

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

Form 10-Q

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

For the quarterly period ended March 31, 2005.

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, 2005
Common stock, \$1.00 par value	32,544,957 shares

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

	Three Months Ended March 31	
	<u>2005</u>	<u>2004</u>
	(in thousands, except per share amounts)	
Operating revenues	\$ 305,685	\$ 274,328
Operating expenses:		
Fuel and purchased power	190,978	172,906
Operations and maintenance	24,524	24,454
Administrative and general	23,253	17,963
Depreciation, depletion and amortization	23,519	22,272
Taxes, other than income taxes	8,369	8,427
	<u>270,643</u>	<u>246,022</u>
Operating income	<u>35,042</u>	<u>28,306</u>
Other income (expense):		
Interest expense	(12,769)	(14,351)
Interest income	390	392
Other expense	(73)	(103)
Other income	374	373
	<u>(12,078)</u>	<u>(13,689)</u>
Income from continuing operations before equity in earnings (losses)		
of unconsolidated subsidiaries, minority interest and income taxes	22,964	14,617
Equity in earnings (losses) of unconsolidated subsidiaries	1,475	(249)
Minority interest	(60)	(42)
Income taxes	<u>(8,514)</u>	<u>(4,332)</u>
Income from continuing operations	15,865	9,994
Loss from discontinued operations, net of taxes	<u>(125)</u>	<u>(208)</u>
Net income	15,740	9,786
Preferred stock dividends	(79)	(88)
Net income available for common stock	<u>\$ 15,661</u>	<u>\$ 9,698</u>
Weighted average common shares outstanding:		
Basic	<u>32,444</u>	<u>32,291</u>
Diluted	<u>33,009</u>	<u>32,811</u>
Earnings per share:		
Basic—		
Continuing operations	\$ 0.48	\$ 0.31
Discontinued operations	—	(0.01)
Total	<u>\$ 0.48</u>	<u>\$ 0.30</u>
Diluted—		
Continuing operations	\$ 0.48	\$ 0.30
Discontinued operations	—	—
Total	<u>\$ 0.48</u>	<u>\$ 0.30</u>
Dividends paid per share of common stock	<u>\$ 0.32</u>	<u>\$ 0.31</u>

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 <u>2005</u>	December 31 <u>2004</u>	March 31 <u>2004</u>
	(in thousands, except share amounts)		
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	\$ 67,629	\$ 64,506	\$ 191,484
Restricted cash	3,769	3,069	1,070
Receivables (net of allowance for doubtful accounts of \$5,720; \$4,698 and \$7,582, respectively)	275,849	256,505	205,051
Notes receivable	—	239	239
Materials, supplies and fuel	66,873	89,732	50,980
Derivative assets	34,775	47,977	23,214
Prepaid income taxes	1,048	3,978	—
Deferred income taxes	1,184	4,237	5,350
Other assets	7,625	7,005	5,678
Assets of discontinued operations	3,085	3,059	4,028
	461,837	480,307	487,094
Investments	20,934	24,436	27,560
Property, plant and equipment	2,141,912	1,971,119	1,897,920
Less accumulated depreciation and depletion	(587,110)	(525,387)	(463,563)
	1,554,802	1,445,732	1,434,357
Other assets:			
Derivative assets	613	593	257
Goodwill	30,144	30,144	30,144
Intangible assets (net of accumulated amortization of \$22,579; \$21,744 and \$19,252, respectively)	35,914	36,750	39,241
Other	48,459	38,201	36,717
	115,130	105,688	106,359
	\$ 2,152,703	\$ 2,056,163	\$ 2,055,370
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>			
Current liabilities:			
Accounts payable	\$ 221,449	\$ 196,619	\$ 199,995
Accrued liabilities	74,039	69,306	68,146
Derivative liabilities	52,606	43,206	30,326
Notes payable	25,000	24,000	—
Current maturities of long-term debt	16,318	16,166	15,723
Accrued income taxes	6,577	7,799	5,953
Liabilities of discontinued operations	657	651	3,391
	396,646	357,747	323,534
Long-term debt, net of current maturities	756,544	733,581	822,289
Deferred credits and other liabilities:			
Deferred income taxes	167,766	159,623	129,193
Derivative liabilities	2,206	206	2,894
Other	86,965	64,406	62,060
	256,937	224,235	194,147
Minority interest in subsidiaries	4,894	4,835	4,731
Stockholders' equity:			
Preferred stock – no par Series 2000-A; 21,500 shares authorized; Issued and outstanding:			
6,839 shares all periods	7,167	7,167	7,167
Common stock equity –			
Common stock \$1 par value; 100,000,000 shares authorized; Issued 32,608,482; 32,595,285 and 32,552,878 shares, respectively	32,608	32,595	32,553
Additional paid-in capital	384,467	384,439	382,782
Retained earnings	327,261	322,009	304,249
Treasury stock at cost – 71,675; 117,567 and 144,001 shares, respectively	(1,727)	(2,838)	(3,435)
Accumulated other comprehensive loss	(12,094)	(7,607)	(12,647)
	730,515	728,598	703,502
Total stockholders' equity	737,682	735,765	710,669
	\$ 2,152,703	\$ 2,056,163	\$ 2,055,370

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



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

	Three Months Ended March 31	
	<u>2005</u>	<u>2004</u>
	(in thousands)	
Operating activities:		
Net income available for common	\$ 15,661	\$ 9,698
Adjustments to reconcile net income available for common to net cash provided by operating activities:		
Loss from discontinued operations	125	208
Change in provision for valuation allowances	(613)	112
Depreciation, depletion and amortization	23,519	22,272
Net change in derivative assets and liabilities	17,569	(1,139)
Deferred income taxes	5,551	3,913
Distributed (undistributed) earnings in associated companies	4,549	(234)
Minority interest	60	42
Change in operating assets and liabilities, net of acquisition-		
Accounts receivable and other current assets	20,651	12,311
Accounts payable and other current liabilities	16,028	39,018
Other operating activities	7,322	(54)
	<u>110,422</u>	<u>86,147</u>
Investing activities:		
Property, plant and equipment additions	(28,305)	(13,544)
Payment for acquisition, net of cash acquired	(67,331)	—
Other investing activities	(1,385)	1,529
	<u>(97,021)</u>	<u>(12,015)</u>
Financing activities:		
Dividends paid	(10,409)	(10,016)
Common stock issued	41	2,640
Increase in short-term borrowings, net	1,000	—
Long-term debt – repayments	(3,273)	(48,106)
Other financing activities	2,363	75
	<u>(10,278)</u>	<u>(55,407)</u>
Increase in cash and cash equivalents	3,123	18,725
Cash and cash equivalents:		
Beginning of period	64,506	172,759
End of period	<u>\$ 67,629</u>	<u>\$ 191,484</u>
Supplemental disclosure of cash flow information:		
Cash paid during the period for-		
Interest	\$ 12,877	\$ 10,744
Net income taxes refunded	\$ (626)	\$ (18,819)
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 2004 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 of America 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 2004 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, 2005, December 31, 2004 and March 31, 2004 financial information and are of a normal recurring nature. The results of operations for the three months ended March 31, 2005, 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 2004 amounts in the financial statements have been reclassified to conform to the 2005 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, 2005, 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 March 31	
	<u>2005</u>	<u>2004</u>
Net income available for common stock, as reported	\$ 15,661	\$ 9,698
Deduct: Total stock-based employee compensation expense		
determined under fair value based method for all awards, net of related tax effects	(141)	(188)
Pro forma net income available for common stock	<u>\$ 15,520</u>	<u>\$ 9,510</u>
Earnings per share:		
As reported—		
Basic		
Continuing operations	\$ 0.48	\$ 0.31
Discontinued operations	—	(0.01)
Total	<u>\$ 0.48</u>	<u>\$ 0.30</u>
Diluted		
Continuing operations	\$ 0.48	\$ 0.30
Discontinued operations	—	—
Total	<u>\$ 0.48</u>	<u>\$ 0.30</u>
Pro forma—		
Basic		
Continuing operations	\$ 0.48	\$ 0.30
Discontinued operations	—	(0.01)
Total	<u>\$ 0.48</u>	<u>\$ 0.29</u>
Diluted		
Continuing operations	\$ 0.47	\$ 0.29
Discontinued operations	—	—
Total	<u>\$ 0.47</u>	<u>\$ 0.29</u>



(4) RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

SFAS No. 123 (Revised 2004)

In December 2004, the Financial Accounting Standards Board (FASB) issued SFAS No. 123 (Revised 2004) "Share Based Payment" (SFAS 123 (Revised 2004)). SFAS 123 (Revised 2004) requires the measurement and recognition of the cost of employee services received in exchange for an award of equity instruments, based on the grant-date fair value of the award. The cost is to be recognized over the requisite service period. In April 2005, the Securities and Exchange Commission (SEC) adopted a final rule amending the effective date of SFAS 123 (Revised 2004) to the first interim or annual reporting period of the fiscal year beginning after June 15, 2005. The Company currently accounts for its employee equity compensation stock option plans under the provisions of APB No. 25 and no stock-based employee compensation cost is reflected in net income (see Note 3, Stock-Based Compensation). The effect of adoption of SFAS 123 (Revised 2004) will be to recognize compensation expense for the fair value of the stock options granted at the grant date. Total stock-based employee compensation expense, net of related tax effects would have been \$0.1 million and \$0.2 million for the three month periods ending March 31, 2005 and 2004, respectively, had the Company applied the fair value recognition provisions of SFAS 123 during those periods.

FIN 47

In March 2005 the FASB issued FIN 47, "Accounting for Conditional Asset Retirement Obligations." This interpretation clarifies that the term *conditional asset retirement obligation* as used in FASB Statement No. 143, "Accounting for Asset Retirement Obligations," (SFAS 143) refers to a legal obligation to perform an asset retirement activity in which the timing and (or) method of settlement are conditional on a future event that may or may not be within the control of the entity. The obligation to perform the asset retirement activity is unconditional even though uncertainty exists about the timing and (or) method of settlement. Thus, the timing and (or) method of settlement may be conditional on a future event. Accordingly, an entity is required to recognize a liability for the fair value of a conditional asset retirement obligation if the fair value of the liability can be reasonably estimated. The fair value of a liability for the conditional asset retirement obligation should be recognized when incurred – generally upon acquisition, construction, or development and (or) through the normal operation of the asset. Uncertainty about the timing and (or) method of settlement of a conditional asset retirement obligation should be factored into the measurement of the liability when sufficient information exists.

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 Coal mining segment. FIN 47 is effective for fiscal years ending after December 15, 2005. The Company is currently evaluating the effect of FIN 47 on the Company's consolidated results of operations, financial position and cash flows.

EITF Issue No. 04-6

On March 17, 2005, the Emerging Issues Task Force (EITF) issued EITF Issue No. 04-6, "Accounting for Stripping Costs Incurred during Production in the Mining Industry" (EITF 04-6). EITF 04-6 provides that stripping costs incurred during the production phase of a mine are variable production costs that should be included in the costs of the inventory produced during the period that the stripping costs are incurred. EITF 04-6 is effective for the first reporting period in fiscal years beginning after December 15, 2005. The Company is currently evaluating the effect of EITF 04-6 on the Company's consolidated results of operations, financial position and cash flows.

(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):

<u>Major Classification</u>	March 31, <u>2005</u>	December 31, <u>2004</u>	March 31, <u>2004</u>
Materials and supplies	\$ 24,370	\$ 22,661	\$ 20,884
Fuel for generation	2,450	2,211	1,248
Gas and oil held by energy marketing	40,053	64,860	28,848
Total materials, supplies and fuel	<u>\$ 66,873</u>	<u>\$ 89,732</u>	<u>\$ 50,980</u>

(6) ASSET RETIREMENT OBLIGATIONS

In accordance with SFAS 143, 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 Coal 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 <u>12/31/04</u>	Liabilities <u>Incurred</u>	Liabilities <u>Settled</u>	<u>Accretion</u>	Cash Flow <u>Revisions</u>	Balance at <u>3/31/05</u>
Oil and gas	\$ 7,942	\$ —	\$ —	\$ 138	\$ —	\$ 8,080
Coal mining	15,867	153	(43)	189	—	16,166
Total	<u>\$ 23,809</u>	<u>\$ 153</u>	<u>\$ (43)</u>	<u>\$ 327</u>	<u>\$ —</u>	<u>\$ 24,246</u>

(7) RECOVERED/RECOVERABLE PURCHASED ELECTRIC AND GAS ENERGY COSTS – NET

Cheyenne Light, Fuel and Power (CLF&P) recovers purchased power and natural gas costs from customers through an electric cost adjustment (ECA) and a gas cost adjustment (GCA) mechanism. The ECA and GCA rate structure provides for a fixed energy supply rate charged to CLF&P's customers through 2005; the continuation of the ECA and GCA with certain modifications, including the amortization through December 2005 of unrecovered costs incurred during 2001 up to the agreed upon fixed supply rates; and an agreement that CLF&P's energy supply needs will be provided, in whole or in part, by Public Service Company of Colorado (PSCO) in accordance with wholesale tariff rates. In 2005, CLF&P will request recovery of its actual cost incurred plus the outstanding balance of any deferral from earlier years. New cost levels have been reflected in CLF&P's expenses, and in deferred costs based on current ECA and GCA recovery levels, with an effective date of June 1, 2001, and retroactive adjustments back to the date of the increase in costs on February 25, 2001. At March 31, 2005, the ECA and GCA deferred balance is \$8.4 million and is included in "Other" under "Other assets" on the accompanying Condensed Consolidated Balance Sheet.

