

United States  
Securities and Exchange Commission  
Washington, D.C. 20549

Form 10-Q

X QUARTERLY REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended March 31, 2004.

OR

\_\_\_ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission File Number 001-31303

Black Hills Corporation  
Incorporated in South Dakota      IRS Identification Number 46-0458824

625 Ninth Street  
Rapid City, South Dakota 57701

Registrant's telephone number (605) 721-1700

Former name, former address, and former fiscal year if changed since last report

NONE

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No \_\_\_

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act).

Yes  No \_\_\_

Indicate the number of shares outstanding of each of the issuer's classes of common stock as of the latest practicable date.

| Class                          | Outstanding at April 30, 2004 |
|--------------------------------|-------------------------------|
| Common stock, \$1.00 par value | 32,416,379 shares             |

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**BLACK HILLS CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF INCOME**  
**(unaudited)**

|                                                                                                              | Three Months Ended<br>March 31              |           |
|--------------------------------------------------------------------------------------------------------------|---------------------------------------------|-----------|
|                                                                                                              | 2004                                        | 2003      |
|                                                                                                              | (in thousands,<br>except per share amounts) |           |
| Operating revenues                                                                                           | \$274,328                                   | \$291,445 |
| Operating expenses:                                                                                          |                                             |           |
| Fuel and purchased power                                                                                     | 172,906                                     | 188,685   |
| Operations and maintenance                                                                                   | 24,455                                      | 23,082    |
| Administrative and general                                                                                   | 18,010                                      | 17,783    |
| Depreciation, depletion and amortization                                                                     | 22,272                                      | 19,047    |
| Taxes, other than income taxes                                                                               | 8,431                                       | 7,385     |
|                                                                                                              | 246,074                                     | 255,982   |
| Equity in earnings (losses) of unconsolidated subsidiaries                                                   | (249)                                       | 456       |
| Operating income                                                                                             | 28,005                                      | 35,919    |
| Other income (expense):                                                                                      |                                             |           |
| Interest expense                                                                                             | (14,351)                                    | (12,302)  |
| Interest income                                                                                              | 392                                         | 142       |
| Other expense                                                                                                | (103)                                       | (132)     |
| Other income                                                                                                 | 389                                         | 316       |
|                                                                                                              | (13,673)                                    | (11,976)  |
| Income from continuing operations before minority interest, income taxes and change in accounting principles | 14,332                                      | 23,943    |
| Minority interest                                                                                            | (42)                                        | --        |
| Income taxes                                                                                                 | (4,326)                                     | (8,278)   |
| Income from continuing operations before change in accounting principles                                     | 9,964                                       | 15,665    |
| Income (loss) from discontinued operations, net of taxes                                                     | (178)                                       | 1,193     |
| Change in accounting principles, net of taxes                                                                | --                                          | (2,680)   |
| Net income                                                                                                   | 9,786                                       | 14,178    |
| Preferred stock dividends                                                                                    | (88)                                        | (57)      |
| Net income available for common stock                                                                        | \$ 9,698                                    | \$ 14,121 |
| Weighted average common shares outstanding:                                                                  |                                             |           |
| Basic                                                                                                        | 32,291                                      | 27,041    |
| Diluted                                                                                                      | 32,811                                      | 27,411    |
| Earnings per share:                                                                                          |                                             |           |
| Basic-                                                                                                       |                                             |           |
| Continuing operations                                                                                        | \$ 0.31                                     | \$ 0.58   |
| Discontinued operations                                                                                      | (0.01)                                      | 0.04      |
| Change in accounting principles                                                                              | --                                          | (0.10)    |
| Total                                                                                                        | \$ 0.30                                     | \$ 0.52   |
| Diluted-                                                                                                     |                                             |           |
| Continuing operations                                                                                        | \$ 0.30                                     | \$ 0.58   |

|                                          |         |         |
|------------------------------------------|---------|---------|
| Discontinued operations                  | --      | 0.04    |
| Change in accounting principles          | --      | (0.10)  |
| Total                                    | \$ 0.30 | \$ 0.52 |
| Dividends paid per share of common stock | \$ 0.31 | \$ 0.30 |

The accompanying notes to condensed consolidated financial statements are an integral part of these condensed consolidated financial statements.

**BLACK HILLS CORPORATION**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
**(unaudited)**

|                                                                                                         | March 31<br>2004    | December 31<br>2003 | March 31<br>2003    |
|---------------------------------------------------------------------------------------------------------|---------------------|---------------------|---------------------|
| (in thousands, except share amounts)                                                                    |                     |                     |                     |
| <b>ASSETS</b>                                                                                           |                     |                     |                     |
| Current assets:                                                                                         |                     |                     |                     |
| Cash and cash equivalents                                                                               | \$ 191,484          | \$ 172,771          | \$ 63,095           |
| Restricted cash                                                                                         | 1,070               | 1,350               | 1,070               |
| Receivables (net of allowance for doubtful accounts<br>of \$7,582; \$7,345 and \$3,929, respectively)   | 205,052             | 201,992             | 210,825             |
| Notes receivable                                                                                        | 239                 | 554                 | 554                 |
| Materials, supplies and fuel                                                                            | 50,980              | 44,895              | 23,482              |
| Derivative assets                                                                                       | 23,214              | 26,804              | 31,881              |
| Prepaid income taxes                                                                                    | --                  | 18,940              | --                  |
| Deferred income taxes                                                                                   | 5,350               | 4,229               | 131                 |
| Other assets                                                                                            | 5,678               | 8,324               | 6,460               |
| Assets of discontinued operations                                                                       | 3,876               | 3,893               | 175,599             |
|                                                                                                         | <u>486,943</u>      | <u>483,752</u>      | <u>513,097</u>      |
| Investments                                                                                             | 27,560              | 27,347              | 20,282              |
| Property, plant and equipment                                                                           | 1,898,072           | 1,882,697           | 1,782,250           |
| Less accumulated depreciation and depletion                                                             | (463,564)           | (440,275)           | (390,510)           |
|                                                                                                         | <u>1,434,508</u>    | <u>1,442,422</u>    | <u>1,391,740</u>    |
| Other assets:                                                                                           |                     |                     |                     |
| Derivative assets                                                                                       | 257                 | 1,002               | 496                 |
| Goodwill                                                                                                | 30,144              | 30,144              | 23,922              |
| Intangible assets (net of accumulated amortization<br>of \$19,252, \$18,423 and \$16,601, respectively) | 39,241              | 40,070              | 77,023              |
| Other                                                                                                   | 36,717              | 38,488              | 21,414              |
|                                                                                                         | <u>106,359</u>      | <u>109,704</u>      | <u>122,855</u>      |
|                                                                                                         | <u>\$ 2,055,370</u> | <u>\$ 2,063,225</u> | <u>\$ 2,047,974</u> |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>                                                             |                     |                     |                     |
| Current liabilities:                                                                                    |                     |                     |                     |
| Accounts payable                                                                                        | \$ 200,000          | \$ 162,722          | \$ 183,726          |
| Accrued income taxes                                                                                    | 5,973               | 5,816               | 133                 |
| Accrued liabilities                                                                                     | 68,160              | 66,629              | 78,126              |
| Current maturities of long-term debt                                                                    | 15,723              | 17,659              | 16,543              |
| Notes payable                                                                                           | --                  | --                  | 336,517             |
| Derivative liabilities                                                                                  | 30,326              | 32,967              | 35,839              |
| Liabilities of discontinued operations                                                                  | 493                 | 467                 | 103,818             |
|                                                                                                         | <u>320,675</u>      | <u>286,260</u>      | <u>754,702</u>      |
| Long-term debt, net of current maturities                                                               | 822,289             | 868,459             | 541,271             |
| Deferred credits and other liabilities:                                                                 |                     |                     |                     |
| Deferred income taxes                                                                                   | 129,194             | 125,041             | 123,456             |
| Derivative liabilities                                                                                  | 2,894               | 3,247               | 5,912               |
| Other                                                                                                   | 64,918              | 65,782              | 66,981              |
|                                                                                                         | <u>197,006</u>      | <u>194,070</u>      | <u>196,349</u>      |

|                                                                                                                                       |              |              |              |
|---------------------------------------------------------------------------------------------------------------------------------------|--------------|--------------|--------------|
| Minority interest in subsidiaries                                                                                                     | 4,731        | 4,689        | --           |
| Stockholders' equity:                                                                                                                 |              |              |              |
| Preferred stock - no par Series 2000-A; 21,500 shares authorized; Issued and outstanding: 6,839; 7,771 and 5,177 shares, respectively | 7,167        | 8,143        | 5,549        |
| Common stock equity-                                                                                                                  |              |              |              |
| Common stock \$1 par value; 100,000,000 shares authorized; Issued 32,552,878; 32,447,765 and 27,627,211 shares, respectively          | 32,553       | 32,448       | 27,627       |
| Additional paid-in capital                                                                                                            | 382,782      | 379,271      | 259,878      |
| Retained earnings                                                                                                                     | 304,249      | 304,567      | 286,655      |
| Treasury stock at cost - 144,001; 150,048 and 166,649 shares, respectively                                                            | (3,435)      | (3,560)      | (3,850)      |
| Accumulated other comprehensive loss                                                                                                  | (12,647)     | (11,122)     | (20,207)     |
|                                                                                                                                       | 703,502      | 701,604      | 550,103      |
| Total stockholders' equity                                                                                                            | 710,669      | 709,747      | 555,652      |
|                                                                                                                                       | \$ 2,055,370 | \$ 2,063,225 | \$ 2,047,974 |

The accompanying notes to condensed consolidated financial statements are an integral part of these condensed consolidated financial statements.

**BLACK HILLS CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(unaudited)**

|                                                                                                        | Three Months Ended<br>March 31 |           |
|--------------------------------------------------------------------------------------------------------|--------------------------------|-----------|
|                                                                                                        | 2004                           | 2003      |
|                                                                                                        | (in thousands)                 |           |
| Operating activities:                                                                                  |                                |           |
| Net income available for common                                                                        | \$ 9,698                       | \$ 14,121 |
| Adjustments to reconcile net income available for common to net cash provided by operating activities: |                                |           |
| Income (loss) from discontinued operations                                                             | 178                            | (1,193)   |
| Depreciation, depletion and amortization                                                               | 22,272                         | 19,047    |
| Net change in derivative assets and liabilities                                                        | (1,139)                        | (333)     |
| Deferred income taxes                                                                                  | 3,886                          | 2,965     |
| Undistributed earnings in associated companies                                                         | (234)                          | (336)     |
| Change in accounting principles                                                                        | --                             | 2,680     |
| Change in operating assets and liabilities-                                                            |                                |           |
| Accounts receivable and other current assets                                                           | 12,329                         | (42,043)  |
| Accounts payable and other current liabilities                                                         | 38,966                         | 35,280    |
| Other operating activities                                                                             | 179                            | 3,063     |
|                                                                                                        | 86,135                         | 33,251    |
| Investing activities:                                                                                  |                                |           |
| Property, plant and equipment additions                                                                | (13,544)                       | (25,042)  |
| Increase in notes receivable - Mallon Resources                                                        | --                             | (5,164)   |
| Other investing activities                                                                             | 1,529                          | (1,685)   |
|                                                                                                        | (12,015)                       | (31,891)  |
| Financing activities:                                                                                  |                                |           |
| Dividends paid                                                                                         | (10,016)                       | (8,094)   |
| Common stock issued                                                                                    | 2,640                          | 1,233     |
| Decrease in short-term borrowings, net                                                                 | --                             | (3,983)   |
| Long-term debt - repayments                                                                            | (48,106)                       | (2,537)   |
| Other financing activities                                                                             | 75                             | 71        |
|                                                                                                        | (55,407)                       | (13,310)  |
| Increase (decrease) in cash and cash equivalents                                                       | 18,713                         | (11,950)  |
| Cash and cash equivalents:                                                                             |                                |           |

|                     |                   |                  |
|---------------------|-------------------|------------------|
| Beginning of period | 172,771           | 75,045           |
| End of period       | <u>\$ 191,484</u> | <u>\$ 63,095</u> |

Supplemental disclosure of cash flow information:

|                                  |             |           |
|----------------------------------|-------------|-----------|
| Cash paid during the period for- |             |           |
| Interest                         | \$ 10,744   | \$ 15,664 |
| Net income taxes (received) paid | \$ (18,819) | \$ 137    |

|                                                                                                                   |       |           |
|-------------------------------------------------------------------------------------------------------------------|-------|-----------|
| Non-cash net assets acquired through issuance of common stock and decrease in notes receivable - Mallon Resources | \$ -- | \$ 51,153 |
|-------------------------------------------------------------------------------------------------------------------|-------|-----------|

|                                                       |        |       |
|-------------------------------------------------------|--------|-------|
| Common stock issued in conversion of preferred shares | \$ 976 | \$ -- |
|-------------------------------------------------------|--------|-------|

The accompanying notes to condensed consolidated financial statements are an integral part of these condensed consolidated financial statements.

