confidential written report to the Commission on the transition, with a copy to the Office of Consumer Advocate, including, inter alia, details of the TSA, cost allocations, the status of services being performed by Black Hills and Xcel Energy entities, a transition timeline and any changes in the transition, the status of Cheyenne Light's operations, the results of the SEC review

of the Black Hills application to acquire Cheyenne Light and the details of the financing of the acquisition. They will make a similar report fifteen months after closing.

c. Black Hills affirms that it is not contemplating changes in Cheyenne Light's operations, services or management as a result of the acquisition, although Cheyenne Light, Black Hills and Black Hills Power may make improvements afterward based on best practices and in the normal course of business. No changes may adversely affect customers of Cheyenne Light or Black Hills Power in Wyoming. Black Hills Power specifically agreed to this provision.

d. When Cheyenne Light's obligation to file an annual electric resource plan with the Commission expires (December 2005), it will thereafter file a confidential annual electric demand and energy forecast together with a description of resources available to meet the forecasted need.

e. Cheyenne Light will continue to contribute to Energy Share of Wyoming as it has done in the past. At the public hearing, Cheyenne Light and Black Hills confirmed that the availability of assistance to Cheyenne Light customers from Energy Share of Wyoming and under the Low Income Home Energy Assistance Program would not be altered by Cheyenne Light becoming a wholly-owned subsidiary of Black Hills.

f. Black Hills affirms that transaction costs will not be recovered in Wyoming rates through rate base (consistent with the requirement of W.S. § 37-1-105(b)) or through inclusion of expenses in the calculation of revenue requirements.

g. Black Hills and Cheyenne Light affirm that this case will not change the rates of Cheyenne Light or Black Hills Power's Wyoming customers. Any rate case for either utility must be by separate application. Black Hills Power specifically agreed to this provision.

h. Although Cheyenne Light may file before that time, it agrees that no increase in either gas or electric rates may be effective before January 1, 2006; except that it may file for wholesale commodity cost increases with earlier effective dates.

i. Black Hills agrees that its successors will be bound by the Stipulation. However, if the transaction is not closed and the Stipulation is of no effect, Cheyenne Light agrees that it will continue to be bound by the earlier stipulation approved by the Commission in Dockets No. 2003-EA-99-53 and 30005-GA-99-69 in its April 21, 2000, Order Approving Merger and Confirming Bench Decision, which transferred ownership and control of Cheyenne Light from New Century Energies, Inc., to Xcel Energy as part of the merger of New Century and Northern States Power Company which created Xcel Energy.

Further Findings of Fact

55. The evidence in this case shows that Cheyenne Light and Black Hills are experienced, responsible and competent entities capable of providing reliable, high quality public utility service to customers in Wyoming. Cheyenne Light, Black Hills and Black Hills Power possess the technical, operational and managerial resources and skills needed to provide electric public utility service and to maintain the continuity of this service to Cheyenne Light's customers after the stock sale transaction. Although Black Hills does not directly possess experience in operating a retail natural gas distribution utility, this is compensated for by the experience of Cheyenne Light, the continuity of Cheyenne Light's natural gas employee group after the closing, the valuable experience of Black Hills affiliates in most aspects of the wholesale natural gas business and the TSA under which Xcel Energy will provide services to give Black Hills and Cheyenne Light employees the opportunity to gain experience in those aspects of the natural gas utility business formerly furnished by Xcel Energy. Black Hills has the financial resources necessary for the transaction and for the future success of the operations of its utility subsidiaries in Wyoming.

56. The Stipulation in this case is the result of informed, good faith negotiations among Black Hills, Cheyenne Light and the Office of Consumer Advocate. The parties have advocated the adoption of the Stipulation; and the work of the parties produced undertakings, agreements and assurances which, as more fully explained and qualified below, provide the Commission with sufficient confidence that the public interest will continue to be served by -- and after -- the stock sale transaction, as it applies to Cheyenne Light and its customers. Importantly, the Stipulation secures for the public certain advantages that would be beyond the power of the Commission to order; e.g. the rate filing moratorium. It makes the ongoing monitoring and examination of the relationship of Cheyenne Light to Black Hills much simpler and more efficient; and it provides an unrefuted public interest basis for the Commission's consideration of the approval of the proposed transaction. It is also important that Black Hills Power has also added its agreement to the Stipulation by executing it and agreeing to be bound by the above noted provisions thereof.

57. The stock sales transaction as described in the Application, the public hearing, and the testimony and exhibits of the parties, when considered with the additional necessary provisions of the Stipulation and as more fully explained and qualified by the Commission, serves the public interest by bringing together utility companies with substantial experience, a commitment to serving Wyoming utility markets, and electric and natural gas resources and infrastructure ensuring the continued ability of Cheyenne Light to provide safe and reliable service. This ability to serve is further enhanced by the retention of the significant benefits of Cheyenne Light's autonomous operations as a combination natural gas/electric

public utility. Commission approval of the stock sale transaction will not adversely affect the ability of Cheyenne Light to serve the public.

58. We similarly find that the transactions approved here will not have an adverse effect on the the ability of Black Hills Power to serve its Wyoming retail utility customers. Cheyenne Light will be associated with experienced, responsible and competent entities skilled in utility and energy matters and financially capable of continuing to provide service without a diminution in quality. There is no evidence before us that any other utility or its customers in Wyoming would be adversely affected or harmed by the transaction. There will be no effect on Cheyenne Light's rates or service offerings as a result of the Commission's approval of the transaction; and the efforts of Cheyenne Light and Black Hills to design and implement a more efficient and reliable computerized customer data and billing system will likely improve Cheyenne Light's ability to serve the public.