(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 (in thousands):

Period ended March 31, 2005	<u>Three Months</u>	
	<u>Income</u>	<u>Average Shares</u>
Income from continuing operations	\$ 15,865	
Less: preferred stock dividends	(79)	
	<hr/>	
Basic – available for common shareholders	15,786	32,444
Dilutive effect of:		
Stock options	—	117
Convertible preferred stock	79	195
Estimated contingent shares issuable for prior acquisition	—	158
Others	—	95
	<hr/>	
Diluted – available for common shareholders	<u>\$ 15,865</u>	<u>33,009</u>

Period ended March 31, 2004	<u>Three Months</u>	
	<u>Income</u>	<u>Average Shares</u>
Income from continuing operations	\$ 9,994	
Less: preferred stock dividends	(88)	
	<hr/>	
Basic – available for common shareholders	9,906	32,291
Dilutive effect of:		
Stock options	—	115
Convertible preferred stock	88	195
Estimated contingent shares issuable for prior acquisition	—	158
Others	—	52
	<hr/>	
Diluted – available for common shareholders	<u>\$ 9,994</u>	<u>32,811</u>

(9) COMPREHENSIVE INCOME

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

	Three Months Ended	
	March 31	
	<u>2005</u>	<u>2004</u>
Net income	\$ 15,740	\$ 9,786
Other comprehensive (loss) income, net of tax:		
Fair value adjustment on derivatives designated as cash flow hedges	(4,502)	(1,504)
Unrealized gain (loss) on available-for-sale securities	15	(21)
	<hr/>	
Comprehensive income	<u>\$ 11,253</u>	<u>\$ 8,261</u>

(10) CHANGES IN COMMON STOCK

Other than the following transactions, the Company has no other material changes in its common stock, as reported in Note 10 of the Company's 2004 Annual Report on Form 10-K.

- Effective January 1, 2005, the Company adopted a performance share award plan in which certain officers of the Company are participants. Performance shares are awarded 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 41,499 performance shares were made for the following performance period January 1, 2005 through December 31, 2007.

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 will vary according to the number of shares of common stock that are ultimately granted based upon the actual level of attainment of the performance criteria. The performance awards are paid 50 percent cash and 50 percent common stock.

Grants under this performance share plan are in addition to grants under two other performance share plans awarded March 1, 2004. Compensation expense recognized for all of the performance share awards for the quarter ended March 31, 2005 was \$0.3 million.

- During the first quarter of 2005, the Company granted 12,400 stock options at a weighted-average exercise price of \$29.63 per share.
- 13,202 stock options were exercised at a weighted-average price of \$26.85 per share.
- The Company issued 3,266 shares of common stock from treasury shares under the short-term incentive compensation plan during the first quarter of 2005. Compensation cost related to the award was approximately \$0.1 million, which was accrued for in 2004.
- The Company granted 42,913 restricted common shares and 2,594 restricted stock units during the first quarter of 2005. The pre-tax compensation cost related to the awards of restricted stock and restricted stock units of approximately \$1.4 million will be recognized over the three-year vesting period.

(11) CHANGES IN LONG-TERM DEBT

On January 21, 2005, the Company acquired CLF&P from Xcel Energy, Inc. Included in the purchase price of CLF&P was the assumption of \$24.6 million in long-term debt consisting of First Mortgage Bonds. The debt consists of \$7.0 million of variable rate Industrial Development Revenue Bonds due in 2021, \$10.0 million variable rate Industrial Development Revenue Bonds due 2027 and \$7.6 million 7.5 percent Bonds due 2024. Substantially all properties of CLF&P are subject to the liens securing the First Mortgage Bonds. Annual maturities on the First Mortgage Bonds for the next five years are \$0.2 million a year.

(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 of March 31, 2005, the Company had the following guarantees in place (in thousands):

<u>Nature of Guarantee</u>	<u>Outstanding at March 31, 2005</u>	<u>Year Expiring</u>
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 of certain obligations under Enserco's credit facility	3,000	2005
Guarantee of obligation of Las Vegas Cogen II (LVII) under an interconnection and operation agreement	750	2005
Guarantee payments of Black Hills Power under various transactions with Idaho Power Company	250	2006
Guarantee payments of Black Hills Power (BHP) under various transactions with Southern California Edison Company	750	2005
Guarantee obligations under the Wygen Plant Lease	111,018	2008
Guarantee payment and performance under credit agreements for two combustion turbines	27,714	2010
Guarantee payments of Las Vegas Cogen II to Nevada Power Company under a power purchase agreement	5,000	2013
Indemnification for subsidiary reclamation/surety bonds	25,000	Ongoing
	<u>\$183,482</u>	

(13) EMPLOYEE BENEFIT PLANS

Defined Benefit Pension Plan

The Company has two noncontributory defined benefit pension plans (Plans). One Plan covers the employees of the Company and the following subsidiaries: Black Hills Power, Inc., Wyodak Resources Development Corp., and Black Hills Exploration and Production, who meet certain eligibility requirements. The other Plan covers the employees of the Company's subsidiary, CLF&P, who meet certain eligibility requirements.

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

	<u>2005</u>	<u>2004</u>
Service cost	\$ 576	\$ 443
Interest cost	995	909
Expected return on plan assets	(1,157)	(1,129)
Amortization of prior service cost	54	58
Amortization of net loss	296	375
Net periodic benefit cost	<u>\$ 764</u>	<u>\$ 656</u>

The Company does not anticipate that contributions will be made to the Plans in the 2005 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):

	<u>2005</u>	<u>2004</u>
Service cost	\$ 86	\$ 134
Interest cost	252	241
Amortization of prior service cost	2	2
Amortization of net loss	157	187
	<hr/>	<hr/>
Net periodic benefit cost	\$ 497	\$ 564

The Company anticipates that contributions to the Plan for the 2005 fiscal year will be approximately \$0.3 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 Plans and who meet certain eligibility requirements 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 plans.

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

	<u>2005</u>	<u>2004</u>
Service cost	\$ 185	\$ 140
Interest cost	232	166
Amortization of net transition obligation	37	37
Amortization of prior service cost	(6)	(6)
Amortization of net loss	25	47
	<hr/>	<hr/>
Net periodic benefit cost	\$ 473	\$ 384

The Company anticipates that contributions to the Plans for the 2005 fiscal year will be approximately \$0.2 million; the contributions are expected to be in the form of benefits paid.

## (14) SUMMARY OF INFORMATION RELATING TO SEGMENTS OF THE COMPANY'S BUSINESS

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, 2005, substantially all of the Company's operations and assets are located within the United States. The Company's operations are conducted through seven reporting segments that include: Wholesale Energy group consisting of the following segments: Coal 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 and transportation, 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 power and capacity to wholesale customers; and Retail Services group consisting of the following segments: Electric utility, which supplies electric utility service to western South Dakota, northeastern Wyoming and southeastern Montana; Electric and gas utility, acquired January 21, 2005, which supplies electric and gas utility service to Cheyenne, Wyoming and vicinity; and Communications, which primarily markets broadband communications services in Rapid City and the northern Black Hills region of South Dakota. The Company entered into an agreement on April 20, 2005 to sell Black Hills FiberSystems, Inc., which is reported as the Communications segment (see Note 19).

Segment information follows the same accounting policies as described in Note 23 of the Company's 2004 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.

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

	<u>External Operating Revenues</u>	<u>Inter-segment Operating Revenues</u>	<u>Income (loss) from Continuing Operations</u>
Quarter to Date and Year to Date March 31, 2005			
Wholesale energy:			
Coal mining	\$ 4,872	\$ 3,146	\$ 1,488
Oil and gas	19,041	—	4,960
Energy marketing and transportation	161,131	—	2,927
Power generation	38,162	—	3,885
Retail Services:			
Electric utility	43,049	98	4,322
Electric and gas utility	27,075	—	512
Communications	9,666	—	(887)
Corporate	265	—	(1,342)
Intersegment eliminations	—	(820)	—
Total	<u>\$ 303,261</u>	<u>\$ 2,424</u>	<u>\$ 15,865</u>

	<u>External Operating Revenues</u>	<u>Inter-segment Operating Revenues</u>	<u>Income (loss) from Continuing Operations</u>
Quarter to Date and Year to Date March 31, 2004			
Wholesale energy:			
Coal mining	\$ 5,546	\$ 3,182	\$ 1,752
Oil and gas	16,321	83	3,687
Energy marketing and transportation	164,435	—	3,969
Power generation	35,137	—	(2,077)
Retail services:			
Electric utility	41,626	21	5,037
Communications	8,455	—	(1,784)
Corporate	310	561	(590)
Intersegment eliminations	—	(1,349)	—
Total	<u>\$ 271,830</u>	<u>\$ 2,498</u>	<u>\$ 9,994</u>

Other than the acquisition and consolidation of CLF&P into the Company's Condensed Consolidated Balance Sheet (see Note 17), the Company had no material changes in total assets of its reporting segments, as reported in Note 23 of the Company's 2004 Annual Report on Form 10-K, beyond changes resulting from normal operating activities.

(15) RISK MANAGEMENT ACTIVITIES

The Company actively manages its exposure to certain market risks as described in Note 2 of the Company's 2004 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 at March 31, 2005, December 31, 2004 and March 31, 2004 are as follows:

(in thousands of MMbtus)	<u>March 31, 2005</u>		<u>December 31, 2004</u>		<u>March 31, 2004</u>	
	<u>Notional Amounts</u>	<u>Latest Expiration (months)</u>	<u>Notional Amounts</u>	<u>Latest Expiration (months)</u>	<u>Notional Amounts</u>	<u>Latest Expiration (months)</u>
Natural gas basis swaps purchased	68,214	21	24,972	15	36,180	24
Natural gas basis swaps sold	66,912	19	27,145	15	38,340	24
Natural gas fixed-for-float swaps purchased	30,718	19	27,274	15	16,578	16
Natural gas fixed-for-float swaps sold	25,775	13	32,206	12	26,779	20
Natural gas physical purchases	94,393	21	64,799	15	72,888	20
Natural gas physical sales	118,420	55	95,996	58	59,969	24
(thousands of U.S. dollars)						
Canadian dollars purchased	\$ 1,000	1	\$ 10,800	1	\$ —	—
Canadian dollars sold	\$ 22,700	7	\$ 38,000	4	\$ —	—



Derivatives and certain natural gas marketing activities were marked to fair value on March 31, 2005, December 31, 2004 and March 31, 2004, and the related gains and/or losses recognized in earnings. The amounts included in the accompanying Condensed Consolidated Balance Sheets and Statements of Income are as follows (in thousands):

	Current Derivative <u>Assets</u>	Non-current Derivative <u>Assets</u>	Current Derivative <u>Liabilities</u>	Non-current Derivative <u>Liabilities</u>	Unrealized <u>Gain (loss)</u>
March 31, 2005	\$ 34,566	\$ 613	\$ 43,651	\$ 888	\$ (9,360)
December 31, 2004	\$ 46,177	\$ 286	\$ 38,375	\$ 6	\$ 8,082
March 31, 2004	\$ 22,918	\$ 257	\$ 22,372	\$ 165	\$ 638

In addition, certain volumes of natural gas inventory have been designated as the underlying hedged item in a "fair value" hedge transaction. These volumes are stated at market value using published spot industry quotations. Market adjustments are recorded in inventory on the Balance Sheet and the related unrealized gain/loss on the Statement of Income. As of March 31, 2005, December 31, 2004 and March 31, 2004, the market adjustments recorded in inventory were \$4.8 million, \$(9.0) million and \$0.2 million, respectively.

### Activities Other Than Trading

#### Crude Oil Marketing

The contract or notional amounts and terms of our crude oil contracts, are set forth below (in thousands of barrels):

	<u>March 31, 2005</u>		<u>December 31, 2004</u>		<u>March 31, 2004</u>	
	Notional <u>Amounts</u>	Maximum Term in <u>Years</u>	Notional <u>Amounts</u>	Maximum Term in <u>Years</u>	Notional <u>Amounts</u>	Maximum Term in <u>Years</u>
Crude oil purchased	1,742	.75	1,669	1.0	1,574	.75
Crude oil sold	1,738	.75	1,651	1.0	2,215	.75

The Company's crude oil marketing contracts are accounted for under the accrual method of accounting. Settled contract amounts are reported in revenues on a gross basis in accordance with EITF Issue No. 99-19, "Reporting Revenue Gross as a Principal Versus Net as an Agent" (EITF 99-19) and established industry practice.

In 2004, the EITF initiated a review under EITF Issue No. 04-13, "Accounting for Purchases and Sales of Inventory with the Same Counterparty," to determine if they should be reported on a gross basis or a net basis. In its crude oil marketing activities, the Company uses a type of transaction commonly called a buy/sell, which generally consists of the purchase and sale of crude oil from the same counterparty. In a typical buy/sell transaction, Company A enters into a contract to sell a particular grade of crude oil at a specified location to Company B on a future date, and simultaneously agrees to buy from Company B a particular grade of crude oil at a different location at the same or another specified date.

The characteristics of buy/sell transactions include gross invoicing reflecting the quality and location differences of the crude oil and physical delivery requirements. Nonperformance by one party does not relieve the other party's obligation to perform under the contract except for events of force majeure. The risks and rewards of ownership are evidenced by title transfer, assumption of environmental risk, transportation scheduling and counterparty credit risk. Because of these characteristics, the Company reports the sale of the barrels as gross revenues and the purchase of the barrels as gross purchases in accordance with EITF 99-19.