BLACK HILLS CORPORATION

Notes to Condensed Consolidated Financial Statements  
(unaudited)

(Reference is made to Notes to Consolidated Financial Statements included in the Company's 2003 Annual Report on Form 10-K)

(1) MANAGEMENT'S STATEMENT

The financial statements included herein have been prepared by Black Hills Corporation (the Company) without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted pursuant to such rules and regulations; however, the Company believes that the footnotes adequately disclose the information presented. These financial statements should be read in conjunction with the financial statements and the notes thereto, included in the Company's 2003 Annual Report on Form 10-K filed with the Securities and Exchange Commission.

Accounting methods historically employed require certain estimates as of interim dates. The information furnished in the accompanying financial statements reflects all adjustments which are, in the opinion of management, necessary for a fair presentation of the March 31, 2004, December 31, 2003 and March 31, 2003, financial information and are of a normal recurring nature. The results of operations for the three months ended March 31, 2004, are not necessarily indicative of the results to be expected for the full year. All earnings per share amounts discussed refer to diluted earnings per share unless otherwise noted.

(2) RECLASSIFICATIONS

Certain 2003 amounts in the financial statements have been reclassified to conform to the 2004 presentation. These reclassifications did not have an effect on the Company's total stockholders' equity or net income available for common stock as previously reported.

(3) STOCK-BASED COMPENSATION

At March 31, 2004, the Company had three stock-based employee compensation plans under which it can issue stock options to its employees. The Company accounts for these plans under the recognition and measurement principles of Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees (APB 25)," and related interpretations. No employee compensation cost related to stock options is reflected in net income, as all options granted under these plans had an exercise price equal to the market value of the underlying common stock on the date of grant.

The following table illustrates the effect on net income and earnings per share if the Company had applied the fair value recognition provisions of Statement of Financial Accounting Standards (SFAS) No. 123, "Accounting for Stock-Based Compensation (SFAS 123)," to stock-based employee compensation (in thousands, except per share amounts):

|                                                                                                                                             | Three Months Ended<br>March 31 |                  |
|---------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|------------------|
|                                                                                                                                             | 2004                           | 2003             |
| Net income available for common stock, as reported                                                                                          | \$ 9,698                       | \$ 14,121        |
| Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effects | (188)                          | (242)            |
| Pro forma net income                                                                                                                        | <u>\$ 9,510</u>                | <u>\$ 13,879</u> |

Earnings per share:  
As reported--

|                                 |                |                |
|---------------------------------|----------------|----------------|
| Basic                           |                |                |
| Continuing operations           | \$ 0.31        | \$ 0.58        |
| Discontinued operations         | (0.01)         | 0.04           |
| Change in accounting principles | --             | (0.10)         |
| Total                           | <u>\$ 0.30</u> | <u>\$ 0.52</u> |
| Diluted                         |                |                |
| Continuing operations           | \$ 0.30        | \$ 0.58        |
| Discontinued operations         | --             | 0.04           |
| Change in accounting principles | --             | (0.10)         |
| Total                           | <u>\$ 0.30</u> | <u>\$ 0.52</u> |
| Pro forma--                     |                |                |
| Basic                           |                |                |
| Continuing operations           | \$ 0.30        | \$ 0.57        |
| Discontinued operations         | (0.01)         | 0.04           |
| Change in accounting principles | --             | (0.10)         |
| Total                           | <u>\$ 0.29</u> | <u>\$ 0.51</u> |
| Diluted                         |                |                |
| Continuing operations           | \$ 0.29        | \$ 0.57        |
| Discontinued operations         | --             | 0.04           |
| Change in accounting principles | --             | (0.10)         |
| Total                           | <u>\$ 0.29</u> | <u>\$ 0.51</u> |

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#### (4) RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In January 2004, the Financial Accounting Standards Board (FASB) issued FASB Staff Position (FSP) No. 106-1, "Accounting and Disclosure Requirements Related to the Medicare Prescription Drug, Improvement and Modernization Act of 2003" (FSP 106-1), which permits a sponsor of a postretirement health care plan that provides a prescription drug benefit to make a one-time election to defer accounting for the effects of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 until remaining questions – notably the issue of how to account for the federal subsidy – are resolved. The Company provides prescription drug benefits to certain eligible employees and has elected the one-time deferral of accounting for the effects of the 2003 Medicare Act. The Company intends to analyze the 2003 Medicare Act, along with the authoritative guidance, when issued, to determine if its benefit plans need to be amended and how to record the effects of the 2003 Medicare Act. Specific guidance on the accounting for the federal subsidy provided by the 2003 Medicare Act is pending and that guidance, when issued, could require the Company to change previously reported postretirement benefit information.

During the second quarter of 2003, discussion between the Securities and Exchange Commission (SEC) and FASB staffs raised concerns over the interaction of SFAS No. 19, "Financial Accounting and Reporting by Oil and Gas Producing Companies" (SFAS 19) and SFAS No. 142, "Goodwill and Other Intangible Assets" (SFAS 142). The discussion focused on whether or not pronouncements set forth by SFAS 142 requiring more clarity in distinguishing between tangible and intangible assets, required oil and gas producing companies to reclassify amounts related to mineral rights from tangible assets to intangible assets upon adoption of SFAS 142. In April 2004, the FASB issued FSP FAS 141-1 and FAS 142-1, "Interaction of FASB Statements No. 141, *Business Combinations*, and No. 142, *Goodwill and Other Intangible Assets*, and EITF Issue No. 04-2, *Whether Mineral Rights Are Tangible or Intangible Assets*." The FSP amends SFAS 141 and SFAS 142 to conform with the EITF consensus in EITF 04-2 that mineral rights, as defined by the Issue, are tangible assets. When the Company adopted SFAS 142 on January 1, 2002, the amounts related to mineral rights were classified as tangible assets and continue to be classified in "Property, plant and equipment" on the accompanying Condensed Consolidated Balance Sheets.

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#### (5) MATERIALS, SUPPLIES AND FUEL

The amounts of materials, supplies and fuel included on the accompanying Condensed Consolidated Balance Sheets, by major classification, are provided as follows (in thousands):

| Major Classification                 | March 31, 2004   | December 31, 2003 | March 31, 2003   |
|--------------------------------------|------------------|-------------------|------------------|
| Materials and supplies               | \$ 20,884        | \$ 18,920         | \$ 17,530        |
| Fuel for generation                  | 1,248            | 1,581             | 1,002            |
| Gas and oil held by energy marketing | 28,848           | 24,394            | 4,950            |
| Total materials, supplies and fuel   | <u>\$ 50,980</u> | <u>\$ 44,895</u>  | <u>\$ 23,482</u> |

#### (6) ASSET RETIREMENT OBLIGATIONS

SFAS No. 143, "Accounting for Asset Retirement Obligations" (SFAS 143) requires that the present value of retirement costs for which the Company has a legal obligation be recorded as liabilities with an equivalent amount added to the asset cost and depreciated over an appropriate period. The liability is then accreted over time by applying an interest method of allocation to the liability. Cumulative accretion and accumulated depreciation have been recognized for the time period from the date the liability would have been recognized had the provisions of SFAS 143 been in effect, to the date of its adoption.

The Company has identified legal retirement obligations related to plugging and abandonment of natural gas and oil wells in our Oil and Gas segment and reclamation of our coal mining sites in our Mining segment.

The following table presents the details of the Company's asset retirement obligations which are included on the accompanying Condensed Consolidated Balance Sheets in "Other" under "Deferred credits and other liabilities" (in thousands):

|             | Balance at<br>12/31/03 | Liabilities<br>Incurred | Liabilities<br>Settled | Accretion | Cash Flow<br>Revisions | Balance at<br>3/31/04 |
|-------------|------------------------|-------------------------|------------------------|-----------|------------------------|-----------------------|
| Oil and Gas | \$ 7,233               | \$ --                   | \$ --                  | \$ 161    | \$ --                  | \$ 7,394              |
| Mining      | 15,752                 | 219                     | (22)                   | 270       | --                     | 16,219                |
| Total       | \$ 22,985              | \$ 219                  | \$ (22)                | \$ 431    | \$ --                  | \$ 23,613             |

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#### (7) VARIABLE INTEREST ENTITY

In January 2003, the FASB issued Interpretation No. 46, "Consolidation of Variable Interest Entities" (FIN 46). In December 2003, the FASB issued FIN No. 46 (Revised) (FIN 46-R) to address certain FIN 46 implementation issues. The Company's subsidiary, Black Hills Wyoming has an agreement with Wygen Funding, Limited Partnership, an unrelated variable interest entity (VIE) to lease the Wygen plant. Under the accounting interpretation, as amended, the Company consolidated the VIE effective December 31, 2003. The effect of consolidating the VIE into the Company's Consolidated Balance Sheet at December 31, 2003, was an increase in total assets of \$129.0 million, of which \$121.5 million, net of accumulated depreciation of \$3.0 million, is included in Property, plant and equipment and an increase in long-term debt in the amount of \$128.3 million.

Prior to the December 31, 2003 consolidation, the Company recorded lease expense on the Wygen plant. Lease payments began upon completion of the plant in February 2003. During the three months ended March 31, 2003, lease payments were \$0.9 million and are included in Operations and maintenance on the accompanying 2003 Condensed Consolidated Statement of Income. The net effect on current results is to recognize depreciation and interest expense in place of recognizing lease expense. During the three months ended March 31, 2004, depreciation expense was \$0.8 million and interest expense was \$0.8 million, respectively.

#### (8) EARNINGS PER SHARE

Basic earnings per share from continuing operations is computed by dividing income from continuing operations by the weighted average number of common shares outstanding during the period. Diluted earnings per share from continuing operations gives effect to all dilutive common shares potentially outstanding during a period. A reconciliation of "Income from continuing operations" and basic and diluted share amounts is as follows:

Period ended March 31, 2004  
(in thousands)

|                                                            | Three Months |                   |
|------------------------------------------------------------|--------------|-------------------|
|                                                            | Income       | Average<br>Shares |
| Income from continuing operations                          | \$ 9,964     |                   |
| Less: preferred stock dividends                            | (88)         |                   |
| Basic - available for common shareholders                  | 9,876        | 32,291            |
| Dilutive effect of:                                        |              |                   |
| Stock options                                              | --           | 115               |
| Convertible preferred stock                                | 88           | 195               |
| Estimated contingent shares issuable for prior acquisition | --           | 158               |
| Others                                                     | --           | 52                |
| Diluted - available for common shareholders                | \$ 9,964     | 32,811            |

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Period ended March 31, 2003  
(in thousands)

|                                           | Three Months |                   |
|-------------------------------------------|--------------|-------------------|
|                                           | Income       | Average<br>Shares |
| Income from continuing operations         | \$ 15,665    |                   |
| Less: preferred stock dividends           | (57)         |                   |
| Basic - available for common shareholders | 15,608       | 27,041            |
| Dilutive effect of:                       |              |                   |
| Stock options                             | --           | 46                |

|                                             |           |        |
|---------------------------------------------|-----------|--------|
| Convertible preferred stock                 | 57        | 148    |
| Others                                      | --        | 176    |
|                                             | <hr/>     | <hr/>  |
| Diluted - available for common shareholders | \$ 15,665 | 27,411 |
|                                             | <hr/>     | <hr/>  |

On April 30, 2003, the Company completed a public offering of 4.6 million shares of common stock. Accordingly, this transaction significantly affects the weighted average number of common shares outstanding used in earnings per share calculations for the current and for future periods.

(9) COMPREHENSIVE INCOME

The following table presents the components of the Company's comprehensive (loss) income (in thousands):

|                                                                                                                           | Three Months Ended<br>March 31 |           |
|---------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------|
|                                                                                                                           | 2004                           | 2003      |
|                                                                                                                           | <hr/>                          | <hr/>     |
| Net income                                                                                                                | \$ 9,786                       | \$ 14,178 |
| Other comprehensive (loss) income, net of tax:                                                                            |                                |           |
| Fair value adjustment on derivatives designated as cash<br>flow hedges, (2003 is net of minority interest share of \$228) | (1,504)                        | 985       |
| Unrealized loss on available-for-sale securities                                                                          | (21)                           | --        |
|                                                                                                                           | <hr/>                          | <hr/>     |
| Comprehensive income                                                                                                      | \$ 8,261                       | \$ 15,163 |
|                                                                                                                           | <hr/>                          | <hr/>     |

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(10) CHANGES IN COMMON STOCK

Other than the following transactions, the Company had no other material changes in its common stock, as reported in Note 8 of the Company's 2003 Annual Report on Form 10-K.