59. Although Wyoming law provides that the costs of reorganization cannot be included in rate base (W.S. § 37-1-105(b)), the Stipulation gives us additional assurance because Black Hills also agrees not to seek recovery by the inclusion of transaction costs in the expense calculation for revenue requirements. [Stipulation, p. 4.]

60. Although the Stipulation provides that it may become null and void if the Commission unacceptably "modifies any material term of the Stipulation," we must construe this provision as pertaining to a material modification rather than the possible small enhancement of the Stipulation in the public interest. Therefore, we find, based on the evidence adduced at the hearing, that the following clarifications are needed to clearly express the intent of the parties to the transaction:

a. Black Hills agrees to be bound by all of the terms of the Stipulation after it is approved by the Commission even if they are not expressed specifically as the agreement of Black Hills. For example, when Cheyenne Light agrees to a rate moratorium, Black Hills shall, as the parent company, also be bound by it.

b. The three and 15 month reports to be filed by Cheyenne Light and Black Hills regarding the progress of the transition shall specifically and individually address the questions propounded by the Commission's Facilities Engineering staff in the June 25, 2004, Pre-Hearing Conference Order, as clarified in part by the Commission's July 8, 2004, letter described above.

These clarifications are material to the Commission's approval of the Stipulation and the Application.

Applicable Legal Standards

61. The most important standard applicable to this case is found at W.S. § 37-1-104(a) which states that:

"[n]o reorganization of a public utility shall take place without prior approval by the public service commission. The commission shall not approve any proposed reorganization if the Commission finds, after public notice and opportunity for public hearing, that the reorganization will adversely affect the utility's ability to serve the public."

W.S. § 37-1-104(b) defines a reorganization as "... any transaction which ... results in a change in the ownership of a majority of the voting capital stock of a public utility,"

62. Regarding the costs of a reorganization, W.S. § 37-1-105(b) states that:

"No charge for any expenses of any reorganization shall be included in the rate base of any Wyoming public utility."

63. Our general legal standard in this case is that we must uphold the public interest, and the desires of the utility are secondary to the public interest. *Mountain Fuel Supply Company v. Public Service Commission*, 662 P.2d 878 (Wyo. 1983).

64. In judging the possibility that a reorganization could "adversely affect" the ability of a utility to serve the public we are additionally guided, in a general way, by W.S. § 37-2-121, which requires that the rates of public utilities must be just and reasonable, and by W.S. § 37-2-122(b) which provides, in part, that utility services and facilities should not be "inadequate or unsafe"

65. Section 209 of the Commission's Rules prescribes the information required in an application to sell or transfer a utility or a controlling interest in a utility. Under this Rule, the application must contain a description of the utility or controlling interest therein proposed to be transferred, including the terms and conditions of the proposed transaction and copies of relevant agreements, a description of the effect of the proposed transaction in the service of the utility and the effect on any other utility; and the details of how the proposed transaction is to be financed. It must also contain information about the utility and the purchaser, including explanations of their financial condition.

66. Other applicable statutory provisions are discussed hereinbelow.

Conclusions of Law

67. Some conclusions necessary for the disposition of this case have been stated above and will not be restated here.

68. Cheyenne Light is a duly certificated electric public utility as defined in W.S. § 37-1-101(a)(vi)(C), and is a duly certificated natural gas public utility as defined in W.S. § 37-1-101(a)(vi)(G). As such, under W.S. § 37-2-112, Cheyenne Light is subject to the jurisdiction of the Commission.

69. Black Hills is a South Dakota Corporation which operates, through subsidiaries, a variety of energy and communications businesses, including Black Hills Power, an electric public utility as defined in W.S. § 37-1-101(a)(vi)(C) and over which the Commission has jurisdiction under W.S. § 37-2-112.

70. Proper public notice of this proceeding was given in accordance with the Wyoming Administrative Procedure Act, W.S. § 37-1-104(a), 37-2-201, 37-2-202, and the relevant sections of the Commission's Rules. The public hearing was held and conducted pursuant to W.S. §§ 16-3-107, 16-3-108, 37-1-104(a), 37-2-102, 37-2-201, 37-2-203 and the relevant sections of the Commission's Rules.

71. The Application is complete and complies with Section 209 of the Commission's Rules.

72. All of the above described interventions by parties were properly granted. Upon intervention, each intervenor became a party for all purposes in this proceeding. The withdrawals of the Union and Frontier were effective; and they ceased to be parties on August 17, 2004.

73. The Commission restates here that any description herein of the Stipulation is made only for purposes of facilitating its discussion in this Order and may not be construed as an expression by the Commission of any intent to modify the Stipulation. Our clarifications of the Stipulation as discussed above, are in the public interest and do not constitute material modifications of the undertakings of the parties to the Stipulation.

74. Under W.S. § 37-1-104, the Commission has the responsibility to approve reorganizations of jurisdictional public utilities. We conclude that the proposed transaction as described in the Application, in the Stipulation, at the public hearing and in this Order, constitute a "reorganization" as defined in W.S. § 37-1-104(b). The record overwhelmingly supports approval of the Application and the Stipulation by the Commission. Under W.S. § 37-1-104(a) and after public notice and a public hearing, we conclude that the statutory test for approval of the merger transaction (the absence of adverse effect on the utility's ability to serve the public) has been met and proved by all of the evidence adduced at the hearing. It will further have no adverse effect on Black Hills Power or other utilities in Wyoming or their customers. We further conclude that approval serves the public interest.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Application and the Stipulation are hereby approved. Cheyenne Light and the other entities described in the Stipulation shall make the agreed-upon showings and reports to the Commission promptly and completely.