Some registrants in our industry may report buy/sell transactions on a net rather than a gross presentation. The EITF is reviewing these transactions to determine if more specific guidance is needed for determining a net rather than gross presentation in consolidated earnings. While a net presentation of this issue would reduce both the Company's revenues and purchases, our net income would not be impacted.

#### Oil and Gas Exploration and Production

On March 31, 2005, December 31, 2004 and March 31, 2004, the Company had the following swaps and related balances (in thousands):

		Maximum	Current	Non-current	Current	Non-current	Pre-tax Accumulated Other	Pre-tax
	<u>Notional*</u>	<u>Terms in Years</u>	<u>Derivative Assets</u>	<u>Derivative Assets</u>	<u>Derivative Liabilities</u>	<u>Derivative Liabilities</u>	<u>Comprehensive Income (Loss)</u>	<u>Income (Loss)</u>
March 31, 2005								
Crude oil swaps	300,000	1.00	\$ —	\$ —	\$ 5,199	\$ 1,206	\$ (6,350)	\$ (55)
Natural gas swaps	2,517,500	0.50	—	—	2,989	—	(2,989)	—
			<u>\$ —</u>	<u>\$ —</u>	<u>\$ 8,188</u>	<u>\$ 1,206</u>	<u>\$ (9,339)</u>	<u>\$ (55)</u>
December 31, 2004								
Crude oil swaps	360,000	1.00	\$ —	\$ 152	\$ 3,112	\$ —	\$ (2,886)	\$ (74)
Natural gas swaps	3,810,000	0.50	1,710	155	493	—	1,372	—
			<u>\$ 1,710</u>	<u>\$ 307</u>	<u>\$ 3,605</u>	<u>\$ —</u>	<u>\$ (1,514)</u>	<u>\$ (74)</u>
March 31, 2004								
Crude oil swaps	390,000	1.00	\$ —	\$ —	\$ 2,228	\$ 258	\$ (2,448)	\$ (38)
Natural gas swaps	2,870,000	1.00	25	—	2,548	—	(2,523)	—
			<u>\$ 25</u>	<u>\$ —</u>	<u>\$ 4,776</u>	<u>\$ 258</u>	<u>\$ (4,971)</u>	<u>\$ (38)</u>

\*crude in barrels, gas in MMBtu's

Based on March 31, 2005 market prices, an \$8.1 million loss would be realized and reported in pre-tax 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, 2005 market prices. Estimated and actual realized losses will likely change during the next twelve months as market prices change.

Financing Activities

On March 31, 2005, December 31, 2004 and March 31, 2004, the Company's interest rate swaps and related balances were as follows (in thousands):

	Current	Weighted Average Fixed	Maximum	Current	Non- current	Current	Non- current	Pre-tax Accumulated Other
	<u>Notional Amount</u>	<u>Interest Rate</u>	<u>Terms in Years</u>	<u>Derivative Assets</u>	<u>Derivative Assets</u>	<u>Derivative Liabilities</u>	<u>Derivative Liabilities</u>	<u>Comprehensive Loss</u>
March 31, 2005								
Swaps on project financing	\$ 113,000	4.22%	1.50	\$ 209	\$ —	\$ 767	\$ 112	\$ (670)
December 31, 2004								
Swaps on project financing	\$ 113,000	4.22%	1.75	\$ 60	\$ —	\$ 1,226	\$ 200	\$ (1,366)
March 31, 2004								
Swaps on project financing	\$ 113,000	4.48%	2.5	\$ 271	\$ —	\$ 3,178	\$ 2,471	\$ (5,378)

Based on March 31, 2005 market interest rates and balances, approximately \$0.6 million would 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 21 of the Company's 2004 Annual Report on Form 10-K. There have been no material developments in these proceedings or any new material proceedings that have developed or material proceedings that have terminated during the first quarter of 2005.

(17) 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, CLF&P, a Wyoming corporation. On January 21, 2005, the Company completed this acquisition. The Company purchased all the common stock of CLF&P, including the assumption of outstanding debt of approximately \$24.6 million, for approximately \$93 million.

This acquisition has been accounted for under the purchase method of accounting, and accordingly, the purchase price has been allocated to the acquired assets and liabilities based on preliminary estimates of the fair values of the assets purchased and liabilities assumed as of the date of acquisition. The estimated purchase price allocations are subject to adjustment, generally within one year of the date of acquisition. Preliminary allocation of the purchase price is as follows (in thousands):

Current assets	\$	18,239
Property, plant and equipment		100,447
Deferred assets		17,392
	\$	<u>136,078</u>
Current liabilities	\$	(12,313)
Long-term debt		(24,600)
Deferred tax liabilities		(7,892)
Long-term liabilities		(22,917)
	\$	<u>(67,722)</u>
Net assets	\$	<u>68,356</u>

The results of operations of CLF&P 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 CLF&P acquisition had occurred on January 1, 2005 and 2004, respectively (in thousands):

	Three Month Period Ended	
	<u>March 31, 2005</u>	<u>March 31, 2004</u>
Operating revenues	\$ 314,863	\$ 301,507
Income from continuing operations	16,044	10,769
Net income	15,919	10,561
Earnings per share –		
Basic:		
Continuing operations	\$ 0.49	\$ 0.33
Total	<u>\$ 0.49</u>	<u>\$ 0.32</u>
Diluted:		
Continuing operations	\$ 0.49	\$ 0.33
Total	<u>\$ 0.48</u>	<u>\$ 0.32</u>

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

(18) DISCONTINUED OPERATIONS

The Company accounts for its discontinued operations under the provisions of SFAS 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.

**Sale of Landrica Development Corp.**

On May 21, 2004, the Company sold its subsidiary, Landrica Development Corp. Landrica's primary assets consisted of a coal enhancement plant and land. The purchaser made a \$0.5 million cash payment to the Company and assumed a \$2.9 million reclamation liability. The sale resulted in a \$2.1 million after-tax gain. For segment reporting purposes, Landrica was previously included in the Coal mining segment.

Net income from the discontinued operations is as follows (in thousands):

	Three Months Ended <u>March 31, 2004</u>	
Pre-tax loss from discontinued operations	\$	(36)
Income tax benefit		6
Net loss from discontinued operations	\$	<u>(30)</u>

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

	<u>March 31, 2004</u>	
Current assets	\$	1
Property, plant and equipment		151
Other current liabilities		(39)
Deferred reclamation		(2,858)
Other non-current liabilities		(1)
Net liabilities of discontinued operations	\$	<u>(2,746)</u>

**Sale of Pepperell Plant**

During the third quarter of 2003, the Company adopted a plan to sell the 40 megawatt gas-fired Pepperell plant, and on April 8, 2005, the Company sold the Pepperell plant (see Note 19). 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	
	March 31	
	<u>2005</u>	<u>2004</u>
Pre-tax loss from discontinued operations	\$ (190)	\$ (272)
Income tax benefit	65	94
Net loss from discontinued operations	<u>\$ (125)</u>	<u>\$ (178)</u>

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

	March 31	December 31	March 31
	<u>2005</u>	<u>2004</u>	<u>2004</u>
Current assets	\$ 133	\$ 107	\$ 232
Property, plant and equipment	—	—	1,064
Non-current deferred tax asset	2,952	2,952	2,580
Other current liabilities	(149)	(167)	(88)
Non-current liabilities	(508)	(484)	(405)
Net assets of discontinued operations	<u>\$ 2,428</u>	<u>\$ 2,408</u>	<u>\$ 3,383</u>

(19) SUBSEQUENT EVENTS

**Communications Segment**

On April 20, 2005, the Company entered into an agreement to sell its Communications business, Black Hills FiberSystems, Inc. to PrairieWave Communications, Inc. Under the purchase and sale agreement, the Company will receive a cash payment of approximately \$103 million. The transaction is subject to certain state and federal regulatory approvals and is expected to be completed prior to June 30, 2005. The Company expects to record a loss of approximately \$0.09 per share on the sale.

Assets and liabilities of the Communications segment are as follows (in thousands):

	<u>March 31, 2005</u>	<u>December 31, 2004</u>	<u>March 31, 2004</u>
Current assets	\$ 5,740	\$ 6,468	\$ 6,791
Property, plant and equipment	107,851	109,566	113,299
Other non-current assets	187	198	144
Current liabilities	(5,864)	(6,112)	(6,171)
Other non-current liabilities	(759)	(916)	(677)
Net assets	<u>\$ 107,155</u>	<u>\$ 109,204</u>	<u>\$ 113,386</u>

## Pepperell Plant

On April 8, 2005, the Company sold the Pepperell plant to an unrelated party, Pepperell Realty LLC, for a nominal amount plus the assumption of certain obligations. The Company currently reports the results of operations of the Pepperell facility as discontinued operations (see Note 18).

## Bank Facility

On May 5, 2005, the Company entered into a new \$400 million revolving bank facility. The new facility has a five year term, expiring May 4, 2010. The facility contains a provision which allows the facility size to be increased by up to an additional \$100 million through the addition of new lenders, or through increased commitments from existing lenders but only with the consent of such lenders. The cost of borrowings or letters of credit issued under the new facility is determined based on the Company's credit ratings. At the Company's current credit ratings, the facility has an annual facility fee of 17.5 basis points, and a borrowing spread of 70.0 basis points over the one month LIBOR (3.57 percent as of March 31, 2005).

In conjunction with entering into the new revolving bank facility, the Company terminated its \$125 million revolving bank facility due May 12, 2005 and its \$225 million facility due August 20, 2006.

## 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 our business groups in the following segments:

<u>Business Group</u>	<u>Financial Segment</u>
<i>Wholesale energy group</i>	Power generation
	Oil and gas
	Coal mining
	Energy marketing and transportation
<i>Retail services group</i>	Electric utility
	Electric and gas utility
	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 and gas utilities and communications segments. Our electric utility generates, transmits and distributes electricity to an average of approximately 62,000 customers in South Dakota, Wyoming and Montana. Our electric and gas utility serves approximately 38,000 electric and 31,000 natural gas customers in Cheyenne, Wyoming and vicinity. Our communications segment primarily provides broadband communications services to over 27,000 residential and business customers in Rapid City and the northern Black Hills region of South Dakota through Black Hills FiberCom, LLC.

In April 2005, we entered into a definitive agreement to sell our subsidiary, Black Hills FiberSystems, Inc., reported as our Communications segment, which primarily markets broadband communications services and which holds two telephone directory businesses. To conform with Generally Accepted Accounting Principles, results of operations for the Communications segment will be reclassified to Discontinued Operations in the second quarter of 2005.

In April 2005, we also sold our Pepperell power plant, our last power plant in the eastern region.

In May 2004, we sold our subsidiary, Landrica Development Corp., which held some land and coal enhancement facilities that were previously reported in our Coal mining segment.

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 2004 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:

	Three Months Ended March 31	
	<u>2005</u>	<u>2004</u>
<u>Revenues</u>		
Wholesale energy	74%	82%
Retail services	26	18
	<hr/>	<hr/>
	100%	100%
<u>Income/(Loss) from Continuing Operations</u>		
Wholesale energy	84%	73%
Retail services	24	33
Corporate	(8)	(6)
	<hr/>	<hr/>
	100%	100%

Discontinued operations in 2005 and 2004 represent the operations of our 40 megawatt Pepperell power plant, which was sold in April, 2005 and in 2004, represents the operations of Landrica Development Corp., which was sold on May 21, 2004.

**Three Months Ended March 31, 2005 Compared to Three Months Ended March 31, 2004.** On January 21, 2005, we completed the acquisition of CLF&P, an electric and natural gas utility serving customers in Cheyenne, Wyoming and vicinity. The Company purchased all of the common stock of CLF&P, including the assumption of outstanding debt of approximately \$24.6 million, for approximately \$93 million. The results of operations of CLF&P have been included in the accompanying Condensed Consolidated Financial Statements from the date of acquisition.

Revenues for the three months ended March 31, 2005 increased 11 percent or \$31.4 million compared to the same period in 2004. Increased revenues are primarily the result of the acquisition and consolidation of CLF&P.

Operating expenses increased 10 percent, or \$24.6 million resulting from an increase in fuel and purchased power costs primarily due to the operations of CLF&P and increased administrative and general costs due to increased compensation expense and professional fees. In addition, a \$1.0 million pre-tax gain on the sale of assets was recorded as an offset to general and administrative expense in the first quarter of 2004. The gain on sale of assets is included in the 2004 “Corporate” results.



Income from continuing operations increased 59 percent or \$5.9 million due to the increased revenues, and a decrease in interest expense due to a reduction in debt, exclusive of the assumption of the CLF&P debt, offset by increased fuel and purchased power and administrative and general costs.

A discussion of results from our operating groups and segments is included in the following pages.

*The following business group and segment information does not include discontinued operations or intercompany eliminations. Accordingly, 2004 information has been revised as necessary to remove information related to operations that were discontinued.*

### Wholesale Energy Group

	Three Months Ended March 31	
	<u>2005</u>	<u>2004</u>
	(in thousands)	
Revenue:		
Energy marketing and transportation	\$ 161,131	\$ 164,435
Power generation	38,162	35,137
Oil and gas	19,041	16,404
Coal mining	8,018	8,728
Total revenue	<u>226,352</u>	<u>224,704</u>
Operating expenses	<u>200,479</u>	<u>206,883</u>
Operating income	<u>\$ 25,873</u>	<u>\$ 17,821</u>
Income from continuing operations	<u>\$ 13,260</u>	<u>\$ 7,331</u>

A discussion of results from our Wholesale Energy group's operating segments is as follows:

#### Energy Marketing and Transportation

	Three Months Ended March 31	
	<u>2005</u>	<u>2004</u>
	(in thousands)	
Revenue*	\$ 161,131	\$ 164,435
Operating income	4,709	6,301
Income from continuing operations	2,927	3,969

\* 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 and transportation subsidiary in accordance with EITF Issue No. 02-3 "Accounting for Contracts Involving Energy Trading and Risk Management Activities" (EITF 02-3) and EITF Issue No. 99-19 "Reporting Revenue Gross as a Principal versus Net as an Agent" (EITF 99-19).