First Quarter 2004 Transactions

- On March 1, 2004, certain officers of the Company were named participants in a performance share award plan. Entitlement to performance shares is based on the Company's total shareholder return over designated performance periods as measured against a selected peer group. In addition, the Company's stock price must also increase during the performance periods. Target grants of performance shares were made for the following performance periods:

| <u>Grant Date</u> | <u>Performance Period</u>         | <u>Target Grant<br/>of Shares</u> |
|-------------------|-----------------------------------|-----------------------------------|
| March 1, 2004     | March 1, 2004 - December 31, 2005 | 15,458                            |
| March 1, 2004     | March 1, 2004 - December 31, 2006 | 31,384                            |

Participants may earn additional performance shares if the Company's total shareholder return exceeds the 50<sup>th</sup> percentile of the selected peer group. The final value of the performance shares may vary according to the number of shares of common stock that are ultimately granted based upon the performance criteria. Compensation expense recognized for the performance share awards for the quarter ended March 31, 2004, was \$0.1 million. The performance awards are paid in 50 percent cash and 50 percent common stock.

- 932 shares of the Preferred Stock, Series 2000-A were converted into 26,628 shares of common stock at the conversion price of \$35.00 per share.
- The Company granted 98,000 stock options at a weighted average exercise price of \$30.14 per share.
- 55,934 stock options were exercised at a weighted average price of \$20.34 per share.
- The Company issued 10,310 shares of common stock from treasury shares under the short-term incentive compensation plan. Compensation cost related to the award was approximately \$0.3 million, which was accrued for in 2003.
- The Company granted 1,886 restricted stock units. The pre-tax compensation cost related to the award of approximately \$0.1 million will be recognized over the three year vesting period.
- The Company acquired 4,005 shares of treasury stock related to a forfeiture of unvested restricted stock.
- The Company issued 2,437 shares of common stock under its employee stock purchase plan at a price of \$28.59 per share.

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- The Company issued 20,948 shares of common stock under its dividend reinvestment plan at a weighted average price of \$30.33 per share.

(11) CHANGES IN LONG-TERM DEBT



On January 30, 2004, the Company repaid \$45 million of the long-term debt outstanding on the project-level debt at our Fountain Valley facility.

(12) GUARANTEES

The Company has entered into various agreements providing financial or performance assurance to third parties on behalf of certain subsidiaries. Such agreements include guarantees of debt obligations, performance obligations under contracts and indemnification for reclamation and surety bonds.

As prescribed in FASB Interpretation No. 45, the Company records a liability for the fair value of the obligation it has undertaken for guarantees issued after December 31, 2002. The liability recognition requirements of FASB Interpretation No. 45 are to be applied on a prospective basis to guarantees issued or modified after December 31, 2002, while the disclosure requirements are applied to all guarantees.

As of March 31, 2004 the Company had the following guarantees in place (in thousands):

| Nature of Guarantee                                                                                            | Outstanding at<br>March 31,<br>2004 | Year<br>Expiring           |
|----------------------------------------------------------------------------------------------------------------|-------------------------------------|----------------------------|
| Guarantee payments under the Las Vegas Cogen I Power Purchase and Sales Agreement with Sempra Energy Solutions | \$ 10,000                           | Upon 5 days written notice |
| Guarantee payments under certain energy marketing derivative, power and gas agreements                         | 2,500                               | 2004                       |
| Guarantee of certain obligations under Enserco's credit facility                                               | 3,000                               | 2004                       |
| Guarantee of obligation of Las Vegas Cogen II under an interconnection and operation agreement                 | 750                                 | 2005                       |
| Guarantee payments of Black Hills Power under various transactions with Idaho Power Company                    | 500                                 | 2005                       |
| Guarantee obligations under the Wygen Plant Lease                                                              | 111,018                             | 2008                       |
| Guarantee payment and performance under credit agreements for two combustion turbines                          | 29,714                              | 2010                       |
| Indemnification for subsidiary reclamation/surety bonds                                                        | 29,759                              | Ongoing                    |
|                                                                                                                | \$187,241                           |                            |

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The Company has guaranteed up to \$10.0 million of payments of its power generation subsidiary, Las Vegas Cogeneration Limited Partnership, to Sempra Energy Solutions which may arise from transactions entered into by the two parties under a Master Power Purchase and Sale Agreement. To the extent liabilities exist under this power and purchase sale agreement subject to this guarantee, such liabilities are included in the Condensed Consolidated Balance Sheets. The guarantee may be terminated for future transactions upon five days written notice.

The Company has guaranteed up to \$2.5 million of commodity related payments for its energy marketing subsidiary, Enserco Energy Inc. This guarantee was provided to the counterparty in order to facilitate physical and financial transactions in energy commodities and related services. To the extent liabilities exist under the commodity- related contract subject to this guarantee, such liabilities are included in the Condensed Consolidated Balance Sheets. The guarantee expires on June 30, 2004.

The Company has guaranteed up to \$3.0 million of Enserco Energy Inc.'s obligations to Fortis Capital Corp. under its credit facility. There are no liabilities on the Company's Condensed Consolidated Balance Sheets associated with this guarantee.

The Company has guaranteed up to \$0.8 million of the obligations of Las Vegas Cogeneration II, LLC under an interconnection and operations agreement for the LV II unit. To the extent liabilities exist under the interconnection and operations agreement, such liabilities are included in the Condensed Consolidated Balance Sheets. The obligation is due May 20, 2005.

The Company has guaranteed up to \$0.5 million of the obligations of its electric utility subsidiary, Black Hills Power, Inc., under various transactions with Idaho Power Company. To the extent liabilities exist under these transactions and subject to this guarantee, such liabilities are included in the Condensed Consolidated Balance Sheets. This guarantee expires on the earlier of March 1, 2005 or 30 days after the date creditor receives written notification from guarantor.

The Company has guaranteed the obligations of Black Hills Wyoming under the Agreement for Lease and Lease for the Wygen plant. The Company consolidates the Variable Interest Entity that owns the plant into its financial statements, therefore the obligations associated with this guarantee are included in the Condensed Consolidated Balance Sheets. If the lease was terminated and sold, the Company's obligation is the amount of deficiency in the proceeds from the sale to repay the investors up to a maximum of 83.5 percent of the cost of the project. At March 31, 2004, the Company's maximum obligation under the guarantee is \$111.0 million (83.5 percent of \$133.0 million, the cost incurred for the Wygen plant). The initial term of the lease is five years with two five-year renewal options.

The Company has guaranteed the payment of \$25.5 million of debt of Black Hills Wyoming and \$4.2 million of debt for another of its wholly-owned subsidiaries, Black Hills Generation. The debt is recorded on the Company's Condensed Consolidated Balance Sheets and is due December 18, 2010.

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In addition, at March 31, 2004, the Company had guarantees in place totaling approximately \$29.8 million for reclamation and surety bonds for its subsidiaries. The guarantees were entered into in the normal course of business. To the extent liabilities are incurred as a result of activities covered by the surety bonds, such liabilities are included in the Company's Condensed Consolidated Balance Sheets.

(13) EMPLOYEE BENEFIT PLANS

Defined Benefit Pension Plan

The Company has a noncontributory defined benefit pension plan (Plan) covering the employees of the Company and the following subsidiaries, Black Hills Power, Inc., Wyodak Resources Development Corp., Black Hills Exploration and Production and Daksoft who meet certain eligibility requirements.

The components of net periodic benefit cost for the Plan for the three months ended March 31 are as follows (in thousands):

|                                    | 2004          | 2003          |
|------------------------------------|---------------|---------------|
| Service cost                       | \$ 443        | \$ 323        |
| Interest cost                      | 909           | 838           |
| Expected return on plan assets     | (1,129)       | (780)         |
| Amortization of prior service cost | 58            | 58            |
| Amortization of net loss           | 375           | 352           |
| Net periodic benefit cost          | <u>\$ 656</u> | <u>\$ 791</u> |

The Company does not anticipate that a contribution will be made to the Plan in the 2004 fiscal year.

Supplemental Nonqualified Defined Benefit Plan

The Company has various supplemental retirement plans for outside directors and key executives of the Company. The Plans are nonqualified defined benefit plans.

The components of net periodic benefit cost for the supplemental nonqualified plans for the three months ended March 31 are as follows (in thousands):

|                                    | 2004          | 2003          |
|------------------------------------|---------------|---------------|
| Service cost                       | \$ 134        | \$ 106        |
| Interest cost                      | 241           | 190           |
| Amortization of prior service cost | 2             | (1)           |
| Amortization of net loss           | 187           | 128           |
| Net periodic benefit cost          | <u>\$ 564</u> | <u>\$ 423</u> |

The Company anticipates that contributions to the Plan for the 2004 fiscal year will be approximately \$0.8 million; the contributions are expected to be in the form of benefit payments.

Non-pension Defined Benefit Postretirement Plan

Employees who are participants in the Company's Postretirement Healthcare Plan and who retire from the Company on or after attaining age 55 after completing at least five years of service to the Company are entitled to postretirement healthcare benefits. These financial statements and this Note do not reflect the effects of the 2003 Medicare Act on the postretirement benefit plan (see Note 4).

The components of net periodic benefit cost for the Postretirement Healthcare Plan for the three months ended March 31 are as follows (in thousands):

|                                           | 2004          | 2003          |
|-------------------------------------------|---------------|---------------|
| Service cost                              | \$ 140        | \$ 96         |
| Interest cost                             | 166           | 144           |
| Amortization of net transition obligation | 37            | 37            |
| Amortization of prior service cost        | (6)           | (6)           |
| Amortization of net loss                  | 47            | 22            |
| Net periodic benefit cost                 | <u>\$ 384</u> | <u>\$ 293</u> |

The Company anticipates that contributions to the Plan for the 2004 fiscal year will be approximately \$0.6 million; the contributions are expected to be in the form of benefits and administrative costs paid.

The Company's reportable segments are those that are based on the Company's method of internal reporting, which generally segregates the strategic business groups due to differences in products, services and regulation. As of March 31, 2004, substantially all of the Company's operations and assets are located within the United States. The Company's operations are conducted through six reporting segments that include: Wholesale Energy group consisting of the following segments: Mining, which engages in the mining and sale of coal from its mine near Gillette, Wyoming; Oil and Gas, which produces, explores and operates oil and gas interests located in the Rocky Mountain region, Texas, California and other states; Energy Marketing, which markets natural gas, oil and related services to customers in the Midwest, Southwest, Rocky Mountain, West Coast and Northwest regions and transports crude oil in Texas; and Power Generation, which produces and sells generating capacity and electricity to wholesale customers; Retail Services group consisting of the following segments: Electric, which supplies electric utility service to western South Dakota, northeastern Wyoming and southeastern Montana; and Communications, which primarily markets broadband communications services.

Prior to 2004, the Company's communications segment marketed campground reservation services and software development services to external parties through Daksoft, Inc. With the sale of certain assets and a change in its business strategy, Daksoft now primarily provides information technology support to the Company. With its focus now on corporate support, beginning with the first quarter 2004, Daksoft's results of operations are included with corporate results.

Other than noted above, segment information follows the same accounting policies as described in Note 18 of the Company's 2003 Annual Report on Form 10-K. In accordance with the provisions of SFAS No. 71 "Accounting for the Effects of Certain Types of Regulation" (SFAS 71), intercompany fuel sales to the electric utility are not eliminated.

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Segment information included in the accompanying Condensed Consolidated Statements of Income is as follows (in thousands):

|                                  | External<br>Operating Revenues | Inter-segment<br>Operating Revenues | Income (loss)<br>from<br>Continuing<br>Operations |
|----------------------------------|--------------------------------|-------------------------------------|---------------------------------------------------|
| Quarter to Date and Year to Date |                                |                                     |                                                   |
| March 31, 2004                   |                                |                                     |                                                   |
| Energy marketing*                | \$ 164,435                     | \$ --                               | \$ 3,969                                          |
| Power generation                 | 35,137                         | --                                  | (2,077)                                           |
| Oil and gas                      | 16,321                         | 83                                  | 3,687                                             |
| Mining                           | 5,546                          | 3,182                               | 1,722                                             |
| Electric                         | 41,626                         | 21                                  | 5,037                                             |
| Communications                   | 8,455                          | --                                  | (1,784)                                           |
| Corporate                        | 310                            | 561                                 | (590)                                             |
| Intersegment eliminations        | --                             | (1,349)                             | --                                                |
| <b>Total</b>                     | <b>\$ 271,830</b>              | <b>\$ 2,498</b>                     | <b>\$ 9,964</b>                                   |

\*All periods presented reflect a net presentation of revenues at our gas marketing subsidiary and a gross presentation of revenues at our crude oil marketing subsidiary in accordance with EITF 02-3 and EITF 99-19.

|                                  | External<br>Operating Revenues | Inter-segment<br>Operating Revenues | Income (loss) from<br>Continuing<br>Operations |
|----------------------------------|--------------------------------|-------------------------------------|------------------------------------------------|
| Quarter to Date and Year to Date |                                |                                     |                                                |
| March 31, 2003                   |                                |                                     |                                                |
| Energy marketing*                | \$ 182,427                     | \$ --                               | \$ 4,245                                       |
| Power generation                 | 39,722                         | --                                  | 3,377                                          |
| Oil and gas                      | 8,990                          | 72                                  | 1,862                                          |
| Mining                           | 5,394                          | 2,836                               | 1,581                                          |
| Electric                         | 43,749                         | 13                                  | 6,699                                          |
| Communications                   | 8,687                          | --                                  | (1,809)                                        |
| Corporate                        | --                             | --                                  | (290)                                          |
| Intersegment eliminations        | --                             | (445)                               | --                                             |
| <b>Total</b>                     | <b>\$ 288,969</b>              | <b>\$ 2,476</b>                     | <b>\$ 15,665</b>                               |

\*All periods presented reflect a net presentation of revenues at our gas marketing subsidiary and a gross presentation of revenues at our crude oil marketing subsidiary in accordance with EITF 02-3 and EITF 99-19.