2. Cheyenne Light shall promptly provide to the Commission true and complete copies of all final regulatory orders issued by other jurisdictions approving or otherwise acting upon the reorganization transaction described in the Application and related regulatory issues.

3. All Confidential Information in this case, as that term is used in the Commission's March 30, 2004, Order on Protection of Confidential Information, except for any Confidential Information required by the Commission to be retained by it, shall be redelivered to the disclosing party within thirty (30) days of the conclusion of all proceedings before the Commission and any related appellate proceedings. No party may thereafter retain, in any form, any copies, notes, extrapolations, recordings, or summaries of any Confidential Information disclosed to it.

4. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on August 26, 2004.

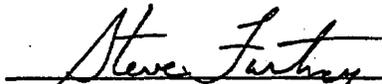
I, Stephen G. Oxley, Chief Counsel of the Wyoming Public Service Commission, hereby certify that this a true and complete copy of the Commission's Order Approving Stock Sale Transaction and Stipulation, including Attachment A thereto, made and entered on August 26, 2004, in Dockets No. 20003-EA-04-75 and 30005-GA-04-97, and consisting of 29 pages in all. Dated: August 31, 2004.

Genuine if signature is in red and
the official seal is raised

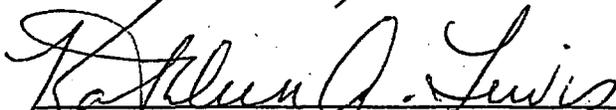
Public Service Commission of Wyoming



ROB HURLESS, Chairman



STEVE FURTNEY, Deputy Chair



KATHLEEN A. LEWIS, Commissioner



STEPHEN G. OXLEY, Secretary and Chief Counsel

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE JOINT)
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)

Docket No. 20003-EA-04-75
(Record No. 8984)

Docket No. 30005-GA-04-97
(Record No. 8985)

STIPULATION AND AGREEMENT

This Stipulation and Agreement (Stipulation) is agreed to and entered into between the Office of Consumer Advocate (OCA), Cheyenne Light, Fuel and Power Company (Cheyenne Light) and Black Hills Corporation (Black Hills). Cheyenne Light and Black Hills shall be referred to hereinafter as the "Applicants." OCA and the Applicants shall be referred to hereinafter as the "Parties."

BACKGROUND

1. On March 22, 2004, Cheyenne Light and Black Hills filed a joint application with the Wyoming Public Service Commission (Commission) requesting authority to transfer all of the issued and outstanding stock of Cheyenne Light from Xcel Energy Inc. (Xcel Energy) to Black Hills.

2. On April 16, 2004, the Commission issued a Notice of Application establishing May 17, 2004, as the deadline for any person seeking to file a statement regarding the Application, or to make a comment, protest or request to intervene or for a hearing with respect to the Application. As of May 17, 2004, the only intervenors were The Frontier Oil and Refining Company, and The International Brotherhood of Electrical Workers, Local No. 111.

4. On June 11, 2004, the Commission issued an Order Setting Pre-Hearing Conference. On June 25, 2004, the Commission issued its Pre-Hearing Conference Order establishing a hearing date of August 24, 2004.

DESCRIPTION OF THE PARTIES

5. The Office of Consumer Advocate was created by W. S. § 37-2-401 as a separate division within the public service commission to represent the interests of Wyoming citizens and all classes of utility customers in matters involving public utilities. The OCA has the authority to enter into stipulations with other parties in any proceeding. W. S. § 37-2-402(d).

6. Cheyenne Light is a public utility as defined by W.S. § 37-1-101(a)(vi)(C) and (D), and, as such, is subject to the Commission's jurisdiction pursuant to the provisions of W.S. § 37-2-112. Pursuant to W.S. § 37-1-104, the Commission has jurisdiction over the transfer of control of Cheyenne Light to Black Hills.

7. On July 19, 2004, Black Hills filed an Application-Declaration on Form U-1 with the Securities and Exchange Commission (SEC) under the federal Public Utility Holding Company Act of 1935, as amended, 15 U.S.C. §§ 70a et seq. (PUHCA) requesting authorization and approvals required under PUHCA to operate as a registered holding company system. Upon the closing of the proposed transaction, Cheyenne Light will become a wholly-owned public utility subsidiary of Black Hills.

AGREEMENT

8. The OCA reviewed the joint application and supporting documents. Additionally, the OCA conducted discovery and the Applicants' representatives had discussions with members of the OCA on several occasions, in person and via telephone, to address questions and concerns of the OCA concerning the above-entitled docketed proceedings. The following Stipulation is the result of the Parties' discussions:

9. Cheyenne Light and Black Hills agree to the following jurisdictional parameters regarding affiliate transactions and common costs:

a. The SEC has jurisdiction to regulate affiliate transactions and assure that common costs (such as service company costs) are fairly and equitably allocated among a registered holding company and its subsidiaries pursuant to PUHCA.

b. Pursuant to W. S. § 37-2-112, the Commission has exclusive jurisdiction for ratemaking purposes to determine whether or not to allow the inclusion in rates of those costs that the SEC may find to be fairly and equitably allocated among the registered holding company and its subsidiaries.

c. Therefore, the applicants agree that they shall not assert that compliance with SEC requirements with respect to cost allocations and affiliate transactions (excluding transactions between Cheyenne Light and Black Hills Corporation or its affiliates entered into prior to March 22, 2004, the date the Application in this docket was filed with the Commission) constitutes an approval for state ratemaking purposes or constitutes a determination that costs can automatically be recovered through the rates of any public utility in the state of Wyoming.

10. In the event that PUHCA is repealed, revised or reformed, Cheyenne Light will provide written notification to and meet with the Commission and the OCA to discuss any changes which Black Hills intends to make regarding the allocation of common costs or the pricing of transactions with its affiliates.