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

	Three Months Ended March 31	
	<u>2005</u>	<u>2004</u>
Natural gas physical sales – MMBtus	1,357,600	1,201,000
Natural gas financial sales - MMBtus	674,800	383,200
Crude oil – barrels	35,500	49,700

**Three Months Ended March 31, 2005 Compared to Three Months Ended March 31, 2004.** The decrease in revenues is primarily the result of a 29 percent decrease in crude oil volumes marketed, partially offset by a 42 percent increase in the average price per barrel marketed. Revenue decreases from crude oil marketing were more than offset by a decrease in the cost of crude oil sold resulting in increased crude oil marketing margins.

Income from continuing operations decreased \$1.0 million due to a \$3.1 million unrealized mark-to-market loss for the quarter ended March 31, 2005, compared to a \$0.3 million unrealized loss in the first quarter of 2004, resulting in a quarter-over-quarter, pre-tax decrease of \$2.8 million in unrealized mark-to-market adjustment at our gas marketing operations (for discussion of potential volatility in energy marketing earnings related to accounting treatment of certain hedging activities at our natural gas marketing operations see "Trading Activities" in Part 1, Item 3 of this Form 10-Q). These items were partially offset by a \$1.7 million increase in realized gas marketing margins received and a 13 percent increase in natural gas physical volumes marketed.

#### Power Generation

	Three Months Ended March 31			
	<u>2005</u>		<u>2004</u>	
	(in thousands)			
Revenue	\$	38,162	\$	35,137
Operating income		11,768		3,593
Income (loss) from continuing operations		3,885		(2,077)

	March 31	
	<u>2005</u>	<u>2004</u>
Independent power capacity:		
MWs of independent power capacity in service	964	964
Contracted fleet plant availability	98.9%	98.5%

**Three Months Ended March 31, 2005 Compared to Three Months Ended March 31, 2004.** Revenue increased 9 percent in the first quarter of 2005 compared to the first quarter of 2004 primarily as a result of a \$2.4 million increase in revenues at our Las Vegas facility. In the first three months of 2005, our Las Vegas II facility sold capacity and energy to Nevada Power Company under a long-term tolling arrangement, which became effective April 1, 2004, as opposed to selling power into the market on a merchant basis, for the same period in 2004, when economic to do so.

Income from continuing operations increased \$6.0 million. Increased earnings were the result of higher revenues, decreased fuel cost primarily related to generating costs at our Las Vegas facility, and lower interest expense from debt reduction and increased income from equity investments.

## Oil and Gas

	Three Months Ended March 31	
	<u>2005</u>	<u>2004</u>
	(in thousands)	
Revenue	\$ 19,041	\$ 16,404
Operating income	7,623	5,892
Income from continuing operations	4,960	3,687

The following is a summary of oil and natural gas production:

	Three Months Ended March 31	
	<u>2005</u>	<u>2004</u>
Fuel production:		
Barrels of oil sold	95,900	114,300
Mcf of natural gas sold	2,889,800	2,394,300
Mcf equivalent sales	3,465,000	3,079,900

**Three Months Ended March 31, 2005 Compared to Three Months Ended March 31, 2004.** Income from continuing operations for the first quarter of 2005 increased \$1.3 million over the comparable period in 2004. Volumes sold increased 13 percent, primarily related to increased production. Average gas and oil prices received, net of hedges, in the first three months of 2005 were \$5.36/Mcf and \$32.73/bbl, respectively, compared to \$5.15/Mcf and \$26.87/bbl in the first three months of 2004. Total operating expenses increased 9 percent primarily due to increased production expenses related to the additional sales volumes. The 2005 lease operating expenses per Mcf sold (LOE/MCF) decreased 16 percent from \$0.99/Mcf in 2004 to \$0.83/Mcf in 2005 due to production efficiencies realized from an increase in productive wells placed in service.

The following is a summary of our internally estimated, economically recoverable oil and gas reserves. These estimates are measured using constant product prices. 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.

	<u>March 31, 2005</u>	<u>December 31, 2004</u>
Barrels of oil (in thousands)	5,400	5,239
Mmcf of natural gas	139,846	141,983
Total in Mmcf equivalents	172,246	173,417

Reserves reflect pricing of:

	March 31, <u>2005</u>		December 31, <u>2004</u>	
	<u>Oil</u>	<u>Gas</u>	<u>Oil</u>	<u>Gas</u>
NYMEX	\$55.40	\$7.65	\$43.45	\$6.15
Average well-head	\$53.14	\$7.13	\$41.19	\$5.55

### Coal Mining

	Three Months Ended March 31	
	<u>2005</u>	<u>2004</u>
	(in thousands)	
Revenue	\$ 8,018	\$ 8,728
Operating income	1,773	2,035
Income from continuing operations	1,488	1,752

The following is a summary of coal sales quantities:

	Three Months Ended March 31	
	<u>2005</u>	<u>2004</u>
Fuel production:		
Tons of coal sold	1,153,300	1,203,600

**Three Months Ended March 31, 2005 Compared to Three Months Ended March 31, 2004.** Revenue from our coal mining segment decreased 8 percent for the three-month period ended March 31, 2005, compared to the same period in 2004. The decrease in revenue was primarily attributable to unscheduled outages at the Wyodak plant. The Wyodak plant, operated by our joint interest partner (PacifiCorp), has postponed a planned 2005 major maintenance outage and rescheduled the outage for 2006.

Operating expenses decreased 7 percent or approximately \$0.4 million, primarily due to lower depletion rates and lower mineral tax expense, related to the decrease in revenues.

Income from continuing operations decreased 15 percent due to the decrease in revenues partially offset by lower taxes and production-related costs.

## Retail Services Group

### Electric Utility

	Three Months Ended	
	March 31	
	<u>2005</u>	<u>2004</u>
	(in thousands)	
Revenue	\$ 43,147	\$ 41,647
Operating expenses	33,652	30,239
Operating income	<u>\$ 9,495</u>	<u>\$ 11,408</u>
Income from continuing operations and net income	<u>\$ 4,322</u>	<u>\$ 5,037</u>

The following table provides certain operating statistics:

	Three Months Ended	
	March 31	
	<u>2005</u>	<u>2004</u>
Firm (system) sales – MWh	517,962	513,234
Off-system sales – MWh	231,314	202,294

**Three Months Ended March 31, 2005 Compared to Three Months Ended March 31, 2004.** Electric utility revenues increased 4 percent for the three-month period ended March 31, 2005, compared to the same period in the prior year. The increase in revenue was primarily due to a 14 percent increase in off-system electric megawatt-hour sales at an 8 percent increase in average prices received. Firm residential, commercial and wholesale sales increased 1 percent, 2 percent and 1 percent, respectively, and industrial sales declined 1 percent. Degree days, which is a measure of weather trends, were 4 percent below last year.

Electric operating expenses increased 11 percent for the three-month period ended March 31, 2005, compared to the same period in the prior year. Purchased power increased \$2.7 million due to a 14 percent increase in megawatt-hours purchased, at a 13 percent increase in the average cost per megawatt-hour. The increase in purchased power costs was primarily due to the increased off-system sales and 18 days of unscheduled plant outages at the Wyodak plant and was partially offset by a \$0.3 million decrease in fuel costs as prevailing gas prices made it more economical for us to purchase power for our peaking needs and increased off-system sales, rather than generate energy utilizing our gas turbines. The Wyodak plant has postponed a planned 2005 maintenance outage and rescheduled the maintenance outage for 2006. The increase in operating expense was also affected by increased legal expense and health insurance costs, partially offset by lower maintenance costs.

Income from continuing operations decreased \$0.7 million primarily due to the increase in purchased power expense, legal expense and health insurance expense, partially offset by an increase in electric sales and a decrease in interest expense primarily due to the pay down of debt.

Electric and Gas Utility

January 21, 2005 to  
March 31  
2005  
(in thousands)

Revenue	\$ 27,075
Operating expenses	26,177
Operating income	<u>\$ 898</u>
Income from continuing operations and net income	<u>\$ 512</u>

Natural gas sales comprised 41 percent or \$11.0 million of total revenues, and electric sales comprised 59 percent or \$16.1 million of total revenues for this segment.

On April 18, 2005, applications were filed with the Wyoming Public Service Commission (WPSC) to increase the base rates for retail electric and natural gas service effective January 1, 2006. The applications request a 3.94 percent and 5.62 percent increase in electric and gas revenues, respectively. We expect that these increases, if approved by the WPSC, would result in an annual revenue increase of approximately \$5.2 million.

Communications

Three Months Ended  
March 31  
2005      2004  
(in thousands)

Revenue	\$ 9,666	\$ 8,455
Operating expenses	10,172	10,294
Operating loss	<u>\$ (506)</u>	<u>\$ (1,839)</u>
Net loss	<u>\$ (887)</u>	<u>\$ (1,784)</u>

The following table provides certain operating statistics:

	March 31 <u>2005</u>	December 31 <u>2004</u>	March 31 <u>2004</u>
Business customers	3,376	3,317	3,156
Residential customers	23,838	23,663	23,478
Revenue generating units	57,542	56,835	55,395

**Three Months Ended March 31, 2005 Compared to Three Months Ended March 31, 2004.** The communications business group's net loss was \$0.9 million for the three-month period ended March 31, 2005 compared to a net loss of \$1.8 million for the same period in 2004. Revenues increased 14 percent as a result of a 2 percent increase in customers and the expiration of a sales incentive marketing campaign initiated in response to a local competitor's aggressive pricing pressure in 2004. Revenue was also impacted by a 4 percent increase in residential revenue generating units over the same period in the prior year. The increase in revenues was partially offset by an increase in the cost of sales related to the increase in customers.

In April 2005, we entered into a definitive agreement to sell our communications business. Under the purchase and sale agreement, we will receive a cash payment of approximately \$103 million. The transaction is subject to certain state and federal regulatory approvals and is expected to be completed prior to June 30, 2005. We expect to record a loss of approximately \$0.09 per share on the sale.

### **Critical Accounting Policies**

There have been no material changes in our critical accounting policies from those reported in our 2004 Annual Report on Form 10-K filed with the Securities and Exchange Commission. For more information on our critical accounting policies, see Part II, Item 7 of our 2004 Annual Report on Form 10-K.

### **Liquidity and Capital Resources**

#### **Cash Flow Activities**

During the three-month period ended March 31, 2005, 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, plant and equipment additions and the CLF&P acquisition (exclusive of debt assumed). We plan to fund future property and investment additions primarily through a combination of operating cash flow and increased short-term and long-term debt.

Cash flows from operations increased \$24.3 million for the three-month period ended March 31, 2005 compared to the same period in the prior year primarily due to a \$6.0 million increase in net income, an \$18.7 million increase in our cash flows from net derivative assets and liabilities and a \$4.8 million increase in cash flows from distributions from equity investments partially offset by a \$7.3 million decrease in operating assets and liabilities.

During the three months ended March 31, 2005, we had cash outflows from investing activities of \$97.0 million, which was primarily related to property, plant and equipment additions in the normal course of business and the \$67.3 million cash payment related to the acquisition of CLF&P.

During the three months ended March 31, 2005, we had cash outflows from financing activities of \$10.3 million, primarily due to the payment of quarterly cash dividends on common stock.

#### **Dividends**

Dividends paid on our common stock totaled \$10.4 million, or \$0.32 per share in the first quarter of 2005. This reflects a 3.2 percent increase, as approved by our board of directors in January 2005, from the 2004 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 PUHCA, 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 2005. As of March 31, 2005, we had approximately \$67.6 million of cash unrestricted for operations and \$350 million of credit through revolving bank facilities. Approximately \$41.1 million of the cash balance at March 31, 2005 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 \$125 million facility due May 12, 2005.

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, 2005, we had \$25.0 million of borrowings outstanding under these facilities. After inclusion of applicable letters of credit, the remaining borrowing capacity under the bank facilities was \$277.4 million at March 31, 2005.

On May 5, 2005, the Company entered into a new \$400 million revolving bank facility with ABN AMRO as Administrative Agent, Union Bank of California and US Bank as Co-Syndication Agents, Bank of America and Harris Nesbitt as Co-Documentation Agents, and other syndication participants. The new facility has a five year term, expiring May 4, 2010. The facility contains a provision which allows the facility size to be increased by up to an additional \$100 million through the addition of new lenders, or through increased commitments from existing lenders, but only with the consent of such lenders. The cost of borrowings or letters of credit issued under the new facility is determined based on the Company's credit ratings; at the Company's current ratings levels, the facility has an annual facility fee of 17.5 basis points, and a borrowing spread of 70.0 basis points over the one month LIBOR (which equates to a 3.57 percent borrowing rate as of March 31, 2005). In conjunction with entering into the new revolving bank facility, the Company terminated its \$125 million revolving bank facility due May 12, 2005 and its \$225 million facility due August 20, 2006.

The bank facility includes customary affirmative and negative covenants, such as limitations on the creation of new indebtedness and on certain liens, restrictions on certain transactions and maintenance of the following financial covenants:

- a consolidated net worth in an amount of not less than the sum of \$625 million and 50 percent of our aggregate consolidated net income beginning January 1, 2005;
- a recourse leverage ratio not to exceed 0.65 to 1.00; and
- an interest coverage ratio of not less than 2.5 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.