The Company had no material changes in total assets of its reporting segments, as reported in Note 18 of the Company's 2003 Annual Report on Form 10-K, beyond changes resulting from normal operating activities.

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The Company actively manages its exposure to certain market risks as described in Note 2 of the Company's 2003 Annual Report on Form 10-K. Details of derivative and hedging activities included in the accompanying Condensed Consolidated Balance Sheets and Condensed Consolidated Statements of Income are as follows:

### Trading Activities

#### Natural Gas Marketing

The contract or notional amounts and terms of our natural gas marketing activities and derivative commodity instruments that were marked-to-market on March 31, 2004, December 31, 2003 and March 31, 2003 are as follows:

|                                             | March 31, 2004   |                       | December 31, 2003 |                       | March 31, 2003   |                       |
|---------------------------------------------|------------------|-----------------------|-------------------|-----------------------|------------------|-----------------------|
|                                             | Notional Amounts | Maximum Term in Years | Notional Amounts  | Maximum Term in Years | Notional Amounts | Maximum Term in Years |
| (thousands of MMBtu's)                      |                  |                       |                   |                       |                  |                       |
| Natural gas basis swaps purchased           | 36,180           | 2                     | 13,028            | 1                     | 63,167           | 2                     |
| Natural gas basis swaps sold                | 38,340           | 2                     | 12,691            | 1                     | 65,303           | 2                     |
| Natural gas fixed-for-float swaps purchased | 16,578           | 1.5                   | 19,645            | 1.5                   | 12,589           | 2                     |
| Natural gas fixed-for-float swaps sold      | 26,779           | 1.75                  | 21,752            | 1.5                   | 19,194           | 1                     |
| Natural gas physical purchases              | 72,888           | 1.75                  | 50,757            | 2.25                  | 57,512           | 1                     |
| Natural gas physical sales                  | 59,969           | 2                     | 44,066            | 2.25                  | 37,979           | 2                     |

Derivative contracts related to our natural gas marketing activities were marked to fair value and the gains and/or losses recognized in earnings. The amounts included in the accompanying Condensed Consolidated Balance Sheets and Statements of Income are as follows:

|                   | Current Derivative Assets | Non-current Derivative Assets | Current Derivative Liabilities | Non-current Derivative Liabilities | Unrealized Gain (loss) |
|-------------------|---------------------------|-------------------------------|--------------------------------|------------------------------------|------------------------|
| (in thousands)    |                           |                               |                                |                                    |                        |
| March 31, 2004    | \$ 22,918                 | \$ 257                        | \$ 22,372                      | \$ 165                             | \$ 638                 |
| December 31, 2003 | \$ 26,376                 | \$ 1,002                      | \$ 26,495                      | \$ 1,291                           | \$ (408)               |
| March 31, 2003    | \$ 28,418                 | \$ 479                        | \$ 27,490                      | \$ 2,138                           | \$ (731)               |

For the three month periods ended March 31, 2004 and 2003, contracts and other activities at our natural gas marketing operations are accounted for under the provisions of EITF 02-3 and SFAS 133. As such, all of the contracts and other activities at the Company's natural gas marketing operations that meet the definition of a derivative under SFAS 133 are accounted for at fair value. EITF 02-3, adopted on January 1, 2003, precludes mark-to-market accounting for energy trading contracts that are not derivatives pursuant to SFAS 133. The prior authoritative accounting guidance applied was EITF 98-10, which allowed a broad interpretation of what constituted "trading activity" and hence what would be marked-to-market. EITF 02-3 took a much narrower view of what "trading activity" should be marked-to-market, limiting mark-to-market treatment primarily to only those contracts that meet the definition of a derivative under SFAS 133. At our natural gas marketing operations, we often employ strategies that include derivative contracts along with inventory, storage and transportation positions to accomplish the objectives of our producer services, end-use origination and wholesale marketing groups. Except in very limited circumstances when we are able to designate transportation, storage or inventory positions as part of a fair value hedge, SFAS 133 generally does not allow us to mark our inventory, transportation or storage positions to market. The result is that while a significant majority of our natural gas marketing positions are fully economically hedged, we are required to mark some parts of our overall strategies (the derivatives), but are generally precluded from marking the rest of our economic hedges (transportation, inventory or storage) to market. Volatility in reported earnings and derivative positions should be expected given these accounting requirements.

### Non-trading Energy Activities

#### Crude Oil Marketing

The contract or notional amounts and terms of our crude oil contracts, are set forth below:

|                        | March 31, 2004   |                       | December 31, 2003 |                       | March 31, 2003   |                       |
|------------------------|------------------|-----------------------|-------------------|-----------------------|------------------|-----------------------|
|                        | Notional Amounts | Maximum Term in Years | Notional Amounts  | Maximum Term in Years | Notional Amounts | Maximum Term in Years |
| (thousands of barrels) |                  |                       |                   |                       |                  |                       |
| Crude oil purchased    | 1,574            | .75                   | 2,688             | 0.5                   | 3,530            | .75                   |
| Crude oil sold         | 2,215            | .75                   | 2,253             | 0.5                   | 3,426            | .75                   |

As of March 31, 2004 and December 31, 2003, all of the Company's crude oil marketing contracts are accounted for under the accrual method of accounting. Oil contracts entered into on or before October 25, 2002 and still in effect at March 31, 2003, were marked to fair value and the gains and/or losses recognized in earnings on March 31, 2003. The amounts related to the accompanying 2003 Condensed Consolidated Balance Sheet and Statement of Income are as follows (in thousands):

|                | Current<br>Derivative<br>Assets | Non-current<br>Derivative<br>Assets | Current<br>Derivative<br>Liabilities | Non-current<br>Derivative | Liabilities |
|----------------|---------------------------------|-------------------------------------|--------------------------------------|---------------------------|-------------|
| March 31, 2003 | \$ 648                          | \$ --                               | \$ 383                               | \$ --                     | \$ 265      |

### Oil and Gas Exploration and Production

On March 31, 2004, December 31, 2003 and March 31, 2003 the Company had the following swaps and related balances (in thousands):

| (in thousands)    | Notional* | Maximum<br>Terms in<br>Years | Current<br>Derivative<br>Assets | Non-current<br>Derivative<br>Assets | Current<br>Derivative<br>Liabilities | Non-<br>current<br>Derivative<br>Liabilities | Pre-tax<br>Accumulated<br>Other<br>Comprehensive<br>Income (Loss) | Pre-tax<br>Income<br>(Loss) |
|-------------------|-----------|------------------------------|---------------------------------|-------------------------------------|--------------------------------------|----------------------------------------------|-------------------------------------------------------------------|-----------------------------|
| March 31, 2004    |           |                              |                                 |                                     |                                      |                                              |                                                                   |                             |
| Crude oil swaps   | 390,000   | 1.75                         | \$ --                           | \$ --                               | \$2,228                              | \$258                                        | \$ (2,448)                                                        | \$(38)                      |
| Natural gas swaps | 2,870,000 | 1                            | 25                              | --                                  | 2,548                                | --                                           | (2,523)                                                           | --                          |
|                   |           |                              | \$ 25                           | \$ --                               | \$4,776                              | \$258                                        | \$ (4,971)                                                        | \$(38)                      |
| December 31, 2003 |           |                              |                                 |                                     |                                      |                                              |                                                                   |                             |
| Crude oil swaps   | 360,000   | 1                            | \$ --                           | \$ --                               | \$1,445                              | \$ --                                        | \$ (1,384)                                                        | \$(61)                      |
| Natural gas swaps | 4,830,000 | 1.25                         | 172                             | --                                  | 1,611                                | 25                                           | (1,462)                                                           | (2)                         |
|                   |           |                              | \$ 172                          | \$ --                               | \$3,056                              | \$ 25                                        | \$ (2,846)                                                        | \$(63)                      |
| March 31, 2003    |           |                              |                                 |                                     |                                      |                                              |                                                                   |                             |
| Crude oil swaps   | 480,000   | 2                            | \$ 49                           | \$ 17                               | \$ 897                               | \$ --                                        | \$ (783)                                                          | \$(48)                      |
| Natural gas swaps | 5,580,000 | 1                            | 1,921                           | --                                  | 1,497                                | --                                           | 424                                                               | --                          |
|                   |           |                              | \$1,970                         | \$ 17                               | \$2,394                              | \$ --                                        | \$ (359)                                                          | \$(48)                      |

\*crude in barrels, gas in MMBtu's

Based on March 31, 2004 market prices, a \$4.8 million loss will be realized and reported in earnings during the next twelve months related to hedges of production. These estimated realized losses for the next twelve months were calculated using March 31, 2004 market prices. Estimated and actual realized losses will likely change during the next twelve months as market prices change.

### Financing Activities

On March 31, 2004, December 31, 2003 and March 31, 2003, the Company's interest rate swaps and related balances were as follows (in thousands):

|                                  | Current<br>Notional<br>Amount | Weighted<br>Average<br>Fixed<br>Interest<br>Rate | Maximum<br>Terms in<br>Years | Current<br>Derivative<br>Assets | Non-current<br>Derivative<br>Assets | Current<br>Derivative<br>Liabilities | Non-current<br>Derivative<br>Liabilities | Pre-tax<br>Accumulated<br>Other<br>Comprehensive<br>Loss |
|----------------------------------|-------------------------------|--------------------------------------------------|------------------------------|---------------------------------|-------------------------------------|--------------------------------------|------------------------------------------|----------------------------------------------------------|
| March 31,<br>2004                |                               |                                                  |                              |                                 |                                     |                                      |                                          |                                                          |
| Swaps on<br>project<br>financing | \$113,000                     | 4.48%                                            | 2.5                          | \$271                           | \$ --                               | \$3,178                              | \$2,471                                  | \$ (5,378)                                               |
| December 31,<br>2003             |                               |                                                  |                              |                                 |                                     |                                      |                                          |                                                          |
| Swaps on<br>project<br>financing | \$113,000                     | 4.48%                                            | 2.75                         | \$256                           | \$ --                               | \$3,247                              | \$1,931                                  | \$ (4,922)                                               |

|                            |              |       |      |       |       |         |         |            |
|----------------------------|--------------|-------|------|-------|-------|---------|---------|------------|
| corporate debt             | 25,000       | 5.28% | 0.25 | --    | --    | 169     | --      | (169)      |
| Total                      | \$138,000    |       |      | \$256 | \$ -- | \$3,416 | \$1,931 | \$ (5,091) |
| March 31, 2003             |              |       |      |       |       |         |         |            |
| Swaps on project financing | \$188,000(a) | 4.24% | 4    | \$205 | \$ -- | \$4,633 | \$3,774 | \$ (8,202) |
| Swaps on corporate debt    | 125,000      | 4.12% | 1    | 640   | --    | 939     | --      | (299)      |
| Total                      | \$313,000    |       |      | \$845 | \$ -- | \$5,572 | \$3,774 | \$ (8,501) |

(a) Amounts exclude interest rate swaps related to our discontinued hydroelectric operations, sold in September 2003. At March 31, 2003, these swaps had a notional amount of \$63.9 million and a fair value of \$(9.2) million. The related balances are currently classified in "discontinued operations".

Based on March 31, 2004 market interest rates and balances, approximately \$2.9 million will be realized as additional interest expense during the next twelve months. Estimated and realized amounts will likely change during the next twelve months as market interest rates change.

#### (16) LEGAL PROCEEDINGS

The Company is subject to various legal proceedings, claims and litigation as described in Note 14 of the Company's 2003 Annual Report on Form 10-K. There have been no material developments in these proceedings or any new material proceedings that have developed during the first quarter of 2004.

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#### (17) GAIN ON SALE OF ASSETS

On March 1, 2004, the Company's subsidiary, Daksoft, Inc., sold assets used in its campground reservation system. The Company recorded a pre-tax gain on the sale of the assets of \$1.0 million, which is included as an offset to Operating expenses, Administrative and general on the 2004 Condensed Consolidated Statement of Income. Prior to this sale, for segment reporting (Note 14) results of operations for Daksoft were included in the Communications Group and Segment. As Daksoft now primarily provides information technology support to the Company, its results are included in "Corporate" for segment reporting.

#### (18) ACQUISITION

On March 10, 2003, the Company completed its acquisition of the Denver-based Mallon Resources Corporation as further described in Note 19 of the Company's 2003 Annual Report on Form 10-K. The results of operations of Mallon Resources Corporation have been included in the accompanying Condensed Consolidated Financial Statements since the acquisition date.