11. Consistent with SEC requirements, Black Hills' cost allocation procedures will provide that (i) costs incurred by one entity for the benefit of another will be directly charged to the entity that benefits from the cost, and (ii) if more than one entity causes a cost to be incurred or benefits from a cost, then that cost will be fairly and equitably allocated among each entity that causes the cost to be incurred or benefits from the cost.

12. Subject to applicable rules of civil procedure and the rules of the Commission, Black Hills will provide access, in the context of a Cheyenne Light existing docket in which rates are at issue, to the books and records of the service company and affiliates who have entered into transactions with Cheyenne Light to the extent necessary to enable the OCA to verify or examine common cost allocations to Cheyenne Light and affiliate transactions affecting Cheyenne Light's regulated retail utility operations.

13. Subject to applicable rules of civil procedure and the rules of the Commission, Black Hills will provide access, in the context of a Black Hills Power (BHP) existing docket in which rates are at issue, to the books and records of the service company and affiliates who have entered into transactions with BHP to the extent necessary to enable the OCA to verify or examine common cost allocations to BHP and affiliate transactions affecting BHP's Wyoming regulated retail utility operations.

14. No later than three months after the closing of the transaction, Black Hills and Cheyenne Light will, in conjunction, file with the Commission a confidential narrative and illustrative update on the transition plan. Black Hills and Cheyenne Light will also notify the OCA and provide, on a confidential basis, a copy of the update filed with the Commission. The update shall include, but is not limited to:

a. Those services referenced in Schedule 9.10 of the Stock Purchase Agreement in this docket;

b. The formal transition services agreement executed by Xcel Energy and Black Hills;

c. The cost allocation methodology approved by the SEC, for all of Black Hills' subsidiaries;

d. The current status of the services being performed by Black Hills and those being performed by Xcel Energy entities;

- e. The time lines to completion of the transition of those services;
- f. Any anticipated or known changes in reference to the course of action for the transition of those services or operations;
- g. The status of the overall operations of Cheyenne Light;
- h. An updated organizational chart for Black Hills;
- i. A report regarding the results of the SEC review of Black Hills' application to acquire Cheyenne Light and a report on how the acquisition was financed.

Cheyenne Light shall organize the content of this filing separately for gas and electric operations, where applicable.

15. Fifteen months after the closing of the transaction, Black Hills and Cheyenne Light will, in conjunction, file with the Commission a second confidential narrative and illustrative update regarding the completion of the transition plan. Black Hills and Cheyenne Light will also notify the OCA and provide, on a confidential basis, a copy of the update filed with the Commission. The content of this filing will address the same topics as the filing described in paragraph 14 of this stipulation (except subparagraph 14.i.).

16. In connection with the proposed transaction, Black Hills is not proposing any changes in local management, employee levels, and administrative and technical services for Cheyenne Light. Additionally Black Hills is not proposing any changes in quality of service, reliability, operations, maintenance or construction that will adversely affect the customers of Cheyenne Light or any of the Wyoming retail customers of BHP. It is recognized that over time Black Hills Corporation will review the best practices of BHP and Cheyenne Light and may make changes it believes will result in improvements in these areas. Furthermore, Cheyenne Light and BHP reserve the right to make such changes in their operations as they would otherwise make in the normal course of business.

17. Upon expiration of the existing annual requirement to file an electric resource plan, Cheyenne Light will provide to the Commission and the OCA, on a confidential basis, an annual electric demand and energy forecast and the existing resources available to meet the forecasted power requirements.

18. Applicants agree that Cheyenne Light will continue to contribute to Energy Share of Wyoming in a manner consistent with its current practices.

19. Consistent with Wyoming law, Black Hills affirms that the transaction costs related to the stock acquisition will not be recovered in Wyoming rates through the inclusion in rate base or expenses used to calculate the revenue requirement in any future rate case.

20. The Applicants acknowledge that (i) the acquisition of Cheyenne Light is not changing current rates for either Cheyenne Light or the Wyoming customers of BHP, and (ii) any proposed rate change for Wyoming retail customers would require a separate application to be filed with the Commission.

21. Cheyenne Light agrees to a moratorium on the increase of retail rates for its electric and natural gas operations until January 1, 2006. Cheyenne Light may file an application to increase gas or electric rates prior to January 1, 2006, provided that the effective date of any such increase shall not be earlier than January 1, 2006. Nothing in this paragraph 21 shall limit the right of Cheyenne Light to file wholesale commodity cost pass on applications pursuant to Sections 249 and 250 of the Commission's Rules with effective dates prior to January 1, 2006.

GENERAL PROVISIONS

22. The Parties agree that the terms and conditions of this Stipulation shall not become effective until the date upon which both of the following have occurred:

a. The proposed transaction described in the joint application becomes effective; and

b. A final decision of the Commission approving this Stipulation becomes effective without modification of any material term, which is unacceptable to any Party.

23. In the event that this Stipulation does not become effective pursuant to paragraph 22, the prior Stipulation and Agreement between Cheyenne Light and the Consumer Advocate Staff adopted by the Commission in Docket Nos. 20003-EA-99-53 and 30005-GA-99-69 shall remain in full force and effect with no amendments thereto and shall not be superseded by this Stipulation.

24. Should Black Hills merge, be assigned or otherwise combine or consolidate with another entity, the successor of Black Hills and all companies within the successor's system shall be bound by this Stipulation. The Applicants and their successors will support this Stipulation before all regulatory agencies with jurisdiction and before all state and federal courts.

25. Nothing in this Stipulation shall preclude the Commission from participating in any related proceedings before the SEC.