A default under the bank facility may be triggered by events such as a failure to comply with financial covenants or certain other covenants under the bank facility, a failure to make payments when due or a failure to make payments when due in respect of, or a failure to perform obligations relating to, debt obligations of \$20 million or more. A default under the bank facility would permit the participating banks to restrict the Company's ability to further access the credit facility for loans or new letters of credit, require the immediate repayment of any outstanding loans with interest and require the cash collateralization of outstanding letter of credit obligations.

The bank facility prohibits the Company from paying cash dividends unless no default or no event of default exists prior to, or would result after, giving effect to such action.



Our consolidated net worth was \$737.7 million at March 31, 2005, which was approximately \$155.7 million in excess of the net worth we were required to maintain under the bank facilities in place at March 31, 2005. The long-term debt component of our capital structure at March 31, 2005 was 50.6 percent, our total debt leverage (long-term debt and short-term debt) was 52.0 percent, and our recourse leverage ratio was approximately 47.4 percent.

In addition, Enserco Energy Inc., our gas marketing unit, has a \$150 million uncommitted, discretionary line of credit to provide support for the purchase of natural gas. As of March 31, 2005, we had a \$3.0 million guarantee to the lender under this facility. At March 31, 2005, there were outstanding letters of credit issued under the facility of \$99.8 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, 2005, BHER had letters of credit outstanding of \$17.7 million.

There were no changes in our corporate credit ratings during the first quarter of 2005.

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.

Upon closing of the agreement to sell our communications subsidiary, Black Hills FiberSystems, Inc., we expect to receive a cash payment of approximately \$103 million. The transaction is expected to be completed on or before June 30, 2005. Proceeds from the transaction are expected to be used to reduce debt, to fund our capital expenditures or a combination of both.

There have been no other material changes in our forecasted changes in liquidity requirements from those reported in Item 7 of our 2004 Annual Report on Form 10-K filed with the Securities and Exchange Commission.

#### **Guarantees**

During the first quarter of 2005, a \$0.5 million guarantee related to payments under various transactions with Idaho Power Company was reduced to \$0.3 million. At March 31, 2005, we had guarantees totaling \$183.5 million in place.

#### **Capital Requirements**

During the three months ended March 31, 2005, capital expenditures were approximately \$28.3 million for property, plant and equipment additions and \$67.3 million for the acquisition of CLF&P (exclusive of debt assumed). We currently expect capital expenditures for the entire year 2005 to approximate \$245 million, as detailed in Item 7 of our 2004 Annual Report on Form 10-K filed with the Securities and Exchange Commission.

## RISK FACTORS

Other than as set forth below, there have been no material changes in our Risk Factors from those reported in Items 1 and 2 of our 2004 Annual Report on 10-K filed with the Securities and Exchange Commission, which we incorporate by reference herein.

**Our sale of Black Hills FiberSystems, Inc. is subject to the receipt of approvals and consents from governmental authorities and third parties. If we do not complete the acquisition, we may continue to incur losses in our Communications segment.**

On April 20, 2005, we entered into an agreement with PrairieWave Communications, Inc. for PrairieWave to acquire all the outstanding common stock of Black Hills FiberSystems, Inc. for approximately \$103.0 million in cash. Completion of the sale is conditioned, among other things, upon the expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, consent by the SDPUC and the receipt of consents, orders, approvals or clearance of certain other regulatory authorities and third parties. A failure to obtain satisfactory approvals, a substantial delay thereof or the imposition of unfavorable terms or conditions in the approvals could prevent us from consummating the sale and could cause us to continue to incur losses from our Communications segment, and could have other adverse effects on our business, financial condition or results of operation.

**Our utilities may not raise their retail rates without prior approval of the South Dakota Public Utilities Commission or the Wyoming Public Services Commission. Any delays in obtaining approvals or having cost recovery disallowed in such rate proceedings could have an adverse effect on our revenues and results of operation.**

The rate freeze agreement with the SDPUC for our Black Hills Power electric utility expired on January 1, 2005. Until such time as we petition the SDPUC or the WPSC for rate relief, or either commission requires that we do so, Black Hills Power may not increase its retail rates. Additionally, Black Hills Power may not invoke any fuel and purchased power adjustment tariff that would take effect prior to the completion of a rate proceeding, absent extraordinary circumstances. Because our utilities are generally unable to increase their base rates without prior approval from the SDPUC and the WPSC, our returns could be threatened by plant outages, machinery failure, increases in purchased power costs over which our utilities have no control, acts of nature, acts of terrorism or other unexpected events that could cause operating costs to increase and operating margins to decline. Moreover, in the event of unexpected plant outages or machinery failures, Black Hills Power may be required to purchase replacement power in wholesale power markets at prices that exceed the rates it is permitted to charge its retail customers. Finally, our utilities' costs would be subject to the review of the SDPUC or the WPSC, and the commissions could find certain costs not to be recoverable, thus negatively affecting our revenues and results of operation.

As part of the process for obtaining approval to acquire CLF&P, we agreed with the WPSC that CLF&P and Black Hills Power would not raise retail rates for their respective Wyoming customers prior to January 1, 2006. In anticipation of such date, our CLF&P utility filed rate cases with the WPSC on April 18, 2005 with respect to its retail gas and electric rates, requesting 5.62% and 3.94% increases in such rates, respectively. In the rate cases, the WPSC will establish, among other things, the return on common equity, overall rate of return, depreciation expenses and cost of capital for CLF&P. Any costs found by the WPSC that have not been prudently incurred would not be recoverable from CLF&P's customers. Such a finding, among any other unfavorable rulings by the WPSC in these rate cases, could negatively affect our revenues and results of operation.

## NEW ACCOUNTING PRONOUNCEMENTS

Other than the new pronouncements reported in our 2004 Annual Report on Form 10-K filed with the Securities and 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 in Items 1 and 2 of our 2004 Annual Report on Form 10-K filed with the SEC, and the following:

- The amount and timing of capital deployment in new investment opportunities or for the repurchase of debt or stock;
- The volumes of our production from oil and gas development properties, which may be dependent upon issuance by federal, state, and tribal governments, or agencies thereof, of drilling, environmental and other permits, and the availability of specialized contractors, work force, and equipment;
- The extent of our success in connecting natural gas supplies to gathering, processing and pipeline systems;
- Our ability to successfully integrate CLF&P into our operations;
- Unfavorable rulings in the rate cases filed by CLF&P with the WPSC and in the periodic applications to recover costs for fuel and purchased power;
- Our compliance with orders of the SEC under PUHCA related to our financing and investment authority, and related to transactions and cost allocation among our affiliated companies;
- Our ability to complete the sale of Black Hills FiberSystems, Inc., including the receipt of required approvals and consents and the timing thereof;
- Our ability to remedy any deficiencies that may be identified in the periodic review of our internal controls;
- 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;
- The timing and extent of scheduled and unscheduled outages of power generation facilities;
- General economic and political conditions, including tax rates or policies and inflation rates;
- Our use of derivative financial instruments to hedge commodity, currency exchange rate and interest rate risks;
- The creditworthiness of counterparties to trading and other transactions, and defaults on amounts due from counterparties;
- 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;
- Changes in state laws or regulations that could cause us to curtail our independent power production;
- Weather and other natural phenomena;
- 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, which may affect our ability to raise capital on favorable terms;
- Price risk due to marketable securities held as investments in benefit plans;
- Obtaining adequate cost recovery for our retail operations through regulatory proceedings; and
- Other factors discussed from time to time in our other 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

#### Trading Activities

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, 2005 (in thousands):

Total fair value of natural gas marketing positions marked-to-market at December 31, 2004	\$ (930) <sup>(a)</sup>
Net cash settled during the quarter on positions that existed at December 31, 2004	541
Change in fair value due to change in techniques and assumptions	—
Unrealized loss on new positions entered during the quarter and still existing at March 31, 2005	(4,535)
Realized gain on positions that existed at December 31, 2004 and were settled during the quarter	355
Unrealized loss on positions that existed at December 31, 2004 and still exist at March 31, 2005	(29)
	<hr/>
Total fair value of natural gas marketing positions net assets at March 31, 2005	<u>\$ (4,598)<sup>(a)</sup></u>

(a) The fair value of positions marked-to-market consists of derivative assets/liabilities and natural gas inventory that has been designated as a hedged item and marked-to-market as part of a fair value hedge, as follows (in thousands):

	March 31, 2005	December 31, 2004
	<hr/>	<hr/>
Net derivative assets/(liabilities)	\$ (9,360)	\$ 8,082
Fair value adjustment recorded in material, supplies and fuel	4,762	(9,012)
	<hr/>	<hr/>
	<u>\$ (4,598)</u>	<u>\$ (930)</u>

On January 1, 2003, the Company adopted EITF 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 Issue No. 98-10 "Accounting for Contracts Involved in Energy Trading and Risk Management Activities" (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 No. 133 "Accounting for Derivative Instruments and Hedging Activities" (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) to market value, 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, 2005, we had a mark to fair value unrealized loss of \$(4.6) million for our natural gas marketing activities, with \$(4.3) 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	\$ 2,067	\$ 157	\$ 2,224
Prices provided by other external sources	(6,391)	(431)	(6,822)
Modeled	—	—	—
Total	\$ (4,324)	\$ (274)	\$ (4,598)

The following table presents a reconciliation of our March 31, 2005 natural gas marketing positions recorded at fair value under generally accepted accounting principles (GAAP) to a non-GAAP measure of the fair value of our natural gas forward book wherein all forward trading positions are marked-to-market (in thousands). The approach used in determining the non-GAAP measure is consistent with our previous accounting methods under EITF 98-10. As part of our GAAP fair value calculations we include a “Liquidity Reserve” to reflect a liquidation scenario on the balance sheet date. We have added back this liquidity reserve in the non-GAAP presentation below as we anticipate holding our natural gas contracts until their settlement and therefore not incur the impact of the bid/ask spread in our realized gross margin.

Fair value of our natural gas marketing positions marked-to-market in accordance with GAAP (see footnote (a) above)	\$ (4,598)
Increase in fair value of inventory, storage and transportation positions that are part of our forward trading book, but that are not marked-to-market under GAAP	4,359
Fair value of all forward positions (Non-GAAP)	(239)
“Liquidity Reserve” included in GAAP marked-to-market fair value (b)	2,723
Fair value of all forward positions excluding the “Liquidity Reserve” (Non-GAAP)	\$ 2,484

- (b) In accordance with generally accepted accounting principles and industry practice, the Company includes a “Liquidity Reserve” in its GAAP marked-to-market fair value. This “Liquidity Reserve” accounts for the estimated impact of the bid/ask spread in a liquidation scenario under which the Company is forced to liquidate its forward book on the balance sheet date.

There have been no material changes in market risk faced by us from those reported in our 2004 Annual Report on Form 10-K filed with the Securities and Exchange Commission. For more information on market risk, see Part II, Item 7 in our 2004 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.

## Activities Other Than Trading

The Company has entered into agreements to hedge a portion of its estimated 2005 and 2006 natural gas and crude oil production. The hedge agreements in place at March 31, 2005 are as follows:

### Natural Gas

<u>Location</u>	<u>Term</u>	<u>Volume (Mmbtu/day)</u>	<u>Price</u>
San Juan El Paso	04/05 – 10/05	2,500	\$ 5.30
San Juan El Paso	04/05 – 10/05	5,000	\$ 5.40
San Juan El Paso	04/05 – 10/05	2,500	\$ 6.04
San Juan El Paso	11/05 – 03/06	2,500	\$ 7.08

### Crude Oil

<u>Location</u>	<u>Term</u>	<u>Volume (barrels/month)</u>	<u>Price</u>
NYMEX	Calendar 2005	10,000	\$ 27.90
NYMEX	Calendar 2005	10,000	\$ 34.08
NYMEX	Calendar 2006	10,000	\$ 41.00

## ITEM 4. 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, 2005. 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.

On January 21, 2005, we acquired Cheyenne Light, Fuel and Power (CLF&P). We have not been able to complete an assessment of CLF&P's internal control over financial reporting between the acquisition date and the end of this reporting period. The Securities and Exchange Commission allows companies one year after acquisition to complete their assessment.

Since the acquisition of CLF&P, we have been focusing on integrating it into our company. We have and will continue to analyze and implement changes in CLF&P's procedures and controls to ensure their effectiveness.

Other than changes resulting from our acquisition of CLF&P, there have been no changes in our internal control over financial reporting that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

BLACK HILLS CORPORATION

Part II – Other Information

Item 1. Legal Proceedings

For information regarding legal proceedings, see Note 21 in Item 8 of the Company's 2004 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 2. Unregistered Sales of Equity Securities and Use of Proceeds

**Unregistered Sales of Equity Securities**

None

**Share Repurchases**

<u>Period</u>	<u>(a) Total Number of Shares Purchased</u>	<u>(b) Average Price Paid per Share</u>	<u>(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</u>	<u>(d) Maximum Number (or Approximate Dollar Value) of Shares That May Yet Be Purchased Under the Plans or Programs</u>
January 1, 2005 – January 31, 2005	—	\$ —	—	—
February 1, 2005 – February 28, 2005	—	\$ —	—	—
March 1, 2005 – March 31, 2005	287 <sup>(1)</sup>	\$ 32.03	—	—
<b>Total</b>	<b>287</b>	<b>\$ 32.03</b>	<b>—</b>	<b>—</b>

(1) Shares acquired by a Rabbi Trust for the Outside Directors Stock Based Compensation Plan.