The following pro forma consolidated results of operations have been prepared as if the Mallon acquisition had occurred on January 1, 2003 (in thousands):

|                                   | Three Months Ended<br>March 31<br>2003 |
|-----------------------------------|----------------------------------------|
| Operating revenues                | \$294,386                              |
| Income from continuing operations | \$15,217                               |
| Net income                        | \$13,730                               |
| Earnings per share--              |                                        |
| Basic:                            |                                        |
| Continuing operations             | \$0.55                                 |
| Total                             | \$0.50                                 |
| Diluted:                          |                                        |
| Continuing operations             | \$0.55                                 |
| Total                             | \$0.49                                 |

The above pro forma information is presented for informational purposes only and is not necessarily indicative of the results of operations that actually would have been achieved had the acquisition been consummated as of that time, nor is it intended to be a projection of future results.

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#### (19) PENDING ACQUISITION

On January 13, 2004, the Company entered into a Stock Purchase Agreement to acquire from Xcel Energy Inc. all of the outstanding capital stock of its subsidiary, Cheyenne Light, Fuel & Power Company (Cheyenne), a Wyoming corporation. Cheyenne owns and operates transmission and distribution facilities to provide electricity and natural gas to consumers in Laramie County, Wyoming. The consideration for the acquisition includes a cash payment

plus assumption of outstanding debt of Cheyenne. The acquisition, which is subject to federal and state regulatory approvals, is expected to close prior to December 31, 2004.

(20) DISCONTINUED OPERATIONS

The Company accounts for its discontinued operations under the provisions of Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," (SFAS 144). Accordingly, results of operations and the related charges for discontinued operations have been classified as "Income from discontinued operations, net of tax" in the accompanying Condensed Consolidated Statements of Income. Assets and liabilities of the discontinued operations have been reclassified and reflected on the accompanying Condensed Consolidated Balance Sheets as "Assets of discontinued operations" and "Liabilities of discontinued operations." For comparative purposes, all prior periods presented have been restated to reflect the reclassifications on a consistent basis.

**Adoption of Plan to Sell Pepperell Plant**

During the third quarter of 2003, the Company adopted a plan to sell the 40 megawatt gas-fired Pepperell plant, which is part of the non-regulated Power Generation segment. The Pepperell plant is the Company's only remaining generation asset in the eastern market and management has determined that it is a non-strategic asset. Management currently believes the assets will be sold by September 30, 2004. For business segment reporting purposes, the Pepperell plant results were previously included in the Power Generation segment.

Revenues and net income from the discontinued operations are as follows (in thousands):

|                                           | Three Months Ended<br>March 31 |          |
|-------------------------------------------|--------------------------------|----------|
|                                           | 2004                           | 2003     |
| Operating revenues                        | \$ --                          | \$ 1,396 |
| Pre-tax loss from discontinued operations | \$ (272)                       | \$ (333) |
| Income tax benefit                        | 94                             | 119      |
| Net loss from discontinued operations     | \$ (178)                       | \$ (214) |

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Assets and liabilities of the discontinued operations are as follows (in thousands):

|                                       | March 31<br>2004 | December 31<br>2003 | March 31<br>2003 |
|---------------------------------------|------------------|---------------------|------------------|
| Current assets                        | \$ 232           | \$ 249              | \$ 810           |
| Property, plant and equipment         | 1,064            | 1,064               | 4,692            |
| Non-current deferred tax asset        | 2,580            | 2,580               | 388              |
| Other current liabilities             | (88)             | (86)                | (14)             |
| Non-current liabilities               | (405)            | (381)               | (18)             |
| Net assets of discontinued operations | \$ 3,383         | \$ 3,426            | \$ 5,858         |

**Sale of Hydroelectric Assets**

On September 30, 2003 the Company sold its seven hydroelectric power plants located in upstate New York.

Revenues and net income from the discontinued operations are as follows (in thousands):

|                                             | Three Months<br>Ended<br>March 31<br>2003 |
|---------------------------------------------|-------------------------------------------|
| Operating revenues                          | \$ 6,491                                  |
| Pre-tax income from discontinued operations | \$ 1,961                                  |
| Income tax expense                          | (554)                                     |
| Net income from discontinued operations     | \$ 1,407                                  |

Assets and liabilities of the discontinued operations are as follows (in thousands):

|                               | March 31<br>2003 |
|-------------------------------|------------------|
| Current assets                | \$ 8,693         |
| Property, plant and equipment | 147,431          |
| Goodwill                      | 9,772            |
| Other non-current assets      | 3,813            |
| Current derivative liability  | (4,253)          |
| Other current liabilities     | (12,744)         |

|                                       |           |
|---------------------------------------|-----------|
| Long-term debt                        | (75,624)  |
| Non-current derivative liability      | (4,939)   |
| Other non-current liabilities         | (6,226)   |
|                                       |           |
| Net assets of discontinued operations | \$ 65,923 |

**(21) SUBSEQUENT EVENT**

On April 1, 2004, the Company's long-term tolling contract to provide capacity and energy from the Las Vegas II power plant to Nevada Power Company (NPC), a subsidiary of Sierra Pacific Resources, became effective. The contract is a tolling arrangement whereby NPC is responsible for supplying natural gas. The Las Vegas II power plant, comprised of combined-cycle gas turbines, is rated at 224 megawatts. The power plant's capacity and energy will be fully dispatchable by NPC to serve its retail load.

The Company has guaranteed up to \$5.0 million of payments of its power generation subsidiary, Las Vegas Cogeneration II, LLC to Nevada Power Company, which may arise from transactions under the Western Systems Power Pool Agreement dated October 1, 2003, and the related Confirmation Agreement dated December 19, 2003. To the extent liabilities exist under this agreement subject to this guarantee, such liabilities are included in the Condensed Consolidated Balance Sheets. The guarantee will expire upon the payment in full of all the obligations under the contract, which expires in 2013.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

We are a diversified energy holding company operating principally in the United States with two major business groups – wholesale energy and retail services. We report for our business groups in the following financial segments:

| <u>Business Group</u>         | <u>Financial Segment</u>               |
|-------------------------------|----------------------------------------|
| <i>Wholesale energy group</i> | Power generation                       |
|                               | Oil and gas exploration and production |
|                               | Coal mining                            |
|                               | Energy marketing                       |
|                               | Electric utility                       |
| <i>Retail services group</i>  | Communications                         |

Our wholesale energy group, Black Hills Energy, Inc., engages in the production of electric power through ownership of a diversified portfolio of generating plants and the sale of electric power and capacity primarily under long-term contracts, the production of coal, natural gas and crude oil primarily in the Rocky Mountain region, and the marketing and transportation of fuel products. Our retail services group consists of our electric utility and communications segments. Our electric utility, Black Hills Power, Inc., generates, transmits and distributes electricity to an average of approximately 61,000 customers in South Dakota, Wyoming and Montana. Our communications segment provides broadband communications services to over 26,000 residential and business customers in Rapid City and the Northern Black Hills region of South Dakota through Black Hills FiberCom, LLC.

In 2003, we made the decision to divest of our non-strategic power generation assets located in the Northeastern United States. On September 30, 2003, we sold our seven hydroelectric power plants located in Upstate New York.

The following discussion should be read in conjunction with Item 7. – Management's Discussion and Analysis of Financial Condition and Results of Operations – included in our 2003 Annual Report on Form 10-K filed with the Securities and Exchange Commission.

### Results of Operations

#### Consolidated Results

Revenue and Income (loss) from continuing operations provided by each business group as a percentage of our total revenue and total income (loss) from continuing operations were as follows:

|                  | <b>Three Months Ended</b> |             |
|------------------|---------------------------|-------------|
|                  | <b>March 31</b>           |             |
|                  | <b>2004</b>               | <b>2003</b> |
| Revenues         |                           |             |
| Wholesale energy | 82%                       | 82%         |
| Electric utility | 15                        | 15          |
| Communications   | 3                         | 3           |
|                  | 100%                      | 100%        |

Income/ (Loss) from Continuing Operations



|                  |      |      |
|------------------|------|------|
| Wholesale energy | 73%  | 71%  |
| Electric utility | 51   | 43   |
| Communications   | (18) | (12) |
| Corporate        | (6)  | (2)  |
|                  | 100% | 100% |

Discontinued operations in 2004 represent the operations of our 40 MW Pepperell power plant, our last power plant in the Eastern region, which is currently held for sale. Discontinued operations in 2003 represent the Pepperell plant as well as operations of the hydroelectric power plants located in upstate New York, which were sold on September 30, 2003.

**Three Months Ended March 31, 2004 Compared to Three Months Ended March 31, 2003.** Consolidated income from continuing operations for the three-month period ended March 31, 2004 was \$10.0 million or \$0.30 per share compared to \$15.7 million or \$0.58 per share in the same period of the prior year. Income from continuing operations for the three-month period ended March 31, 2004 includes a gain on the sale of certain assets that resulted in a net benefit of \$0.02 per share after-tax. This gain on sale is included in our "Corporate" results.

Per share results in the first quarter of 2004 were also affected by an increase of 5.4 million weighted average shares outstanding, compared to the same period in 2003, due primarily to a 4.6 million share common stock offering in April 2003.

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Net income for the three months ended March 31, 2003, included a charge of \$2.7 million or (\$0.10) per share for change in accounting principles. The change in accounting principles reflect a \$2.9 million charge related to the adoption of EITF 02-3 and a \$0.2 million benefit related to the adoption of SFAS 143.

Discussion of results from our operating groups and segments are included in the following pages.

## Wholesale Energy Group

|                                                            | Three Months Ended<br>March 31 |            |
|------------------------------------------------------------|--------------------------------|------------|
|                                                            | 2004                           | 2003       |
|                                                            | (in thousands)                 |            |
| Revenue:                                                   |                                |            |
| Energy marketing*                                          | \$ 164,435                     | \$ 182,427 |
| Power generation                                           | 35,137                         | 39,722     |
| Oil and gas                                                | 16,404                         | 9,062      |
| Mining                                                     | 8,728                          | 8,230      |
| Total revenue                                              | 224,704                        | 239,441    |
| Equity in earnings (losses) of unconsolidated subsidiaries | (249)                          | 456        |
| Operating expenses                                         | 206,935                        | 215,239    |
| Operating income                                           | \$ 17,520                      | \$ 24,658  |
| Income from continuing operations                          | \$ 7,301                       | \$ 11,065  |

\*All periods presented reflect a net presentation of revenues at our gas marketing subsidiary and a gross presentation of revenues at our crude oil marketing subsidiary in accordance with EITF 02-3 and EITF 99-19.

The following is a summary of sales volumes of our coal, oil and natural gas production and power generation capacity:

|                                                 | Three Months Ended<br>March 31 |                |
|-------------------------------------------------|--------------------------------|----------------|
|                                                 | 2004                           | 2003           |
| Fuel production:                                |                                |                |
| Tons of coal sold                               | 1,203,600                      | 1,143,000      |
| Barrels of oil sold                             | 114,300                        | 103,560        |
| Mcf of natural gas sold                         | 2,394,300                      | 1,300,100      |
| Mcf equivalent sales                            | 3,079,900                      | 1,921,500      |
|                                                 |                                | March 31       |
|                                                 |                                | 2004      2003 |
| Independent power capacity:                     |                                |                |
| MWs of independent power capacity in service(a) | 1,004                          | 1,046          |

(a) Capacity in service includes 40 MW and 82 MW in 2004 and 2003, respectively, which are currently reported as "Discontinued operations."

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The following is a summary of average daily energy marketing volumes:

|                      | Three Months Ended<br>March 31 |           |
|----------------------|--------------------------------|-----------|
|                      | 2004                           | 2003      |
| Natural gas - MMBtus | 1,584,200                      | 1,188,000 |
| Crude oil - barrels  | 49,700                         | 58,000    |

Discussion of results from our Wholesale Energy group's operating segments are as follows:

#### Energy Marketing

|                                                                         | Three Months Ended<br>March 31 |            |
|-------------------------------------------------------------------------|--------------------------------|------------|
|                                                                         | 2004                           | 2003       |
|                                                                         | (in thousands)                 |            |
| Revenue*                                                                | \$ 164,435                     | \$ 182,427 |
| Operating income                                                        | 6,301                          | 6,678      |
| Income from continuing operations before change in accounting principle | 3,969                          | 4,245      |
| Change in accounting principle                                          | --                             | (2,870)    |
| Net income                                                              | 3,969                          | 1,375      |

\*All periods presented reflect a net presentation of revenues at our gas marketing subsidiary and a gross presentation of revenues at our crude oil marketing subsidiary in accordance with EITF 02-3 and EITF 99-19.

**Three Months Ended March 31, 2004 Compared to Three Months Ended March 31, 2003.** The decrease in revenues is a result of a 13 percent decrease in crude oil volumes marketed, partially offset by a 4 percent increase in the average price per barrel marketed. Revenue decreases from crude oil marketing were offset by a similar decrease in the cost of crude oil sold.