26. The Parties agree that this Stipulation represents a compromise in the positions of the Parties.

27. In the event that the Commission modifies any material term of this Stipulation, which modification is unacceptable to any party hereto, that Party shall so notify the other Party within ten (10) days after the decision becomes effective. In that event, this Stipulation shall be considered null and void and of no force and effect in this or any other proceeding. In that event, this Stipulation, its terms and conditions, and the negotiations or discussions undertaken in conjunction with this Stipulation shall not be admissible in evidence in this or any other proceeding.

28. The Parties agree that this Stipulation represents a just, equitable and reasonable resolution of all issues which were or could have been contested by the Parties in these dockets.

29. Except as otherwise specifically agreed upon in this Stipulation, nothing contained herein shall be deemed to constitute a settled regulatory practice for the purposes of any other proceeding.

IN WITNESS WHEREOF, the Parties hereto have executed this Stipulation and Agreement:

OFFICE OF CONSUMER ADVOCATE:

By: Christy Petrie

8/2/2004
Date

Title: Senior OCA Counsel

CHEYENNE LIGHT, FUEL AND POWER COMPANY:

By: Richard L. Kaysen

8/2/04
Date

Richard L. Kaysen

Title: President / CEO

BLACK HILLS CORPORATION

By: Steve Melmer

8-2-04
Date

Title: As. Vice President & General Counsel

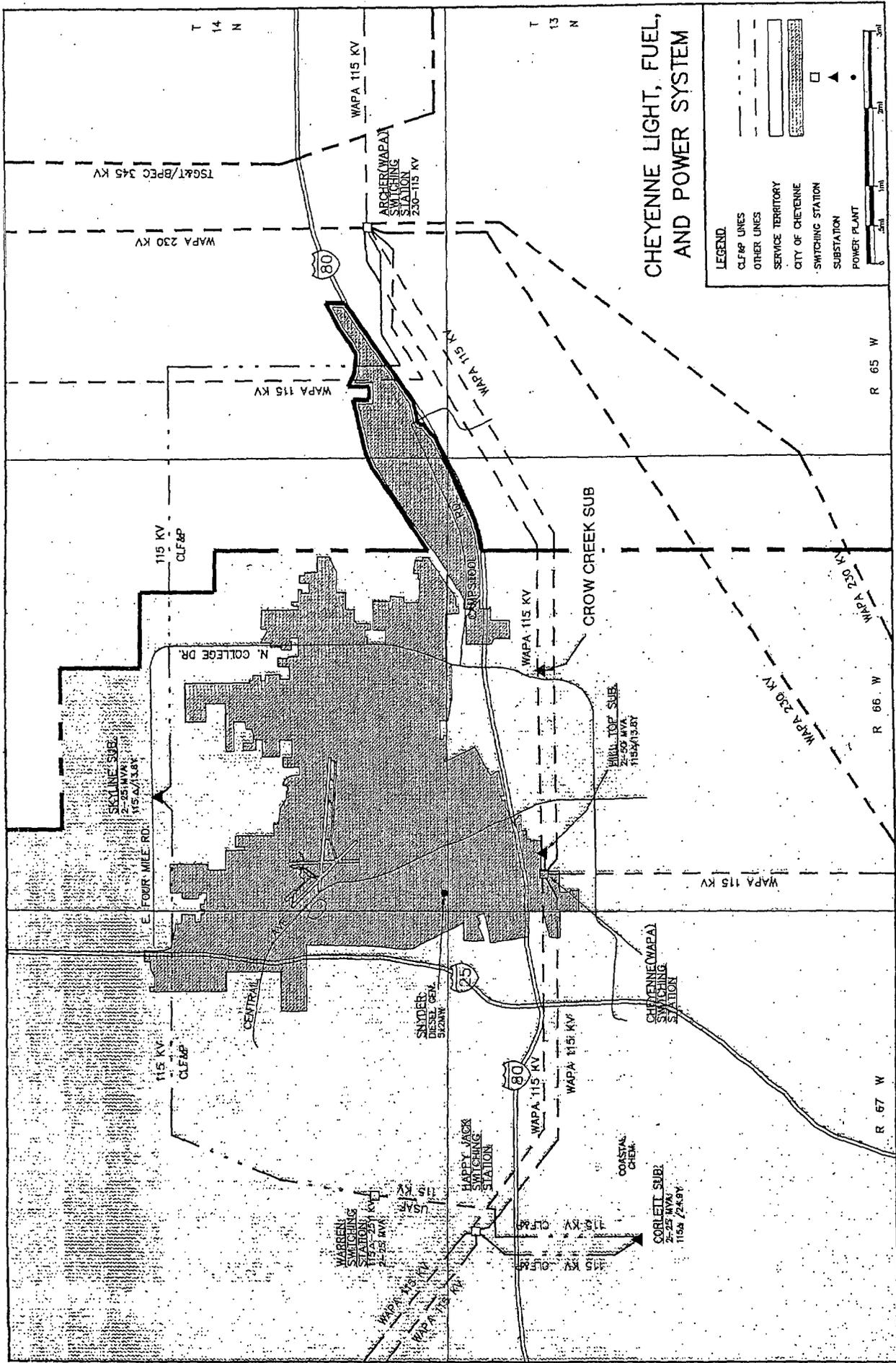
Black Hills Power, Inc. hereby joins in the provisions of paragraphs 13, 16 and 20 of this Stipulation and Agreement insofar as they pertain to Black Hills Power, Inc.:

BLACK HILLS POWER, INC.