Item 6. Exhibits

(a) Exhibits–

- Exhibit 10.1 Credit Agreement, dated as of May 5, 2005 among Black Hills Corporation, a South Dakota corporation ("Borrower"), the financial institutions from time to time party hereto (each a "Bank," and collectively the "Banks"), U.S. Bank, National Association, in its capacity as a co-syndication agent for the Banks (in such capacity, a "Co-Syndication Agent"), Union Bank of California, N.A., in its capacity as a Co-Syndication Agent, BANK OF AMERICA, N.A., in its capacity as a co-documentation agent for the Banks (in such capacity, a "Co-Documentation Agent"), BANK OF MONTREAL dba HARRIS NESBITT, as Co-Documentation Agent, and ABN AMRO Bank N.V. in its capacity as agent for the Banks hereunder (in such capacity, the "Administrative Agent").
- 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.



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, 2005

## EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
Exhibit 10.1	Credit Agreement, dated as of May 5, 2005 among Black Hills Corporation, a South Dakota corporation ("Borrower"), the financial institutions from time to time party hereto (each a "Bank," and collectively the "Banks"), U.S. Bank, National Association, in its capacity as a co-syndication agent for the Banks (in such capacity, a "Co-Syndication Agent"), Union Bank of California, N.A., in its capacity as a Co-Syndication Agent, BANK OF AMERICA, N.A., in its capacity as a co-documentation agent for the Banks (in such capacity, a "Co-Documentation Agent"), BANK OF MONTREAL dba HARRIS NESBITT, as Co-Documentation Agent, and ABN AMRO Bank N.V. in its capacity as agent for the Banks hereunder (in such capacity, the "Administrative Agent").
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CREDIT AGREEMENT

DATED AS OF

MAY 5, 2005

AMONG

BLACK HILLS CORPORATION,  
as Borrower,

THE FINANCIAL INSTITUTIONS PARTY HERETO,  
as Banks,

ABN AMRO BANK N.V.,  
as Administrative Agent and Co-Book Runner,

UNION BANK OF CALIFORNIA, N.A.,  
as Co-Syndication Agent and Co-Book Runner,

U.S. BANK, NATIONAL ASSOCIATION,  
as Co-Syndication Agent,

BANK OF AMERICA, N.A.  
as Co-Documentation Agent

and

BANK OF MONTREAL dba HARRIS NESBITT,  
as Co-Documentation Agent

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## CREDIT AGREEMENT

**CREDIT AGREEMENT**, dated as of May 5, 2005 among Black Hills Corporation, a South Dakota corporation (“*Borrower*”), the financial institutions from time to time party hereto (each a “*Bank*,” and collectively the “*Banks*”), U.S. Bank, National Association, in its capacity as a co-syndication agent for the Banks (in such capacity, a “*Co-Syndication Agent*”), Union Bank of California, N.A., in its capacity as a Co-Syndication Agent, BANK OF AMERICA, N.A. , in its capacity as a co-documentation agent for the Banks (in such capacity, a “*Co-Documentation Agent*”), BANK OF MONTREAL dba HARRIS NESBITT, as Co-Documentation Agent, and ABN AMRO Bank N.V. in its capacity as agent for the Banks hereunder (in such capacity, the “*Administrative Agent*”).

### WITNESSETH THAT:

**WHEREAS**, the Borrower desires to obtain the several commitments of the Banks to make available a revolving credit for loans and letters of credit (the “*Revolving Credit*”), as described herein; and

**WHEREAS**, the Banks are willing to extend such commitments subject to all of the terms and conditions hereof and on the basis of the representations and warranties hereinafter set forth.

**NOW, THEREFORE**, in consideration of the recitals set forth above and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### SECTION 1. DEFINITIONS; INTERPRETATION.

Section 1.1 *Definitions*. The following terms when used herein have the following meanings:

“*Account*” is defined in Section 8.4(b) hereof.

“*Adjusted LIBOR*” is defined in Section 2.3(b) hereof.

“*Administrative Questionnaire*” means an administrative questionnaire in a form supplied by the Administrative Agent.

“*Affiliate*” means, as to any Person, any other Person which directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, “*control*” (including, with their correlative meanings, “*controlled by*” and “*under common control with*”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies of a Person (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise), *provided* that, in any event for purposes of this definition: (i) any Person which owns directly or indirectly twenty percent (20%) or more of the securities having ordinary voting power for the election of directors or other governing body of a corporation or twenty percent (20%) or more of the partnership or other ownership interests of any other Person will be deemed to control such corporation or other



Person; and (ii) each director and executive officer of Borrower or any Subsidiary of Borrower shall be deemed an Affiliate of Borrower and each of its Subsidiaries.

“*Administrative Agent*” is defined in the first paragraph of this Agreement and includes any successor Administrative Agent pursuant to Section 10.7 hereof.

“*Agreement*” means this Credit Agreement, including all Exhibits and Schedules hereto, as it may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“*Allocable Amount*” has the meaning specified in 2.13(b).

“*Applicable Margin*” means, at any time (i) with respect to Base Rate Loans, the Base Rate Margin and (ii) with respect to Eurodollar Loans, the Eurodollar Margin.

“*Applicable Telerate Page*” is defined in Section 2.3(b) hereof.

“*Application*” is defined in Section 2.2(b) hereof.

“*Approved Fund*” means any Fund that is administered or managed by (a) a Bank, (b) an Affiliate of a Bank or (c) an entity or an Affiliate of an entity that administers or manages a Bank.

“*Arrangers*” means, collectively, ABN AMRO Bank, Inc., Union Bank of California, N.A., and U.S. Bank, National Association.

“*Assignment and Assumption*” means an assignment and assumption entered into by a Bank and an Eligible Assignee (with the consent of any party whose consent is required by the terms hereof), and accepted by the Administrative Agent, in substantially the form of Exhibit C or any other form approved by the Administrative Agent.

“*Authorized Representative*” means those persons whose specimen signature is included in the incumbency certificate provided by the Borrower pursuant to Section 6.1(c) hereof, or any further or different officer of the Borrower so named by any Authorized Representative of the Borrower in a written notice to the Administrative Agent.

“*Bank*” and “*Banks*” are defined in the first paragraph of this Agreement.

“*Base Rate*” is defined in Section 2.3(a) hereof.

“*Base Rate Loan*” means a Loan bearing interest prior to maturity at a rate specified in Section 2.3(a) hereof.

“*Base Rate Margin*” means the percentage set forth in **Schedule 1** hereto beside the then applicable Level.

“*BHP*” means Black Hills Power, Inc., a South Dakota corporation.

“*Borrower*” is defined in the first paragraph of this Agreement.

“*Borrowing*” means the total of Loans of a single type advanced, continued for an additional Interest Period, or converted from a different type into such type by the Banks on a single date and for a single Interest Period. Borrowings of Loans are made by and maintained ratably for each of the Banks according to their Percentages. A Borrowing is “*advanced*” on the day Banks advance funds comprising such Borrowing to Borrower, is “*continued*” on the date a new Interest Period for the same type of Loans commences for such Borrowing and is “*converted*” when such Borrowing is changed from one type of Loan to the other, all as requested by Borrower pursuant to Section 2.5(a).

“*Business Day*” means any day other than a Saturday or Sunday on which Banks are not authorized or required to close in New York, New York, Chicago, Illinois or Rapid City, South Dakota and, if the applicable Business Day relates to the borrowing or payment of a Eurodollar Loan, on which banks are dealing in U.S. Dollars in the interbank market in London, England.

“*Capital*” means, as of any date of determination thereof, without duplication, the sum of (A) Consolidated Net Worth plus (B) all Recourse Indebtedness (provided that for purposes of clause (B) of this definition, to the extent otherwise included, Indebtedness of Marketing Subsidiaries in an aggregate amount not to exceed the Marketing Subsidiary Indebtedness Limit incurred under Marketing Subsidiary Excluded Credit Facilities shall not be deemed to be Recourse Indebtedness).

“*Capital Lease*” means at any date any lease of Property which, in accordance with GAAP, would be required to be capitalized on the balance sheet of the lessee.

“*Capitalized Lease Obligations*” means, for any Person, the amount of such Person’s liabilities under Capital Leases determined at any date in accordance with GAAP.

“*Change of Control Event*” means one or more of the following events:

(a) less than a majority of the members of the Board of Directors of Borrower shall be persons who either (i) were serving as directors on the Effective Date or (ii) were nominated as directors and approved by the vote of the majority of the directors who are directors referred to in clause (i) above or this clause (ii); or

(b) the stockholders of Borrower shall approve any plan or proposal for the liquidation or dissolution of Borrower; or

(c) a Person or group of Persons acting in concert (other than the direct or indirect beneficial owners of the Voting Stock of Borrower as of the Effective Date) shall, as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise, have become the direct or indirect beneficial owner (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended from time to time) of Voting Stock of Borrower representing more than ten percent (10%) of the combined voting power of the outstanding Voting Stock or other ownership interests for the election of directors or shall have the right to elect a majority of the Board of Directors of Borrower; or

(d) Except as permitted by Section 7.12, Borrower ceases at any time to own one hundred percent (100%) of the Voting Stock and other equity interest of any Material Subsidiary.

“CLF&P” means Cheyenne Light, Fuel & Power Company, a Wyoming corporation.

“CLF&P Indenture” means that certain Indenture of Mortgage and Deed of Trust, dated March 1, 1948, between CLF&P and The United States National Bank of Denver, as Trustee, together with all amendments and supplemental indentures thereto, and the industrial revenue bonds issued in connection therewith.

“Co-Documentation Agent” is defined in the first paragraph of this Agreement.

“Co-Syndication Agent” is defined in the first paragraph of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commitment” and “Commitments” are defined in Section 2.1 hereof.

“Compliance Certificate” means a certificate in the form of **Exhibit B** hereto.

“Consolidated Assets” means all assets which should be listed on the consolidated balance sheet of Borrower and its Consolidated Subsidiaries, as determined on a consolidated basis in accordance with GAAP.

“Consolidated EBITDA” means, for any period, for Borrower and its Consolidated Subsidiaries on a consolidated basis, (A) the sum of the amounts for such period of (i) Consolidated Net Income, (ii) to the extent deducted in arriving at Consolidated Net Income, net federal, state and local income taxes in respect of such period, (iii) to the extent deducted in arriving at Consolidated Net Income, Consolidated Interest Expense, (iv) to the extent deducted in arriving at Consolidated Net Income, the amount charged for the amortization of intangible assets, (v) to the extent deducted in arriving at Consolidated Net Income, the amount charged for the depreciation and depletion of assets, and (vi) to the extent deducted in arriving at Consolidated Net Income, losses on sales of assets (excluding sales in the ordinary course of business) and other extraordinary losses, **less** (B) the amount for such period of (i) to the extent added in arriving at Consolidated Net Income, interest income arising from traditional investment activities with banks, investments banks and other financial institutions or relating to governmental or other marketable securities and (ii) to the extent added in arriving at Consolidated Net Income, gains on sales of assets (excluding sales in the ordinary course of business) and other extraordinary gains, all as determined on a consolidated basis in accordance with GAAP.

“Consolidated Interest Expense” means, with reference to any period of the Borrower and its Subsidiaries, the sum of (i) all interest charges (including capitalized interest, imputed interest charges with respect to Capitalized Lease Obligations and all amortization of debt discount and expense and other deferred financing charges) of the Borrower and its Subsidiaries on a consolidated basis for such period determined in accordance with GAAP, (ii) all commitment or other fees payable in respect of the issuance of standby letters of credit or other

credit facilities for the account of the Borrower or its Subsidiaries, and (iii) net costs/expenses incurred by the Borrower and its Subsidiaries under interest rate derivative arrangements.

“*Consolidated Net Income*” means, for any period of the Borrower and its Consolidated Subsidiaries, the amount for such period of consolidated net income (or net loss) of the Borrower and its Consolidated Subsidiaries, as determined on a consolidated basis in accordance with GAAP.

“*Consolidated Net Worth*” means, as of any time the same is to be determined, the total shareholders’ equity (including capital stock, additional paid-in-capital and retained earnings after deducting treasury stock, but excluding (to the extent otherwise included in calculating shareholders’ equity), minority interests in Subsidiaries) which would appear on the consolidated balance sheet of Borrower determined on a consolidated basis in accordance with GAAP.

“*Consolidated Subsidiary*” means, as to any Person, each subsidiary of such Person (whether now existing or hereafter created or acquired) the financial statements of which shall be (or should have been) consolidated, with the financial statements of such Person in accordance with GAAP, including principles of consolidation.

“*Contractual Obligation*” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or undertaking to which such Person is a party or by which it or any of its Property is bound.

“*Controlled Group*” means all members of a controlled group of corporations and all trades and businesses (whether or not incorporated) under common control that, together with Borrower or any of its Subsidiaries, are treated as a single employer under Section 414 of the Code.

“*Credit Documents*” means this Agreement, the Notes, the Mandate Letter, the Master Letter of Credit Agreement, the Applications, the Letters of Credit and all other documents executed in connection herewith or therewith, including without limitation all documents executed in connection with the making of any Loan to BHP in accordance with the terms of Section 2.13.

“*Credit Event*” means any Borrowing or the issuance of, or extension of the expiration date or increase in the amount of, any Letter of Credit.

“*Default*” means any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

“*Derivative Arrangement*” means any agreement (including any master agreement and any agreement, whether or not in writing, relating to any single transaction) that is an interest rate swap agreement, basis swap, forward rate agreement, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, forward foreign exchange agreement, rate cap, collar or floor agreement, future agreement, currency swap agreement, cross-currency rate swap agreement, swaption, currency option, that relates to fluctuations in raw material prices or utility or energy prices or other costs, or any other similar agreement, including any option to enter into any of the foregoing, or any combination of any of

the foregoing. "Derivative Arrangements" shall include all such agreements or arrangements made or entered into at any time, or in effect at any time, whether or not related to a Loan or L/C Obligations.