Income from continuing operations decreased \$0.3 million due to a decrease in gas marketing margins received and a \$0.3 million unrealized mark-to-market loss for 2004, compared to a \$2.4 million unrealized gain in 2003, resulting in a quarter-over-quarter pre-tax decrease of \$2.7 million in unrealized mark-to-market adjustment at our gas marketing operations (See Note 15 for discussion of potential volatility in energy marketing earnings related to accounting treatment of certain hedging activities at our natural gas marketing operations). These items were partially offset by a 33 percent increase in natural gas volumes marketed and a \$1.5 million increase in income from continuing operations at our crude oil marketing and transportation business resulting from an increase in contracted crude oil transportation and storage revenues.

#### Power Generation

|                                                            | Three Months Ended<br>March 31 |           |
|------------------------------------------------------------|--------------------------------|-----------|
|                                                            | 2004                           | 2003      |
|                                                            | (in thousands)                 |           |
| Revenue                                                    | \$ 35,137                      | \$ 39,722 |
| Equity in (losses) earnings of unconsolidated subsidiaries | (199)                          | 117       |
| Operating income                                           | 3,394                          | 13,611    |
| (Loss) income from continuing operations                   | (2,077)                        | 3,377     |

**Three Months Ended March 31, 2004 Compared to Three Months Ended March 31, 2003.** Revenue decreased 12 percent in 2004 compared to 2003 primarily as a result of decreased energy sales at our plants not currently under long-term contract as there had been limited opportunities for economic dispatch due to the prevailing regional power market conditions. This includes a \$5.8 million decrease in revenues at our Las Vegas facility, which has been selling power into the market, when economic to do so, since the September 2003 termination and buyout of the long-term contract at the Las Vegas II plant. A new long-term tolling arrangement for the capacity and energy of the Las Vegas II plant was entered into with Nevada Power Company and became effective April 1, 2004. These decreases were partially offset by additional revenue from a full quarter of capacity and energy payments at our 90 megawatt Wygen plant that became operational in February 2003.

Income from continuing operations decreased \$5.5 million. Decreased earnings were the result of lower revenues, increased fuel cost primarily related to generating costs at our Las Vegas facility, higher depreciation costs primarily related to the Wygen plant, partially offset by lower interest expense from debt reduction from the proceeds of an asset sale and contract termination outweighed higher interest rates.

#### Oil and Gas

|                                                            | Three Months Ended<br>March 31 |          |
|------------------------------------------------------------|--------------------------------|----------|
|                                                            | 2004                           | 2003     |
|                                                            | (in thousands)                 |          |
| Revenue                                                    | \$ 16,404                      | \$ 9,062 |
| Equity in (losses) earnings of unconsolidated subsidiaries | (50)                           | 339      |
| Operating income                                           | 5,842                          | 2,634    |

|                                                                         |       |       |
|-------------------------------------------------------------------------|-------|-------|
| Income from continuing operations before change in accounting principle | 3,687 | 1,862 |
| Change in accounting principle                                          | --    | (127) |
| Net income                                                              | 3,687 | 1,735 |

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**Three Months Ended March 31, 2004 Compared to Three Months Ended March 31, 2003.** Income from continuing operations increased \$1.8 million. Volumes sold increased 60 percent, primarily related to a full quarter of production at the Mallon properties acquired in March 2003. Average gas and oil prices received in 2004 were \$4.54/Mcf and \$28.65/bbl, respectively, compared to \$3.40/Mcf and \$29.17/bbl in 2003. Total operating expenses increased 55 percent primarily related to the additional operations acquired in the Mallon transaction. In addition, 2004 lease operating expenses per Mcfe sold (LOE/MCFE) were flat with 2003.

The following is a summary of our internally estimated economically recoverable oil and gas reserves. These estimates are measured using constant product prices of \$35.76 per barrel of oil and \$5.93 per Mcf of natural gas as of March 31, 2004, and \$31.04 per barrel of oil and \$5.05 per Mcf of natural gas as of March 31, 2003. The increases in reserves are primarily the result of increased product prices. Estimates of economically recoverable reserves for interim periods are based on independent year-end reserve studies updated for acquisitions, drilling activity, property sales and actual production during the interim period. These internally estimated reserves may differ from actual results.

|                               | March 31 |         |
|-------------------------------|----------|---------|
|                               | 2004     | 2003    |
| Barrels of oil (in thousands) | 5,564    | 4,972   |
| Mmcf of natural gas           | 124,852  | 116,630 |
| Total in Mmcf equivalents     | 158,236  | 146,462 |

#### Coal Mining

|                                                                         | Three Months Ended<br>March 31 |          |
|-------------------------------------------------------------------------|--------------------------------|----------|
|                                                                         | 2004                           | 2003     |
|                                                                         | (in thousands)                 |          |
| Revenue                                                                 | \$ 8,728                       | \$ 8,230 |
| Operating income                                                        | 1,983                          | 1,735    |
| Income from continuing operations before change in accounting principle | 1,722                          | 1,581    |
| Change in accounting principle                                          | --                             | 318      |
| Net income                                                              | 1,722                          | 1,899    |

**Three Months Ended March 31, 2004 Compared to Three Months Ended March 31, 2003.** Revenue from our mining segment increased 6 percent for the three-month period ended March 31, 2004, compared to the same period in 2003. The increase is attributable to a 5 percent increase in tons of coal sold. The increase in tons of coal sold was primarily attributable to sales to the Wygen Plant, which began commercial operation in February 2003, and additional sales through the train load-out facility.

Operating expenses increased 4 percent or approximately \$0.2 million, primarily due to higher operating costs related to the increase in production and accruals for taxes.

Income from continuing operations increased 9 percent due to higher production volumes at higher average prices offset by higher taxes and production-related costs.

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## Retail Services Group

### Electric Utility

|                                                  | Three Months Ended<br>March 31 |           |
|--------------------------------------------------|--------------------------------|-----------|
|                                                  | 2004                           | 2003      |
|                                                  | (in thousands)                 |           |
| Revenue                                          | \$ 41,647                      | \$ 43,762 |
| Operating expenses                               | 30,239                         | 30,110    |
| Operating income                                 | \$ 11,408                      | \$ 13,652 |
| Income from continuing operations and net income | \$ 5,037                       | \$ 6,699  |

The following table provides certain operating statistics:

Three Months Ended

|                           | March 31 |         |
|---------------------------|----------|---------|
|                           | 2004     | 2003    |
| Firm (system) sales - MWh | 513,234  | 505,482 |
| Off-system sales - MWh    | 202,294  | 245,727 |

**Three Months Ended March 31, 2004 Compared to Three Months Ended March 31, 2003.** Electric utility revenues decreased 5 percent for the three-month period ended March 31, 2004, compared to the same period in the prior year. The decrease in revenue was primarily due to an 18 percent decrease in off-system electric MWh sales at a 6 percent decrease in average prices received. Decreased off-system megawatt-hour sales were impacted in part by plant availability resulting from scheduled maintenance outages during the three month period ended March 31, 2004. Firm residential, commercial, industrial and wholesale electricity revenues increased 3 percent, 1 percent, 5 percent and 2 percent, respectively. Residential and commercial customers increased 2 percent. Degree days, which is a measure of weather trends, were 7 percent below last year.

Electric operating expenses remained flat for the three-month period ended March 31, 2004, compared to the same period in the prior year. Purchased power increased \$1.2 million due to a 21 percent increase in megawatt-hours purchased, partially offset by a 5 percent decrease in the average cost per megawatt-hour. Gas costs decreased 88 percent due to a 96 percent decrease in megawatt-hours generated with our gas turbines as prevailing prices made it more economical for us to purchase power for our peaking needs when it was available rather than generate energy from our gas turbines. The average cost per megawatt-hour of our gas generation was \$40.57 for the three months ended March 31, 2003 compared to \$35.02 per megawatt-hour for purchased power for the same time period. The decrease in fuel expense was offset by increased maintenance costs for scheduled plant outages, increased health insurance costs and an increase in allocated corporate costs.

Income from continuing operations decreased \$1.7 million primarily due to the decrease in off-system electric revenue and increases in purchased power expense, maintenance expense, health insurance expense and allocated corporate costs, partially offset by an increase in firm system electric sales and a decrease in fuel expense.

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## Communications

|                       | Three Months Ended<br>March 31 |                     |                  |
|-----------------------|--------------------------------|---------------------|------------------|
|                       | 2004                           | 2003                |                  |
|                       | (in thousands)                 |                     |                  |
| Revenue               | \$ 8,455                       | \$                  | 8,687            |
| Operating expenses    | 10,294                         |                     | 10,572           |
| Operating loss        | \$ (1,839)                     | \$                  | (1,885)          |
| Net loss              | \$ (1,784)                     | \$                  | (1,809)          |
|                       | March 31<br>2004               | December 31<br>2003 | March 31<br>2003 |
| Business customers    | 3,156                          | 3,012               | 2,657            |
| Business access lines | 12,508                         | 12,023              | 10,342           |
| Residential customers | 23,478                         | 23,878              | 22,700           |

**Three Months Ended March 31, 2004 Compared to Three Months Ended March 31, 2003.** The communications business group's net loss was \$1.8 million for the three-month periods ended March 31, 2004 and 2003, respectively. Revenues decreased as a result of \$0.8 million in sales incentive costs related to a marketing campaign responding to a local competitor's aggressive pricing pressure, primarily in the fourth quarter of 2003. These sales incentives included six months of service at discounted prices, of which many will become full price service during the second quarter of 2004. Revenue reductions from sales incentives were partially offset by increased customers, compared to 2003. In addition, reduced property tax accruals and a decrease in operations and maintenance expense were partially offset by increased corporate cost allocations.

## **Earnings Guidance**

Based on lower-than-expected results in the first quarter of 2004 and management's current evaluation of capital deployment prospects for the remainder of 2004, the Company expects 2004 income from continuing operations to approximate \$2.00 to \$2.15 per share. The narrowing of guidance takes into consideration possible additional delay in the deployment of excess cash balances for anticipated capital investments in retail and wholesale energy operations, further debt reduction, stock repurchase or other corporate purposes, which, until deployed should result in lower returns from short-term investments instead of higher returns from alternative uses, and a revised expectation that any new development capital deployment likely would not have an accretive effect in 2004 due to the timing of such deployment. The Company continues to expect strong financial performance in 2004 from the oil and gas production business segment, due to expected continued increases in production and an advantageous price environment, and from the energy marketing business segment, due to expected increases in daily volumes marketed.

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## **Critical Accounting Policies**

There have been no material changes in our critical accounting policies from those reported in our 2003 Annual Report on Form 10-K filed with the Securities Exchange Commission. For more information on our critical accounting policies, see Part II, Item 7 in our 2003 Annual Report on Form 10-K.

### Cash Flow Activities

During the three-month period ended March 31, 2004, we generated sufficient cash flow from operations to meet our operating needs, to pay dividends on common and preferred stock, to pay our long-term debt maturities, and to fund our property additions. We plan to fund future property and investment additions primarily through a combination of operating cash flow, increased short-term debt, long-term debt, and long-term non-recourse project financing.

Cash flows from operations increased \$52.9 million for the three-month period ended March 31, 2004 compared to the same period in the prior year primarily due to an \$18.8 million federal income tax refund and changes in working capital.

During the three months ended March 31, 2004, we had cash outflows from investing activities of \$12.0 million, which was primarily related to property, plant and equipment additions in the normal course of business.

During the three months ended March 31, 2004, we had cash outflows from financing activities of \$55.4 million, primarily due to the repayment of debt and payment of quarterly cash dividends on stock. On January 30, 2004, we repaid \$45 million of the project-level debt outstanding on the Fountain Valley project.

### Dividends

Dividends paid on our common stock totaled \$0.31 per share in the first quarter of 2004. This reflects a 3.3 percent increase, as approved by our board of directors in January 2004, from the 2003 quarterly dividend level. The determination of the amount of future cash dividends, if any, to be declared and paid will depend upon, among other things, our financial condition, funds from operations, the level of our capital expenditures, restrictions under our credit facilities and our future business prospects.

### Short-Term Liquidity and Financing Transactions

Our principal sources of short-term liquidity are revolving bank facilities and cash provided by operations. Our liquidity position remained strong during the first quarter of 2004. As of March 31, 2004, we had approximately \$191.5 million of cash unrestricted for operations and \$425 million of credit through revolving bank facilities. Approximately \$55.5 million of the cash balance at March 31, 2004 was restricted by subsidiary debt agreements that limit our subsidiaries' ability to dividend cash to the parent company. The bank facilities consisted of a \$225 million facility due August 20, 2006 and a \$200 million facility due August 27, 2004. These bank facilities can be used to fund our working capital needs, for general corporate purposes, and to provide liquidity for a commercial paper program if implemented. At March 31, 2004, we had no bank borrowings outstanding under these facilities. After inclusion of applicable letters of credit, the remaining borrowing capacity under the bank facilities was \$374.4 million at March 31, 2004.