By: Steven D. Hulmen 8-2-04

Date

Title: As. Vice President & General Counsel



CHEYENNE LIGHT, FUEL, AND POWER SYSTEM

LEGEND

- CLF&P LINES
- - - OTHER LINES
- ▨ SERVICE TERRITORY
- ▩ CITY OF CHEYENNE
- SWITCHING STATION
- ▲ SUBSTATION
- POWER PLANT

Scale: 0 to 3 Miles

T 14 N

T 13 N

WAPA 115 KV

WAPA 230 KV

80

ARCHER/WAPA
SWITCHING
STATION
230-115 KV

WAPA 115 KV

WAPA 115 KV

R 65 W

115 KV
CLF&P

N. COLLEGE DR.

560 LINE SUB
2-05 WVA
15-A/13.8Y

E. FOUR-MILE RD.

115 KV
CLF&P

CENTRAL

SNIDER
DIESEL GEN.
5K2W

25

HAPPY JACK
SWITCHING
STATION

80

WAPA 115 KV

WAPA 115 KV

CHEYENNE/WAPA
SWITCHING
STATION

WAPA 115 KV

R 66 W

CROW CREEK SUB

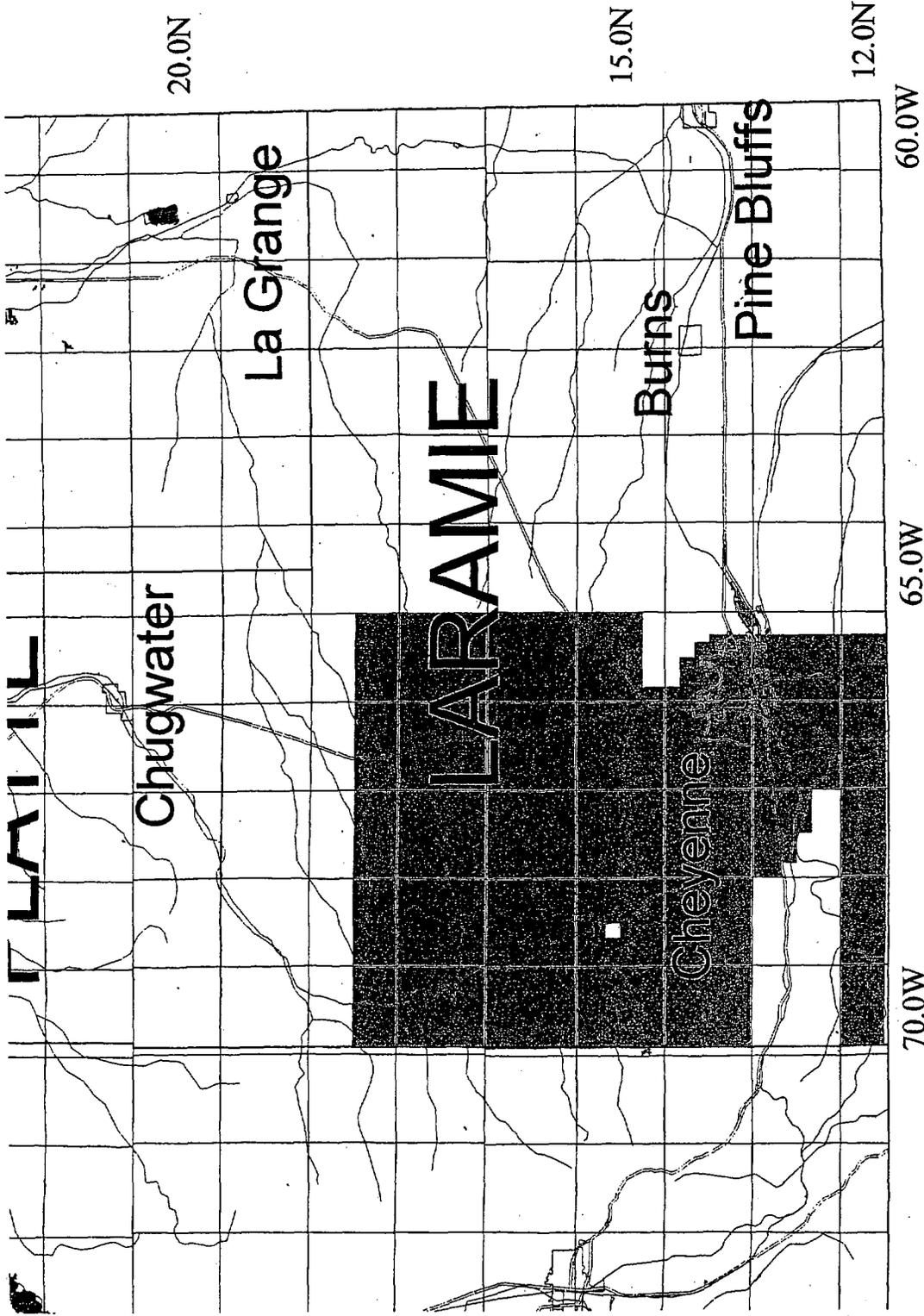
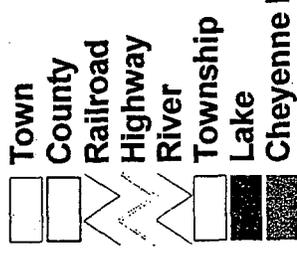
WAPA 115 KV