"*Derivative Obligations*" means, with respect to any Person, all liabilities of such Person under any Derivative Arrangement (including but not limited to obligations and liabilities arising in connection with or as a result of early or premature termination of a Derivative Arrangement, whether or not occurring as a result of a default thereunder), absolute or contingent, now or hereafter existing or incurred or due or to become due.

"*Effective Date*" means May 5, 2005.

"*Eligible Assignee*" means (a) a Bank, (b) an Affiliate of a Bank, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by (i) the Administrative Agent, (ii) the Issuing Bank, and (iii) unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include the Borrower or any of the Borrower's Affiliates or Subsidiaries.

"*Environmental and Health Laws*" means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, judgments, permits and other governmental rules or restrictions relating to human health, safety (including without limitation occupational safety and health standards), or the environment or to emissions, discharges or releases of pollutants, contaminants, hazardous or toxic substances, wastes or any other controlled or regulated substance into the environment, including without limitation ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous or toxic substances, wastes or any other controlled or regulated substance or the clean-up or other remediation thereof.

"*ERISA*" is defined in Section 5.8 hereof.

"*Eurodollar Loan*" means a Loan bearing interest prior to its maturity at the rate specified in Section 2.3(b) hereof.

"*Eurodollar Margin*" means the percentage set forth in **Schedule 1** hereto beside the then applicable Level.

"*Eurodollar Reserve Percentage*" is defined in Section 2.3(b) hereof.

"*Event of Default*" means any of the events or circumstances specified in Section 8.1 hereof.

"*Existing Letters of Credit*" means the Letters of Credit set forth on Schedule 1.1 hereto, which were issued under one of the credit agreements described under Section 6.1(i) hereof but from and after the Effective Date shall be deemed to be outstanding under this Agreement.

“*Facility Fee Rate*” means the percentage set forth in **Schedule 1** hereto beside the then applicable Level.

“*Federal Funds Rate*” means, for any period, a fluctuating interest rate per annum equal for each day during such period to:

(a) the weighted average of the rates on overnight federal funds transactions with members of the United States Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the United States Federal Reserve Bank of New York; or

(b) if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

“*Fund*” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“*GAAP*” means generally accepted accounting principles as in effect in the United States from time to time, applied by Borrower and its Subsidiaries on a basis consistent with the preparation of Borrower’s financial statements furnished to the Banks as described in Section 5.4 hereof.

“*Granting Bank*” has the meaning specified in Section 11.10(h).

“*Guarantee*” means, in respect of any Person, any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Indebtedness or other obligations of another Person, including, without limitation, by means of an agreement to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to maintain financial covenants, or to assure the payment of such Indebtedness by an agreement to make payments in respect of goods or services regardless of whether delivered, or otherwise, provided, that the term “*Guarantee*” shall not include endorsements for deposit or collection in the ordinary course of business; and such term when used as a verb shall have a correlative meaning.

“*Guarantor Payment*” has the meaning specified in 2.13(b).

“*Hazardous Material*” means any substance or material which is hazardous or toxic, and includes, without limitation, (a) asbestos, polychlorinated biphenyls, dioxins and petroleum or its by-products or derivatives (including crude oil or any fraction thereof) and (b) any other material or substance classified or regulated as “hazardous” or “toxic” pursuant to any Environmental and Health Law.

“*Immaterial Subsidiary*” shall mean, any direct or indirect subsidiary of Borrower (i) whose total assets (as determined in accordance with GAAP) do not represent at least five percent (5%) of the total assets (as determined in accordance with GAAP) of Borrower and its subsidiaries on a consolidated basis or (ii) whose total revenues (as determined in accordance

with GAAP) do not represent at least five percent (5%) of the total revenues (as determined in accordance with GAAP) of Borrower and its subsidiaries on a consolidated basis, *provided* that no subsidiary shall be deemed an Immaterial Subsidiary to the extent (a) the total assets of such subsidiary, when combined with the total assets of other subsidiaries which are Immaterial Subsidiaries, represent at least ten percent (10%) of the total assets (as determined in accordance with GAAP) of Borrower and its subsidiaries on a consolidated basis or (ii) the total revenues of such subsidiary, when combined with the total revenues of other Immaterial Subsidiaries, (as determined in accordance with GAAP) represent at least ten percent (10%) of the total revenues (as determined in accordance with GAAP) of Borrower and its subsidiaries on a consolidated basis. As used in this definition “*subsidiary*” shall mean any Person whose financial statements are consolidated into the financial statements of Borrower in accordance with GAAP.

“*Indebtedness*” means, as to any Person, without duplication: (i) all obligations of such Person for borrowed money or evidenced by bonds, debentures, notes or similar instruments; (ii) all obligations of such Person for the deferred purchase price of property or services (other than in respect of trade accounts payable arising in the ordinary course of business which are not past-due); (iii) all Capitalized Lease Obligations of such Person; (iv) all Indebtedness of others secured by a Lien on any properties, assets or revenues of such Person (other than stock, partnership interests or other equity interests of Borrower or any Subsidiary of Borrower in other entities) to the extent of the lesser of the value of the property subject to such Lien or the amount of such Indebtedness; (v) all Guarantees issued by such Person, *provided* that Long-Term Guaranties shall not be deemed “*Indebtedness*” for purposes of calculating Borrower’s compliance with the financial covenants set forth in Sections 7.16, 7.17 and 7.18 hereof; (vi) all obligations of such Person, contingent or otherwise, in respect of any letters or credit (whether commercial or standby) or bankers’ acceptances, (vii) all Derivative Obligations of such Person (but excluding Derivative Obligations of Marketing Subsidiaries), *provided* that for purposes of determining Borrower’s compliance with the financial covenants set forth herein, only Borrower’s Derivative Obligations under Derivative Arrangements which must be marked-to-market in accordance with GAAP shall be included as Indebtedness of Borrower, and (viii) all obligations of such Person under synthetic (and similar type) lease arrangements, *provided* that for purposes of calculating such Person’s Indebtedness under such synthetic (or similar type) lease arrangements, such lease arrangement shall be treated as if it were a Capitalized Lease.

“*Interest Expense Coverage Ratio*” means, for any period of four consecutive quarters of the Borrower ending with the most recently completed such fiscal quarter, the ratio of (A) Consolidated EBITDA to (B) Consolidated Interest Expenses for such period.

“*Interest Period*” is defined in Section 2.6 hereof.

“*Investments*” is defined in Section 7.14.

“*Issuing Agents*” means: (i) U.S. Bank, National Association, (ii) solely with respect to the Existing Letters of Credit, each Bank which has issued any such Existing Letters of Credit, and (iv) and any other Bank who agrees to be an Issuing Agent and who is acceptable to the Borrower and the Administrative Agent.

“*L/C Documents*” means the Letters of Credit, any draft or other document presented in connection with a drawing thereunder, the Applications and this Agreement.

“*L/C Fee Rate*” means the percentage set forth in Schedule 1 hereto beside the then applicable Level.

“*L/C Obligations*” means the aggregate undrawn face amounts of all outstanding Letters of Credit and all unpaid Reimbursement Obligations.

“*Lending Office*” is defined in Section 9.4 hereof.

“*Letter of Credit*” is defined in Section 2.2(a) hereof.

“*Level I Status*” means Borrower’s S&P Rating is A- or higher and its Moody’s Rating is A3 or higher.

“*Level II Status*” means Level I Status does not exist, but Borrower’s S&P Rating is BBB+ or higher and its Moody’s Rating is Baa1 or higher.

“*Level III Status*” means neither Level I Status nor Level II Status exists, but Borrower’s S&P Rating is BBB or higher and its Moody’s Rating is Baa2 or higher.

“*Level IV Status*” means neither Level I Status, Level II Status, nor Level III Status exists, but Borrower’s S&P Rating is BBB- or higher and its Moody’s Rating is Baa3 or higher.

“*Level V Status*” means neither Level I Status, Level II Status, Level III Status, nor Level IV Status exists, but Borrower’s S&P Rating is BB+ or higher and its Moody’s Rating is Ba1 or higher.

“*Level VI Status*” means none of Level I Status, Level II Status, Level III Status, Level IV Status nor Level V Status exists.

“*LIBOR*” is defined in Section 2.3(b) hereof.

“*LIBOR Loan Restriction Period*” means the period commencing on and including the fifth to last Business Day of any calendar year and ending on and including the fifth Business Day of the immediately succeeding calendar year.

“*Lien*” means any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law, statute or contract, including, but not limited to, the security interest or lien arising from a mortgage, encumbrance, pledge, conditional sale, security agreement or trust receipt, or a lease, consignment or bailment for security purposes. For the purposes of this definition, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement, Capital Lease or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes, and such retention of title shall constitute a “*Lien*.”



“*Loan*” and “*Loans*” are defined in Section 2.1 hereof and includes a Base Rate Loan or Eurodollar Loan, each of which is a “*type*” of Loan hereunder.

“*Long-Term Guarantee*” means (i) any Guarantee issued by Borrower or its Subsidiaries under which the holder or beneficiary of such Guarantee is not permitted under any circumstance or contingency to make demand or exercise any other remedies under such Guarantee prior to the Termination Date, as extended from time to time in accordance with the terms hereof and (ii) any coal mining reclamation bonds or contingent indemnity or reimbursement obligations with respect to such reclamation bonds (so long as such reclamation bonds have not been called upon).

“*Mandate Letter*” means that certain letter among dated as of March 31, 2005 by and among the Arrangers and Borrower pertaining to fees to be paid by Borrower to the Administrative Agent for its sole account and benefit.

“*Marketing Subsidiary*” means each of Black Hills Energy Resources, Inc., a South Dakota corporation, and Enserco Energy, Inc., a South Dakota corporation, and their respective subsidiaries.

“*Marketing Subsidiary Excluded Credit Facilities*” means those certain credit facilities of the Marketing Subsidiaries described on **Schedule 7.15(a)** hereof, as such credit facilities are in effect on the Effective Date (or, in the case of: (i) the credit facility of Enserco Energy Inc., as such credit facility may be amended, restated or otherwise modified on terms and conditions and pursuant to documentation to accommodate an increase in the borrowings thereunder from \$150,000,000 to \$200,000,000 or (ii) the credit facility of Black Hills Energy Resources, Inc., as such credit facility may be amended, restated or otherwise modified on terms and conditions and pursuant to documentation to accommodate an increase in the borrowings thereunder from \$40,000,000 to \$60,000,000 or (iii) the credit facilities of Enserco Energy Inc. and Black Hills Energy Resources, Inc., as such credit facilities may be combined pursuant to a merger of such Persons, on terms and conditions and pursuant to documentation reasonably acceptable to Administrative Agent and, in any event, without any increase in the aggregate amount of combined Indebtedness under such credit facilities), provided that such credit facilities shall cease to be Marketing Subsidiary Excluded Credit Facilities to the extent availability is otherwise increased, any substantive term thereof is materially modified, or such credit facility is extended more than once in any fiscal year for a period of more than one year. Any replacement credit facility of a Marketing Subsidiary Excluded Credit Facility shall be deemed a Marketing Subsidiary Excluded Credit Facility only if such replacement credit facility contains terms substantially the same as the Marketing Subsidiary Excluded Credit Facility being replaced (including tenor but excluding the increase in borrowings otherwise permitted above) or is approved in writing by the Required Banks.

“*Marketing Subsidiary Indebtedness Limit*” means the sum of (i) aggregate amount of credit availability (used or unused) under Marketing Subsidiary Excluded Credit Facilities as of the Effective Date and (ii) \$25,000,000.

“*Marketing Subsidiary Letter of Credit*” means a Letter of Credit issued hereunder which supports any obligation of a Marketing Subsidiary or the primary purpose of which is to otherwise benefit a Marketing Subsidiary.

“*Marketing Subsidiary Sublimit*” means, at any time, an amount equal to the greater of: (x) \$150,000,000 and (y) seven and one half percent (7.50%) of Consolidated Assets as reflected on the most recent audited, fiscal year-end balance sheet delivered by Borrower pursuant to Section 7 outstanding at any time.

“*Master Letter of Credit Agreement*” is defined in Section 2.2(a) hereof.

“*Material Adverse Effect*” means a material adverse effect on (i) the business, financial position or results of operations of Borrower or Borrower and its Subsidiaries taken as a whole, (ii) the ability of Borrower to perform its material obligations under the Credit Documents, (iii) the validity or enforceability of the material obligations of Borrower under any Credit Document, (iv) the rights and remedies of the Banks or the Administrative Agent against Borrower; or (v) the timely payment of the principal of and interest on the Loans or other amounts payable by Borrower hereunder, provided, that a downgrade of Borrower’s S&P Rating and/or Moody’s Rating shall not, in and of itself, be deemed a “Material Adverse Effect” for purposes of this Agreement.

“*Material Subsidiaries*” means BHP, Black Hills Energy, Inc., a South Dakota corporation, Wyodak Resources Development Corp., a Delaware corporation, Black Hills Generation, Inc., a Delaware corporation, CLF&P, and any other Subsidiary of Borrower which is not either an Immaterial Subsidiary or a Project Finance Subsidiary.