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The above bank facilities include the following covenants that are common in such arrangements:

- a consolidated net worth in an amount of not less than the sum of \$475 million and 50 percent of the aggregate consolidated net income beginning April 1, 2003;
- a recourse leverage ratio not to exceed 0.65 to 1.00; and
- a fixed charge coverage ratio of not less than 1.5 to 1.0.

If these covenants are violated, it would be considered an event of default entitling the lender to terminate the remaining commitment and accelerate all principal and interest outstanding. As of March 31, 2004, we were in compliance with the above covenants.

Our consolidated net worth was \$710.7 million at March 31, 2004, which was approximately \$207.3 million in excess of the net worth we are required to maintain under the debt covenant described above. The long-term debt component of our capital structure at March 31, 2004 was 53.6 percent, our total debt leverage (long-term debt and short-term debt) was 54.1 percent, and our recourse leverage ratio was approximately 49.5 percent.

In addition, Enserco Energy Inc., our gas marketing unit, has a \$135 million uncommitted, discretionary line of credit to provide support for the purchase of natural gas. As of March 31, 2004, we had a \$3.0 million guarantee to the lender under this facility. At March 31, 2004, there were outstanding letters of credit issued under the facility of \$92.2 million, with no borrowing balances outstanding on the facility.

Similarly, Black Hills Energy Resources, Inc. (BHER), our oil marketing unit, has a \$25 million uncommitted, discretionary credit facility. The facility allows BHER to elect up to \$40 million of available credit via notification to the bank at the beginning of each calendar quarter. This line of credit provides credit support for the purchases of crude oil by BHER. We provided no guarantee to the lender under this facility. At March 31, 2004, BHER had letters of credit outstanding of \$6.1 million.

There were no changes in our corporate credit ratings during the first quarter of 2004.

Our ability to obtain additional financing, if necessary, will depend upon a number of factors, including our future performance and financial results, and capital market conditions. We can provide no assurance that we will be able to raise additional capital on reasonable terms or at all.

There have been no other material changes in our forecasted changes in liquidity requirements from those reported in Item 7 of our 2003 Annual Report on Form 10-K filed with the Securities Exchange Commission.

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## Guarantees

During the first quarter of 2004, a \$5.0 million performance guarantee for Black Hills Wyoming, under a power sales agreement on the Wygen Plant expired. In addition a new \$0.5 million guarantee was issued related to payments under various transactions with Idaho Power Company. At March 31, 2004, we had guarantees totaling \$187.2 million in place.

## Capital Requirements

During the three months ended March 31, 2004, capital expenditures were approximately \$13 million. We currently expect capital expenditures for the entire year 2004 to approximate \$312 million, as detailed in Item 7 of our 2003 Annual Report on Form 10-K filed with the Securities and Exchange Commission.

## RISK FACTORS

There have been no material changes in our risk factors from those reported in Items 1 and 2 of our 2003 Annual Report on Form 10-K filed with the Securities and Exchange Commission.

## NEW ACCOUNTING PRONOUNCEMENTS

Other than the new pronouncements reported in our 2003 Annual Report on Form 10-K filed with the Securities Exchange Commission and those discussed in Note 4 of the Notes to Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q, there have been no new accounting pronouncements issued that when implemented would require us to either retroactively restate prior period financial statements or record a cumulative catch-up adjustment.

## SAFE HARBOR FOR FORWARD LOOKING INFORMATION

This Quarterly Report on Form 10-Q includes “forward-looking statements” as defined by the Securities and Exchange Commission, or SEC. We make these forward-looking statements in reliance on the safe harbor protections provided under the Private Securities Litigation Reform Act of 1995. All statements, other than statements of historical facts, included in this Form 10-Q that address activities, events or developments that we expect, believe or anticipate will or may occur in the future are forward-looking statements. These forward-looking statements are based on assumptions which we believe are reasonable based on current expectations and projections about future events and industry conditions and trends affecting our business. However, whether actual results and developments will conform to our expectations and predictions is subject to a number of risks and uncertainties that, among other things, could cause actual results to differ materially from those contained in the forward-looking statements, including the risk factors described above, in Item 1 of our 2003 Annual Report on Form 10-K filed with the SEC, and the following:

- The amount and timing of capital deployment in new investment opportunities;
- General economic and political conditions, including tax rates or policies and inflation rates;
- Our use of derivative financial instruments to hedge commodity and interest rate risks;
- The creditworthiness of counterparties to trading and other transactions, and defaults on amounts due from counterparties;

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- The amount of collateral required to be posted from time to time in our transactions;
  - Changes in or compliance with laws and regulations, particularly those relating to taxation, safety and protection of the environment;
  - The timing and extent of changes in energy-related and commodity prices, interest rates, energy and commodity supply or volume, the cost of transportation of commodities, and demand for our services, all of which can affect our earnings, liquidity position and the underlying value of our assets;
  - Weather and other natural phenomena;
  - The timing of production from oil and gas development facilities, which may be dependent upon issuance by federal, state, and tribal governments, or agencies thereof, of building, environmental and other permits, and the availability of specialized contractors, work force, equipment, and prices of and demand for our products;
  - The extent of success in connecting natural gas supplies to gathering and processing systems;
  - Industry and market changes, including the impact of consolidations and changes in competition;
  - The effect of accounting policies issued periodically by accounting standard-setting bodies;
  - The cost and effects on our business, including insurance, resulting from terrorist actions or responses to such actions;
  - Capital market conditions, including price risk due to marketable securities held as investments in benefit plans; and
  - Other factors discussed from time to time in our filings with the SEC.

New factors that could cause actual results to differ materially from those described in forward-looking statements emerge from time to time, and it is not possible for us to predict all such factors, or the extent to which any such factor or combination of factors may cause actual results to differ from those contained in any forward-looking statement. We assume no obligation to update publicly any such forward-looking statements, whether as a result of new information, future events, or otherwise.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The following table is a required disclosure and provides a reconciliation of the activity in energy trading contracts that meet the definition of a derivative under SFAS 133 and that were marked-to-market during the three months ended March 31, 2004 (in thousands):

|                                                                                                  |          |
|--------------------------------------------------------------------------------------------------|----------|
| Total fair value of natural gas marketing contract net liability at December 31, 2003            | \$ (408) |
| Net cash settled during the quarter on contracts that existed at December 31, 2003               | (1,464)  |
| Change in fair value due to change in techniques and assumptions                                 | --       |
| Unrealized loss on new contracts entered during the quarter and still existing at March 31, 2004 | (19)     |
| Realized gain on contracts that existed at December 31, 2003 and were settled during the quarter | 1,187    |
| Unrealized gain on contracts that existed at December 31, 2003 and still exist at March 31, 2004 | 1,342    |
|                                                                                                  | <hr/>    |
| Total fair value of natural gas marketing contract net assets at March 31, 2004                  | \$ 638   |
|                                                                                                  | <hr/>    |

On January 1, 2003, the Company adopted EITF Issue No. 02-3. The adoption of EITF 02-3 resulted in certain energy trading activities no longer being accounted for at fair value, therefore, the above reconciliation does not present a complete picture of our overall portfolio of trading activities and our expected cash flows from those operations. EITF 98-10 was superseded by EITF 02-3 and allowed a broad interpretation of what constituted "trading activity" and hence what would be marked-to-market. EITF 02-3 took a much narrower view of what "trading activity" should be marked-to-market, limiting mark-to-market treatment primarily to only those contracts that meet the definition of a derivative under SFAS 133. At our natural gas marketing operations, we often employ strategies that include derivative contracts along with inventory, storage and transportation positions to accomplish the objectives of our producer services, end-use origination and wholesale marketing groups. Except in very limited circumstances when we are able to designate transportation, storage or inventory positions as part of a fair value hedge, SFAS 133 generally does not allow us to mark our inventory, transportation or storage positions to market. The result is that while a significant majority of our natural gas marketing positions are fully economically hedged, we are required to mark some parts of our overall strategies (the derivatives), but are generally precluded from marking the rest of our economic hedges (transportation, inventory or storage) to market. Volatility in reported earnings and derivative positions should be expected given these accounting requirements.

At March 31, 2004, we had a mark to fair value unrealized gain of \$0.6 million for our derivative contracts related to our natural gas marketing activities, with \$0.5 million of this amount current. The sources of fair value measurements were as follows (in thousands):

| Source of Fair Value                           | Maturities       |             | Total Fair Value |
|------------------------------------------------|------------------|-------------|------------------|
|                                                | Less than 1 year | 1 - 2 years |                  |
| Actively quoted (i.e., exchange-traded) prices | \$ (599)         | \$ --       | \$ (599)         |
| Prices provided by other external sources      | 1,145            | 92          | 1,237            |
| Modeled                                        | --               | --          | --               |
|                                                | <hr/>            | <hr/>       | <hr/>            |
| Total                                          | \$ 546           | \$ 92       | \$ 638           |
|                                                | <hr/>            | <hr/>       | <hr/>            |

There have been no material changes in market risk faced by us from those reported in our 2003 Annual Report on Form 10-K filed with the Securities Exchange Commission. For more information on market risk, see Part II, Item 7 in our 2003 Annual Report on Form 10-K, and Note 15 of our Notes to Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q.

### ITEM 4. CONTROLS AND PROCEDURES

#### Evaluation of disclosure controls and procedures

Our Chief Executive Officer and Chief Financial Officer evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934 (Exchange Act)) as of March 31, 2004. Based on their evaluation, they have concluded that our disclosure controls and procedures are adequate and effective to ensure that material information relating to us that is required to be disclosed in our reports filed under the Exchange Act is recorded, processed, summarized and reported within the required time periods.

#### Changes in internal control over financial reporting

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BLACK HILLS CORPORATION

Part II — Other Information

Item 1. Legal Proceedings

For information regarding legal proceedings, see Note 14 in Item 8 of the Company's 2003 Annual Report on Form 10-K and Note 16 in Item 1 of Part I of this Quarterly Report on Form 10-Q, which information from Note 16 is incorporated by reference into this item.

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits - -

- Exhibit 2.1 Stock Purchase Agreement between Xcel Energy, Inc., as "Seller" and Black Hills Corporation, as "Buyer," dated January 13, 2004.
- Exhibit 10.1 Severance Agreement and Release, dated February 26, 2004, between John W. Salyer and Black Hills Corporation.
- Exhibit 31.1 Certification pursuant to Rule 13a - 14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes - Oxley Act of 2002.
- Exhibit 31.2 Certification pursuant to Rule 13a - 14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes - Oxley Act of 2002.
- Exhibit 32.1 Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- Exhibit 32.2 Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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(b) Reports on Form 8-K

We have filed or furnished the following Reports on Form 8-K during the quarter ended March 31, 2004:

Form 8-K dated January 14, 2004.

Reported under Item 5, that the Company issued a press release announcing it had entered into a definitive agreement to acquire Cheyenne Light, Fuel & Power from Xcel Energy Inc., pending regulatory approval and under Item 7, Exhibits.

Form 8-K dated January 14, 2004.

Reported under Item 5, that the Company issued a press release announcing CEO succession and changes in its board membership and under Item 7, Exhibits.

Form 8-K dated February 9, 2004.

Reported under Item 12, that the Company issued a press release announcing earnings for the fourth quarter and the year 2003.

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BLACK HILLS CORPORATION

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

BLACK HILLS CORPORATION

/s/ David R. Emery  
David R. Emery, President and



Chief Executive Officer

/s/ Mark T. Thies

Mark T. Thies, Executive Vice President and  
Chief Financial Officer

Dated: May 10, 2004

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| <u>Exhibit Number</u> | <u>Description</u>                                                                                                                                         |
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| Exhibit 10.1          | Severance Agreement and Release, dated February 26, 2004, between John W. Salyer and Black Hills Corporation.                                              |
| Exhibit 31.1          | Certification pursuant to Rule 13a - 14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes - Oxley Act of 2002. |
| Exhibit 31.2          | Certification pursuant to Rule 13a - 14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes - Oxley Act of 2002. |
| Exhibit 32.1          | Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.                                    |
| Exhibit 32.2          | Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.                                    |

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**STOCK PURCHASE AGREEMENT**

**between**

**XCEL ENERGY INC.,**

**as “Seller,”**

**and**

**BLACK HILLS CORPORATION,**

**as “Buyer”**

**January 13, 2004**

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**EXHIBITS\***

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\*The above Exhibits and Schedules have been omitted from this filing. The Registrant agrees to furnish supplementally a copy of any omitted schedule or exhibit to the Commission upon request.