HILL TOP SUB
2-05 WVA
115-A/13.8Y

WAPA 230 KV

R 67 W

COASTAL
CREK
CORLETT SUB
2-25 WVA
115-A/24.8Y



T L A M I L

Chugwater

La Grange

LARAMIE

Burns

Cheyenne

Pine Bluffs

20.0N

15.0N

12.0N

60.0W

65.0W

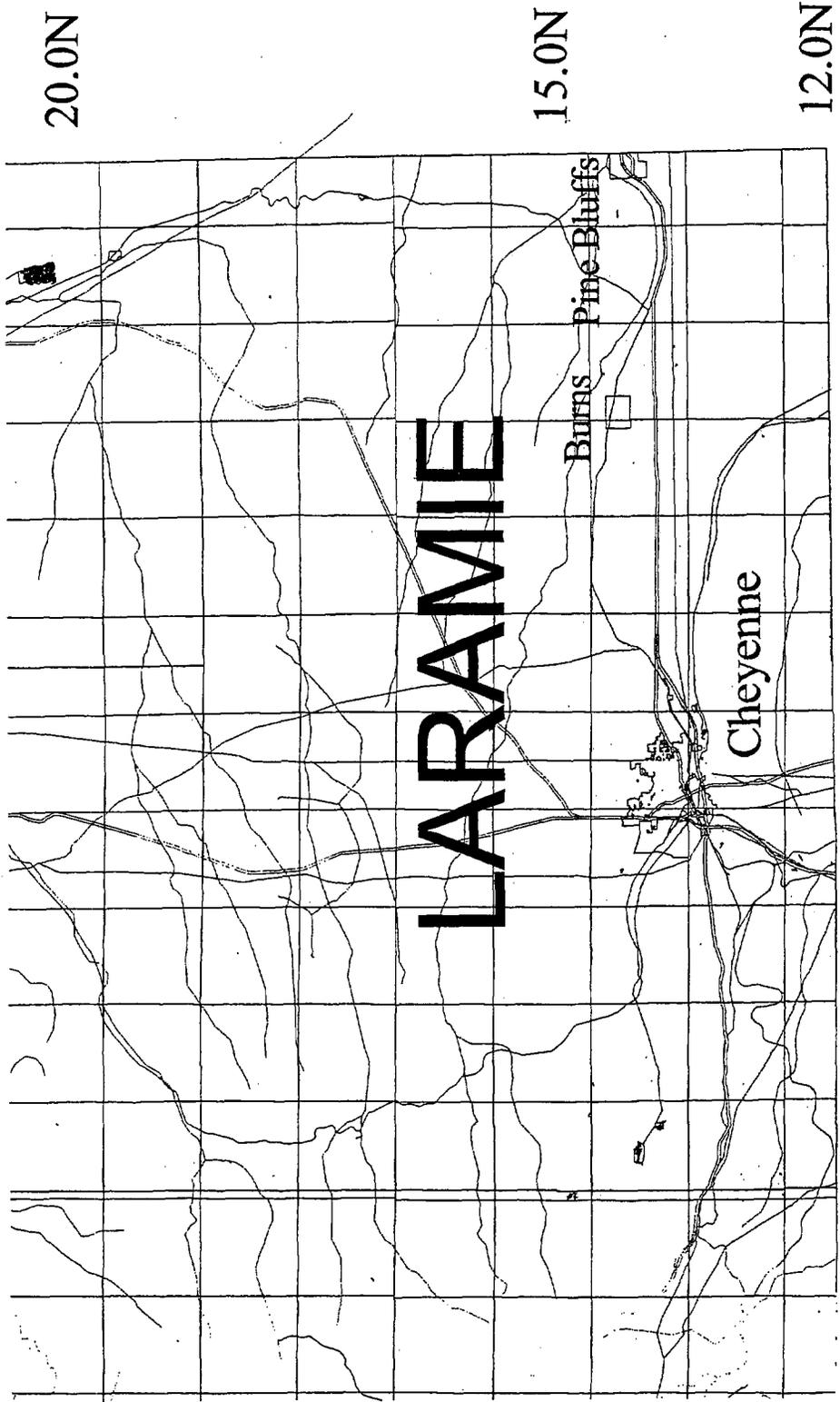
70.0W



Wyoming
Gas Utilities
Certificated Areas

Printed April 13, 2004

