

SECURITIES AND EXCHANGE COMMISSION

(Release No. 35-28046; 70-10237)

Black Hills Corporation, et al.

Order Authorizing, Among Other Things, Extension of Time to Implement Certain Requirements

October 14, 2005

Black Hills Corporation (“Black Hills”), a public-utility holding company registered under the Public Utility Holding Company Act of 1935, as amended (“Act”), Black Hills Power, Inc. (“Black Hills Power”), an electric-utility subsidiary of Black Hills, both located in Rapid City, SD, and Cheyenne Light, Fuel and Power Company, also an electric-utility subsidiary of Black Hills, located in Cheyenne, WY, Black Hills Energy, Inc. (“Black Hills Energy”), a nonutility subsidiary of Black Hills, and all of Black Hills other subsidiaries (collectively, “Subsidiaries”), all located in Rapid City, SD (collectively, “Applicants”), have filed with the Securities and Exchange Commission (“Commission”) a post-effective amendment to their previously filed application-declaration, as amended (“Application”) under sections 6(a), 7, 9(a), 10, 11, 12(b) and (c), 13(b), 32, 33 and 34 of the Act and rules 42, 43, 45, 52, 53, 54, 58 and 88 through 92. Notices of the Application were issued on July 26, 2005 and September 14, 2005.¹ The Commission has not received any request for a hearing.

Black Hills has requested authority to make certain administrative modifications to its two money pools and for certain extensions of time to the implementation schedule it proposed last year for certain administrative matters related to its registration with the

¹ See Black Hills Corporation, et al., Holding Co. Act Release Nos. 28003 and 28029.

Commission, which occurred on December 29, 2004.

I. Background

Black Hills is an integrated public-utility holding company.² On December 28, 2004, the Commission authorized Black Hills and its Subsidiaries to engage in various financing and other transactions (“Financing Order”).³ In connection with the Financing Order, Black Hills committed to establish a limited liability subsidiary, Black Hills Service Company, LLC (“Black Hills Service”), to provide centralized services (such as accounting, financial, human resources, information technology and legal services) to the companies in the Black Hills system and to submit certain filings to the Commission and to implement certain processes and methodologies by December 28, 2005.⁴ In June

² Black Hills is engaged in two lines of business: (1) the generation, transmission, distribution and sale of electricity to retail and wholesale customers; and (2) through Black Hills Energy and its subsidiaries, the development, ownership and operation of exempt wholesale generators, as defined in section 32 of the Act, qualifying facilities as defined in the Public Utility Regulatory Policies Act of 1978, as amended, and the production, transportation and marketing of natural gas, oil, coal and other energy commodities, power marketing and other energy-related activities. Applicants previously engaged in certain exempt telecommunications activities and these businesses were recently sold.

³ Black Hills Corporation, et al., Holding Company Act Release No. 27931. Black Hills registered as a public-utility holding company under the Act on December 29, 2004. By the Financing Order, Black Hills, then a public-utility holding company exempt from registration under section 3(a)(1) of the Act by rule 2, Black Hills Power, its subsidiary electric-utility company, and all other direct and indirect subsidiaries, were authorized to engage in financing and investment activities, intrasystem services and other related activities and transactions, through December 31, 2007, following Black Hills’ registration as a public-utility holding company. Applicants’ recent, related notice issued on July 26, 2005, and noted above, concerned two money pool proposals: (1) modification of the money pools’ interest provisions and (2) filing of quarterly money pool reports, rather than more frequently, under rule 24. See Black Hills Corporation, et al., Holding Co. Act Release No. 28003.

⁴ Black Hills states that it explained, in its application for the Financing Order, that the Black Hills system companies anticipated engaging in a variety of affiliate transactions for goods, services and construction, in accordance with rules 87, 88, 90 and 91, unless otherwise permitted by law. Black Hills states it also committed to file accounting and

2005, Black Hills applied to the Commission for authorization to make certain adjustments to procedures described in the Financing Order; specifically, to interest calculations by its money pools and to change to the filing schedule for money pool transaction reports, among other things.⁵ During the notice period for the Application,⁶ Congress repealed the Act.