# 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 debits, 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 9.1Q; 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, 30<sup>th</sup> 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: /s/Richard C. Kelly  
Name: Richard C. Kelly  
Title: President and COO

By: /s/ Daniel P. Landguth  
Name: Daniel P. Landguth  
Title: Chairman and CEO

## SEVERANCE AGREEMENT AND RELEASE

This Severance Agreement and Release ("Agreement"), dated February 26, 2004, is made between John W. Salyer ("Employee") and Black Hills Corporation (the "Company"). Employee and the Company are referred to collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, Employee voluntarily resigned his employment with the Company effective February 19, 2004;

WHEREAS, the Parties wish to resolve fully and finally any potential disputes regarding Employee's employment with the Company and any other potential disputes between the Parties; and

WHEREAS, in order to accomplish this end, the Parties are willing to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual promises and undertakings contained herein, the sufficiency of which is acknowledged by the Parties, the Parties to this Agreement agree as follows:

TERMS

1. Separation and Effective Date. Employee's last date of employment with the Company is February 19, 2004. This Agreement shall become effective (the "Effective Date") on the eighth day after Employee's execution of this Agreement, provided that employee has not revoked Employee's acceptance pursuant to Paragraph 7(g) below.

2. Payments.

a. After the expiration of the Effective Date, and on the express condition that Employee has not revoked this Agreement, the Company will pay Employee a severance amount of Two Hundred Thousand Dollars (\$200,000), less all applicable deductions and withholdings, which includes Sixty Thousand Dollars (\$60,000) in deferred deal bonus compensation and balance for time employed with the Company.

b. Provided that Employee timely elects continuation coverage under the Consolidated Omnibus Reconciliation Act of 1985, as amended ("COBRA"), the Company shall pay, on Employee's behalf, the initial four (4) months of the full premium cost of Employee's group health insurance, including coverage for Employee's eligible dependants for which those dependants were enrolled immediately prior to the termination of Employee's employment. If Employee executes this Agreement and does not revoke this Agreement, Employee is eligible for four (4) months of such premium payments covering the time period beginning February 20, 2004, and continuing through June 19, 2004. For the balance of the period that Employee is entitled to coverage under COBRA, Employee shall be entitled to maintain coverage for Employee and Employee's eligible dependants at the full COBRA rate. The four (4) months of premium payments is taxable to Employee.

c. Reporting of and withholding on any payment under this Paragraph 2 for tax purposes shall be at the discretion of the Company in conformance with applicable tax laws. If a claim is made against the Company for any additional tax or withholding in connection with or arising out of the payment pursuant to subparagraphs a. or b. above, Employee shall pay any such claim within thirty (30) days of being notified by the Company and agrees to indemnify the Company and hold it harmless against such claims, including but not limited to any taxes, attorneys' fees, penalties or interest, which are or become due from the Company.

d. Upon execution of this Agreement, the Company will provide an allowance of up to Five Thousand Dollars (\$5,000.00) to be used for professional career transition assistance. Invoices up to this amount are to be submitted by the professional career transition provider to Jim Mattern, Black Hills Corporation, P.O. Box 1400, Rapid City, South Dakota 57709 for processing and remittance. This allowance for services is in effect through June 1, 2004. Services rendered after June 1, 2004 are not covered. The amount paid on behalf of Employee is taxable to Employee.

### 3. General Release.

a. Employee, for himself and for his affiliates, successors, heirs, subrogees, assigns, principals, agents, partners, employees, associates, attorneys and representatives, voluntarily, knowingly and intentionally releases and discharges the Company and its predecessors, successors, parents, subsidiaries, affiliates and assigns and each of their respective officers, directors, principals, shareholders, agents, attorneys, board members, and employees from any and all claims, actions, liabilities, demands, rights, damages, costs, expenses, and attorneys' fees (including but not limited to any claim of entitlement for attorneys' fees under any contract, statute, or rule of law allowing a prevailing party or plaintiff to recover attorneys' fees), of every kind and description from the beginning of time through the Effective Date (the "Employee's Released Claims").

b. The Company, individually and for its present, former and future successors, legal representatives, insurers, trustees, administrators, assigns, subrogees, officers, directors, shareholders, parent entities, subsidiaries, affiliates, divisions, employees, servants, agents, partners, and attorneys, and all persons, natural or corporate, in privity with it, and their respective heirs, next of kin, executors, administrators, successors and assigns, voluntarily, knowingly and intentionally releases and discharges Employee, and his affiliates, successors, heirs, subrogees, assigns, principals, agents, partners, employees, associates, attorneys and representatives from any and all claims, actions, liabilities, demands, rights, damages, costs, expenses, and attorneys' fees (including but not limited to any claim of entitlement for attorneys' fees under contract, statute, or rule of law allowing a prevailing party or plaintiff to recover attorneys' fees), of every kind and description from the beginning of time through the Effective Date (the "Company's Released Claims").

c. The Employee's Released Claims and the Company's Released Claims include but are not be limited to those which arise out of, relate to, or are based upon: (i) Employee's employment with the Company or the termination thereof; (ii) statements, acts or omissions by the Parties whether in their individual or representative capacities, (iii) express or implied agreements between the Parties, (except as provided herein) and claims under any severance plan, (iv) any stock option grant, agreement, or plan, (v) all federal, state, and municipal statutes, ordinances, and regulations, including but not limited to claims of discrimination based on race, age, sex, disability, whistleblower status, public policy, or any other characteristic of Employee under the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Americans with Disabilities Act, the Fair Labor Standards Act, the Equal Pay Act, Title VII of the Civil Rights Act of 1964 (as amended), the Employee Retirement Income Security of 1974, the Rehabilitation Act of 1973, the Worker Adjustment and Retraining Notification Act, the Employment Relations Act of 1999, or any other federal, state, or municipal law prohibiting discrimination or termination for any reason, (vi) state and federal common law, and (vii) any claim which was or could have been raised by Employee or Company.

d. The Released Claims do not include any right or obligation of Employee in his individual capacity or as a Stockholder as provided in and arising out of the Agreement and Plan of Merger, between Company, Black Hills Energy Capital, Inc., and Indeck Capital Inc., dated January 1, 2000, as amended or supplemented. In addition, the Released Claims do not include any right or obligation of Employee in his individual capacity or as a New Shareholder, as provided in and arising out of the Shareholders Agreement of Black Hills Corporation dated June 30, 2000, by and among Black Hills Corporation, Gerald R. Forsythe, John W. Salyer, and others.

4. Unknown Facts. This Agreement includes claims of every nature and kind, known or unknown, suspected or unsuspected. Employee hereby acknowledges that Employee may hereafter discover facts different from, or in addition to, those which Employee now knows or believes to be true with respect to this Agreement, and Employee agrees that this Agreement and the releases contained herein shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery thereof.

5. No Admission of Liability. The Parties agree that nothing contained herein, and no action taken by any Party hereto with regard to this Agreement, shall be construed as an admission by any Party of liability or of any fact that might give rise to liability for any purpose whatsoever.

6. Warranties. Employee warrants and represents as follows:

a. Employee has read this Agreement, and Employee agrees to the conditions and obligations set forth in it.

b. Employee voluntarily executes this Agreement after having been advised to consult with legal counsel and after having had opportunity to consult with legal counsel and without being pressured or influenced by any statement or representation or omission of any person acting on behalf of the Company including, without limitation, the officers, directors, board members, committee members, employees, agents and attorneys for the Company.

c. Employee has no knowledge of the existence of any lawsuit, charge, or proceeding against the Company or any of its officers, directors, board members, committee members, employees, or agents arising out of or otherwise connected with any of the matters herein released.

d. Employee has not previously disclosed any information that would be a violation of the confidentiality provisions set forth below if such disclosure were to be made after the execution of this Agreement.

e. Employee has full and complete legal capacity to enter into this Agreement.

f. Employee has had at least 21 days to consider this Agreement. In the event that Employee executes this Agreement prior to the 21<sup>st</sup> day after receipt of it, Employee expressly intends such execution as a waiver of any rights Employee has to review the Agreement for the full 21 days. In such event, Employee represents that such waiver is voluntary and made without any pressure, representations, or incentives from the Company for such early execution.

g. Employee understands that Employee is waiving and releasing any claims he may have under the Age Discrimination in Employment Act. Employee may revoke this Agreement for seven days following its execution, and this Agreement shall not become enforceable and effective until seven days after such execution. If Employee chooses to revoke this Agreement, he must provide written notice to James M. Mattern, Senior Vice President-Corporate Administration, by certified mail and by facsimile within seven calendar days of Employee's execution of this Agreement. If Employee does not revoke within the seven-day period, the right to revoke is lost.

Employee admits, acknowledges, and agrees that Employee is not otherwise entitled to the amounts set forth in Paragraph 2, and those amounts are good and sufficient consideration for this Agreement. Employee admits, acknowledges, and agrees that Employee has been fully and finally paid or provided all wages, compensation, vacation, paid time off, or other benefits from the Company which are or could be due to Employee under the terms of Employee's employment with the Company or otherwise.

#### 7. Confidential Information.

a. Except as herein provided, all discussions regarding this Agreement, including, but not limited to, the amount of consideration, offers, counteroffers or other terms or conditions of the negotiations or the agreement reached, shall be kept confidential by Employee from all persons and entities other than the Parties to this Agreement. Employee may disclose the amount received in consideration of the Agreement only if necessary (i) for the limited purpose of making disclosures required by law to agents of the local, state or federal governments, (ii) for the purpose of enforcing any term of this Agreement, or (iii) in response to compulsory process, and only then after giving the Company ten days advance notice of the compulsory process and affording the Company the opportunity to obtain any necessary or appropriate protective orders. Otherwise, in response to inquiries about this matter, Employee shall state, "My employment with the Company has ended," and nothing more.

b. Employee shall not use, nor disclose to any third party, any of the Company's business, personnel, or financial information that Employee learned during his employment with the Company. Employee hereby expressly acknowledges that any breach of this Paragraph 8 shall result in a claim for injunctive relief or damages against Employee by the Company, and possibly by others.

8. Non-Disparagement. Employee agrees not to make to any person any statement that disparages the Company or reflects negatively on the Company, including, but not limited to statements regarding the Company's financial condition, employment practices, or its officers, directors, board members, employees, or affiliates.

9. Return of Company Property and Information. Employee represents and warrants that, prior to Employee's execution of this Agreement, Employee will return to the Company any and all property, documents and files, including any documents (in any recorded media, such as papers, computer disks, copies, photographs, maps, transparencies, and microfiche) that relate in any way to the Company or the Company's business. Employee agrees that, to the extent that Employee possesses any files, data, or information relating in any way to the Company or the Company's business on any personal computer, Employee will delete those files, data, or information (and will retain no copies in any form). Employee also will return any Company tools, equipment, calling cards, credit cards, access cards or keys, any keys to any filing cabinets, vehicles, vehicle keys, cell phones and all other Company property in any form on date of termination of employment.

10. Severability. If any provision of this Agreement is held illegal, invalid, or unenforceable, such holding shall not affect any other provisions hereof. In the event any provision is held illegal, invalid or unenforceable, such provision shall be limited so as to effect the intent of the Parties to the fullest extent permitted by applicable law. Any claim by Employee against the Company shall not constitute a defense to enforcement by the Company.

11. Assignment. The Company may assign its rights under this Agreement. Employee cannot assign his rights under this Agreement without the written consent of the Company.

12. Enforcement. The releases contained herein do not release any claims for enforcement of the terms, conditions or warranties contained in this Agreement. The Parties shall be free to pursue any remedies available to them to enforce this Agreement.

13. Entire Agreement. This Agreement, and any confidentiality agreement signed by Employee, represent the entire agreement between the Parties. This Agreement supersedes any and all prior oral or written promises or agreements between the Parties, and Employee acknowledges that Employee has not relied on any promise, representation, or statement other than those set forth in this Agreement. This Agreement cannot be modified except in writing signed by all Parties.

14. Venue and Applicable Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Colorado, without regard to its conflicts of law provisions. Venue shall be in the federal or state courts in Colorado.

15. Non-solicitation. Employee will not solicit for purposes of employment, or employ, directly or indirectly, any employee currently employed by Black Hills Corporation or any of its subsidiaries or affiliated companies, for a period of one (1) year following the date of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Severance Agreement and Release on the dates written below.

EMPLOYEE

/s/ John W. Salyer  
John W. Salyer

March 24, 2004  
Date

THE COMPANY

/s/ Steven Helmers  
Black Hills Corporation  
By: Steven Helmers  
Title: Senior Vice President - General Counsel

April 2, 2004

A copy of the signed Severance Agreement and Release is to be returned to the attention of:

Jim Mattern  
Sr. Vice President - Corporate Administration  
Black Hills Corporation  
PO Box 1400  
Rapid City, SD 57709

## CERTIFICATION

I, David R. Emery, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Black Hills Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 10, 2004

/s/ David R. Emery  
President and  
Chief Executive Officer



## CERTIFICATION

I, Mark T. Thies, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Black Hills Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 10, 2004

/s/ Mark T. Thies  
Executive Vice President and  
Chief Financial Officer

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Black Hills Corporation (the "Company") on Form 10-Q for the period ended March 31, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David R. Emery, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13 (a) or 15 (d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ David R. Emery

David R. Emery  
President and  
Chief Executive Officer  
May 10, 2004

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Black Hills Corporation (the "Company") on Form 10-Q for the period ended March 31, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mark T. Thies, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13 (a) or 15 (d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Mark T. Thies

Mark T. Thies

Executive Vice President and

Chief Financial Officer

May 10, 2004