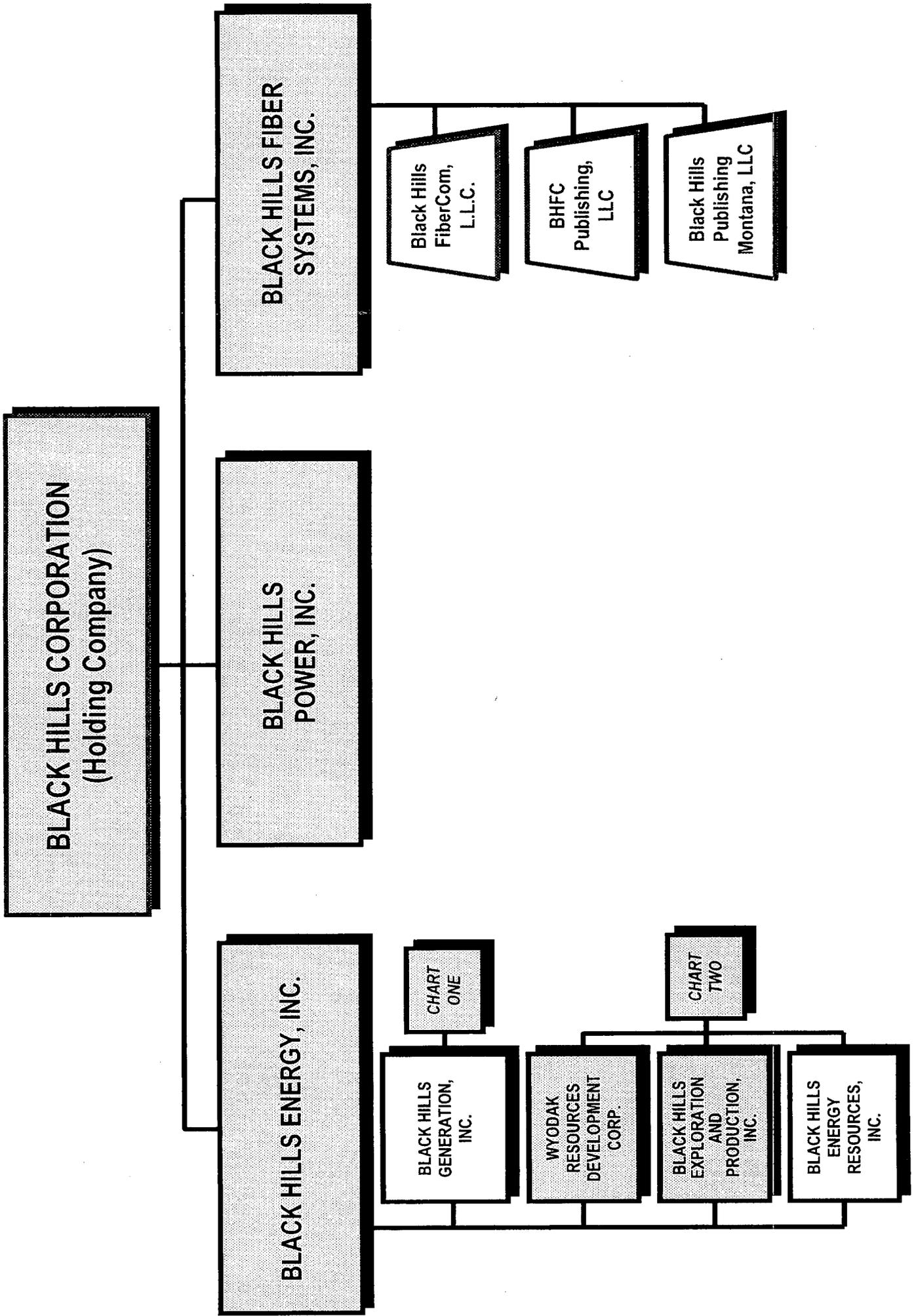
Note: Items may not be 100% accurate



- County
- Town
- Railroad
- Highway
- Township
- River
- Lake
- Pipeline
- Cheyenne LF&P

BLACK HILLS CORPORATION ORGANIZATIONAL CHART

DECEMBER 1, 2004



December 1, 2004

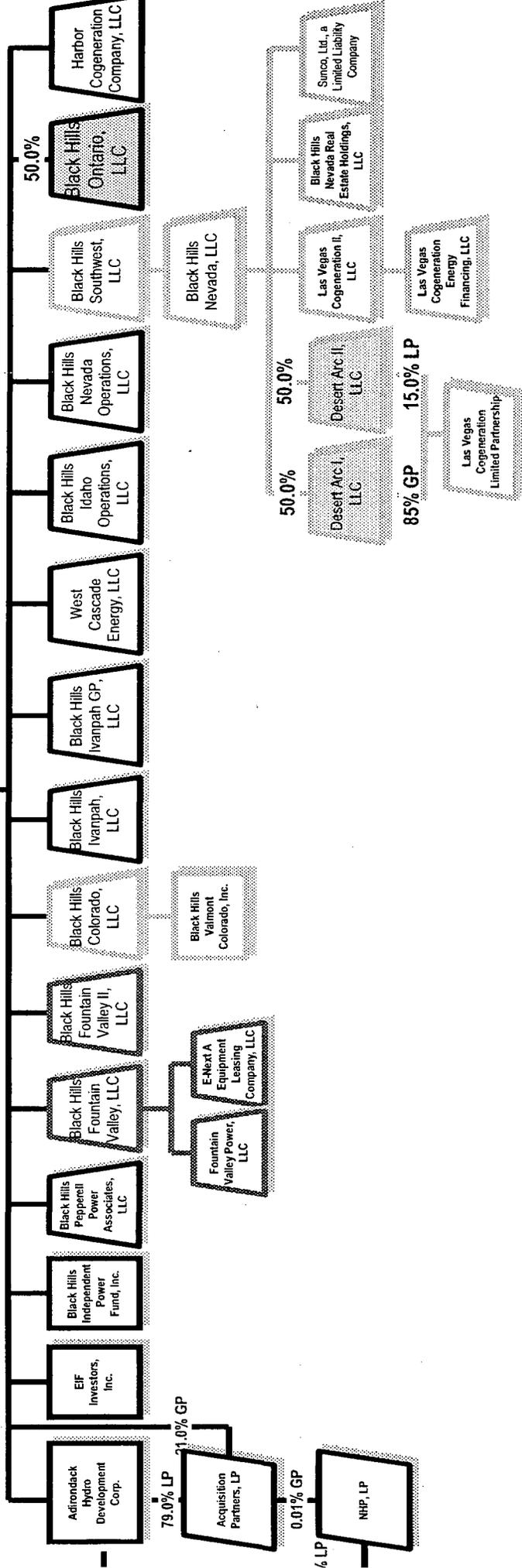
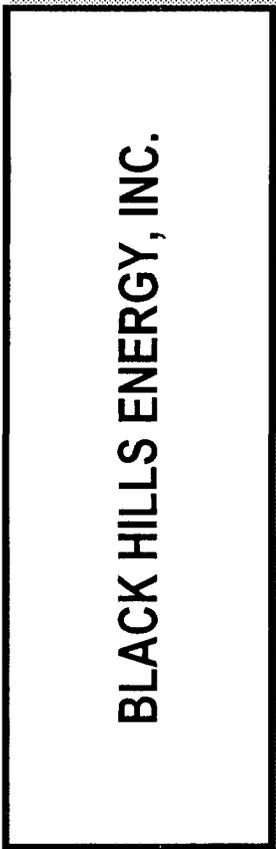


Chart Two

December 1, 2004