The Act was repealed on August 8, 2005, and the Public Utility Holding Company Act of 2005 (“PUHCA 2005”) was enacted on that date by the Energy Policy Act of 2005 (“Energy Policy Act 2005”). The repeal of the Act ends the Commission’s authority over Black Hills and the Black Hills system under this statute as of February 8, 2006 and subjects Black Hills and the Black Hills system to new, but in certain respects similar, regulation by the Federal Energy Regulatory Commission (“FERC”) under PUHCA 2005.

FERC is required to issue certain PUHCA 2005 regulations by December 8, 2005.

cost allocation procedures with the Commission by October 1, 2005; to form Black Hills Service within sixty days of issuance of the Financing Order, but sought authority to delay (for not longer than twelve months) the full implementation of Black Hills Service and the required accounting systems and cost allocation methodologies; and finally, to complete conversion of non-exempt market-based rate affiliate transactions to cost-based transactions (not later than twelve months following issuance of the Financing Order). In the Financing Order, the Commission acknowledged Black Hills’ plans for these procedures, Black Hills Service and the affiliate arrangements. It is these matters that are the subject of Applicants’ requests for extensions of time.

Black Hills states, further, that it established Black Hills Service and has taken significant steps to implement the service company. Black Hills states that it has already expended significant resources in extensive planning and organizational initiatives to identify employees and functions to be transferred to Black Hills Service, defining extensive new organizational, management and personnel structures to be put in place at Black Hills Service and associate companies and formulating required changes to human resources systems and pension and benefit plans.

⁵ See notes 1 and 3, above.

⁶ See note 1, Black Hills Corporation, et al., Holding Co. Act Release No. 28003.

Black Hills states that the new FERC regulations may affect some of the processes and methodologies relating to allocation of costs, among other things, that were addressed in the Financing Order.

II. Requested Authority

First, Black Hills requested that it and its Subsidiaries be authorized to (1) modify the interest provisions of the Black Hills utility subsidiary and nonutility subsidiary money pools; (2) file quarterly money pool reports under rule 24;⁷ and (3) add various participants, identified in the Application, to the nonutility money pool.⁸

Secondly, in light of repeal of the Act and FERC's schedule for implementing PUHCA 2005, Black Hills requested the Commission to extend Black Hills' time:

1. To make certain filings with the Commission through February 8, 2006, the effective date of the Act's repeal (describing accounting systems and cost allocation methodologies);
2. To implement fully Black Hills Service, from December 28, 2005, through February 8, 2006, the effective date of the Act's repeal (accounting systems and cost allocation methodologies); and
3. To convert certain market-based rate affiliate transactions to cost-based

⁷ Black Hills proposed amending the Utility Money Pool and Nonutility Money Pool Agreements to clarify that each lender to either pool may earn the same interest rate that the borrowers from the money pools pay. Black Hills also proposed that the interest rate charged on loans provided through the pools be the composite weighted average daily effective cost incurred by the lenders on externally obtained funds outstanding on that date (and that the daily effective cost will include interest rate swap values related to the external funds). In addition, Applicants proposed that, if no external funds are outstanding on a particular date, then the interest rate imposed will be the daily one-month LIBOR rate plus 100 basis points. Black Hills was also authorized by the Financing Order to file various reports of financing-related activities on a quarterly basis. Applicants requested that money pool transaction reports be included among these cumulative quarterly reports (rather than be required to be filed within ten days of each transaction as required by rule 24), on the schedule for quarterly rule 24 reports established in the Financing Order.

⁸ In the Financing Order, the Commission reserved jurisdiction over the addition of participants to the money pools.

transactions from December 28, 2005, through February 8, 2006, the effective date of the Act's repeal.

Black Hills states that it expects to incur fees, commissions and expenses in connection with this Application estimated at approximately \$5,000. Black Hills further states that no state or federal regulatory authority, other than the Commission, has jurisdiction over this matter.

Due notice of the filing of the Application has been given in the manner prescribed by rule 23 under the Act and no hearing has been requested of, or ordered by, the Commission. Based on the facts in the record, the Commission finds that the applicable standards of the Act are satisfied and that no adverse findings are necessary.

IT IS ORDERED that the Application, as amended, is granted and permitted to become effective immediately, subject to the terms and conditions prescribed in rule 24.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz
Secretary