“*Moody’s Rating*” means the rating assigned by Moody’s Investors Service, Inc. and any successor thereto that is a nationally recognized rating agency to the outstanding senior unsecured non-credit enhanced long-term indebtedness of a Person (or if neither Moody’s Investors Service, Inc. nor any such successor shall be in the business of rating long-term indebtedness, a nationally recognized rating agency in the United States of America as mutually agreed between the Required Banks and Borrower). Any reference in this Agreement to any specific rating is a reference to such rating as currently defined by Moody’s Investors Service, Inc. (or such a successor) and shall be deemed to refer to the equivalent rating if such rating system changes.

“*Non-Recourse Indebtedness*” means, without duplication, all Indebtedness of Borrower and its Consolidated Subsidiaries determined on a consolidated basis in accordance with GAAP incurred in connection with project financings (including project financings of existing assets) as to which the holder of such Indebtedness has recourse solely against the assets of the Project Finance Subsidiary that incurs such Indebtedness and not against Borrower or a Consolidated Subsidiary of Borrower other than a Project Finance Subsidiary or any of their other assets (whether directly, through a Guarantee or otherwise), other than the pledge of the stock (or similar equity interest) of the Project Finance Subsidiary which incurred such Indebtedness. For purposes of clarification, any Indebtedness of a Project Finance Subsidiary which would otherwise constitute Non-Recourse Indebtedness but for the issuance by the Borrower or a Consolidated Subsidiary of the Borrower of a Guarantee or other document which provides

recourse with respect to such Indebtedness, such Indebtedness shall for all purposes of this Agreement be deemed Non-Recourse Indebtedness so long as (i) the Borrower's or such Consolidated Subsidiary's obligations under such Guarantee or other document are treated for all purposes as Recourse Indebtedness hereunder, (ii) such Recourse Indebtedness of the Borrower or such Consolidated Subsidiary is unsecured and is otherwise permitted by this Agreement, and (iii) such Recourse Indebtedness of the Borrower or such Consolidated Subsidiary does not in the aggregate exceed \$100,000,000 at any one time outstanding.

"*Note*" is defined in Section 2.10(a) hereof.

"*Obligations*" means all fees payable hereunder, all obligations of Borrower to pay principal or interest on Loans and L/C Obligations, fees, expenses, indemnities, and all other payment obligations of Borrower arising under or in relation to any Credit Document.

"*Participating Interest*" is defined in Section 2.2(d) hereof.

"*Percentage*" means, for each Bank, the percentage of the Commitments represented by such Bank's Commitment or, if the Commitments have been terminated, the percentage held by such Bank (including through participation interests in L/C Obligations) of the aggregate principal amount of all outstanding Obligations.

"*Permitted Derivative Obligations*" means all Derivative Obligations as to which the Derivative Arrangements giving rise to such Derivative Obligation are entered into in the ordinary course of business to hedge interest rate risk, currency risk, commodity price risk or the production of Borrower or its Subsidiaries (and not for speculative purposes) and if such Derivative Obligation is an obligation of Borrower, such Derivative Obligation ranks no greater than *pari passu* to the Obligations.

"*Person*" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or any agency or political subdivision thereof.

"*Plan*" means at any time an employee pension benefit plan covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code that is either (i) maintained by a member of the Controlled Group or (ii) maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which a member of the Controlled Group is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions.

"*PBGC*" is defined in Section 5.8 hereof.

"*Project Finance Subsidiary*" means any Subsidiary of Borrower as to which the creditors and other holders of Indebtedness of such Subsidiary have recourse solely against the assets of such Subsidiary and not against Borrower or any other Subsidiary of Borrower or any of their other assets (whether directly, through a Guarantee or otherwise) other than (i) pursuant to a Guarantee permitted hereunder and (ii) the stock of such special purpose Subsidiary (or similar equity interest).

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“*PUHCA*” means the Public Utility Holding Company Act of 1935, as amended.

“*Recourse Indebtedness*” means, without duplication, all Indebtedness of Borrower and its Consolidated Subsidiaries determined on a consolidated basis in accordance with GAAP other than Non-Recourse Indebtedness.

“*Recourse Leverage Ratio*” means, as of any time the same is to be determined, the ratio of the amount of (A) Recourse Indebtedness outstanding at such time (provided that for purposes of clause (A) of this definition, to the extent otherwise included, Indebtedness of Marketing Subsidiaries in an aggregate amount not to exceed the Marketing Subsidiary Indebtedness Limit incurred under Marketing Subsidiary Excluded Credit Facilities shall not be deemed to be Recourse Indebtedness) to (B) the amount of Capital at such time.

“*Reimbursement Obligation*” is defined in Section 2.2(c) hereof.

“*Required Banks*” means, as of the date of determination thereof, any Banks holding in the aggregate more than fifty percent (50%) of the Percentages, *provided*, that at any time there are two (2) or less Banks, Required Banks shall mean Banks holding one hundred percent (100%) of the Percentages.

“*Revolving Credit*” has the meaning specified in the recitals hereof.

“*SEC*” means the United States Securities and Exchange Commission.

“*Security*” has the same meaning as in Section 2(l) of the Securities Act of 1933, as amended.

“*S&P Rating*” means the rating assigned by Standard & Poor’s Ratings Group, a division of The McGraw-Hill Companies, Inc. and any successor thereto that is a nationally recognized rating agency to the outstanding senior unsecured non-credit enhanced long-term indebtedness of a Person (or, if neither such division nor any successor shall be in the business of rating long-term indebtedness, a nationally recognized rating agency in the United States as mutually agreed between the Required Banks and Borrower). Any reference in this Agreement to any specific rating is a reference to such rating as currently defined by Standard & Poor’s Ratings Group, a division of The McGraw-Hill Companies, Inc. (or such a successor) and shall be deemed to refer to the equivalent rating if such rating system changes.

“*Solvent*” means that (a) the fair value of a Person’s assets is in excess of the total amount of such Person’s debts, as determined in accordance with the United States Bankruptcy Code, and (b) the present fair saleable value of a Person’s assets is in excess of the amount that will be required to pay such Person’s debts as they become absolute and matured. As used in this definition, the term “debts” includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent, as determined in accordance with the United States Bankruptcy Code.

“SPC” has the meaning specified in Section 11.10(h).

“*Subsidiary*” means, as to Borrower, any corporation or other entity (i) which is consolidated into the financial statements of such Borrower in accordance with GAAP or (ii) of which more than fifty percent (50%) of the outstanding stock or comparable equity interests having ordinary voting power for the election of the Board of Directors of such corporation or similar governing body in the case of a non-corporation (irrespective of whether or not, at the time, stock or other equity interests of any other class or classes of such corporation or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned by such Borrower or by one or more of its Subsidiaries.

“*Telerate Service*” means Moneyline Telerate, Inc.

“*Termination Date*” means May 4, 2010.

“*Unfunded Vested Liabilities*” means, with respect to any Plan at any time, the amount (if any) by which (i) the present value of all vested nonforfeitable accrued benefits under such Plan exceeds (ii) the fair market value of all Plan assets allocable to such benefits, all determined as of the then most recent valuation date for such Plan, but only to the extent that such excess represents a potential liability of a member of the Controlled Group to the PBGC or the Plan under Title IV of ERISA.

“*Utilization Fee Rate*” means the percentage set forth in **Schedule 1** hereto beside the then applicable Level.

“*U.S. Dollars*” and “\$” each means the lawful currency of the United States of America.

“*Voting Participant*” is defined in Section 11.10(i) hereof.

“*Voting Participant Notification*” is defined in Section 11.10(i) hereof.

“*Voting Stock*” of any Person means capital stock of any class or classes or other equity interests (however designated) having ordinary voting power for the election of directors or similar governing body of such Person.

“*Welfare Plan*” means a “*welfare plan*”, as defined in Section 3(l) of ERISA.

“*Wholly-Owned*” when used in connection with any Subsidiary means a Subsidiary of which all of the issued and outstanding shares of stock or other equity interests (other than directors’ qualifying shares as required by law) shall be owned by Borrower and/or one or more of its Wholly-Owned Subsidiaries.

Section 1.2 *Interpretation*. The foregoing definitions shall be equally applicable to both the singular and plural forms of the terms defined. All references to times of day in this Agreement shall be references to New York, New York time unless otherwise specifically provided. The word “*including*” means including without limiting the generality of any description preceding such term. Where the character or amount of any asset or liability or item

of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, the same shall be done in accordance with GAAP in effect on the Effective Date, to the extent applicable, except where such principles are inconsistent with the specific provisions of this Agreement.

## SECTION 2. THE CREDITS.

Section 2.1 *The Revolving Loan Commitment.* Subject to the terms and conditions hereof (including Sections 6.1 and 6.2), each Bank, by its acceptance hereof, severally agrees to make a loan or loans (individually a “*Loan*” and collectively “*Loans*”) to Borrower from time to time on a revolving basis in U.S. Dollars in an aggregate outstanding amount up to the amount of its commitment set forth opposite the name of such Bank on Schedule 2.1 hereto (such amount, as reduced pursuant to Section 2.12(a), increased pursuant to Section 2.12(b), or changed as a result of one or more assignments under Section 11.10 its “*Commitment*” and, cumulatively for all the Banks, the “*Commitments*”) before the Termination Date, *provided* that the sum of the aggregate amount of Loans and of L/C Obligations at any time outstanding shall not exceed the Commitments in effect at such time. On the Termination Date the Commitments shall terminate. Each Borrowing of Loans shall be made ratably from the Banks in proportion to their respective Percentages. As provided in Section 2.5(a) hereof, Borrower may elect that each Borrowing of Loans be either Base Rate Loans or Eurodollar Loans. Loans may be repaid and the principal amount thereof reborrowed before the Termination Date, subject to all the terms and conditions hereof. Unless an earlier maturity is provided for hereunder, all Loans shall mature and be due and payable on the Termination Date. Notwithstanding anything is this Agreement to the contrary, no Eurodollar Loans may be advanced during the LIBOR Loan Restriction Period.

### Section 2.2 *Letters of Credit.*

(a) *General Terms.* Subject to the terms and conditions hereof, as part of the Revolving Credit the Issuing Agents shall issue standby letters of credit denominated in U.S. Dollars (each a “*Letter of Credit*”) for Borrower’s account, provided that: (i) the aggregate L/C Obligations at any time outstanding attributable to Marketing Subsidiary Letters of Credit shall not exceed the Marketing Subsidiary Sublimit and (ii) the aggregate amount of L/C Obligations outstanding at any time shall not exceed the difference between the Commitments in effect at such time and the aggregate amount of Loans then outstanding. Each Letter of Credit shall be issued by the applicable Issuing Agent, but each Bank shall be obligated to purchase an undivided percentage participation interest of such Letter of Credit from the applicable Issuing Agent pursuant to Section 2.2(d) hereof in an amount equal to its Percentage of the amount of each drawing thereunder and, accordingly, the undrawn face amount of each Letter of Credit shall constitute usage of the Commitment of each Bank *pro rata* in accordance with each Bank’s Percentage. The Borrower shall execute a master letter of credit agreement with each Issuing Agent (collectively, the “*Master Letter of Credit Agreement*”) which shall contain certain terms applicable to the Letters of Credit. To the extent any provision of the Master Letter of Credit Agreement is inconsistent with the terms of this Agreement, the terms of this Agreement shall control. Each Existing Letter of Credit shall for all purposes be deemed to be a Letter of Credit issued on the Effective Date under this Agreement. No Issuing Agent shall have an obligation pursuant to the Credit Documents

to issue any Letter of Credit if, after giving effect to the issuance of such Letter of Credit, the aggregate face amount of Letters of Credit issued by such Issuing Agent then outstanding would exceed \$100,000,000, unless otherwise agreed to by such Issuing Agent.

(b) *Applications.* At any time before thirty (30) days prior to the Termination Date, an Issuing Agent shall, at the request of Borrower given to such Issuing Agent at least three (3) Business Days prior to the requested date of issuance, issue one or more Letters of Credit, in a form satisfactory to such Issuing Agent, with expiration dates no later than five (5) Business Days prior to the Termination Date, in an aggregate face amount as set forth above, upon the receipt of a duly executed application for the relevant Letter of Credit in the form customarily prescribed by such Issuing Agent for the type of Letter of Credit, requested (each an “*Application*”). Notwithstanding anything contained in any Application to the contrary (i) Borrower’s obligation to pay fees in connection with each Letter of Credit shall be as exclusively set forth in Section 3.1(b) hereof, and (ii) if the applicable Issuing Agent is not timely reimbursed for the amount of any drawing under a Letter of Credit on the date such drawing is paid (it being understood that a drawing which is reimbursed pursuant to, and in accordance with, the last sentence of Section 2.5(c) shall be deemed to have been timely reimbursed), Borrower’s obligation to reimburse the applicable Issuing Agent for the amount of such drawing shall bear interest (which Borrower hereby promises to pay on demand) from and after the date such drawing is paid at a rate per annum equal to the sum of two percent (2%) plus the Base Rate Margin plus the Base Rate from time to time in effect. The applicable Issuing Agent will promptly notify the Banks of each issuance by it of a Letter of Credit and any amendment or extension of a Letter of Credit. Each Issuing Agent agrees to issue amendments to any Letters of Credit issued by it increasing the amount, or extending the expiration date, thereof at the request of Borrower subject to the conditions set forth herein (including the conditions set forth in Section 6.2 and the other terms of this Section 2.2). Without limiting the generality of the foregoing, a Issuing Agent’s obligation to issue, amend or extend the expiration date of a Letter of Credit is subject to the conditions set forth herein (including the conditions set forth in Section 6.2 and the other terms of this Section 2.2) and an Issuing Agent will not issue, amend or extend the expiration date of any Letter of Credit if any Bank notifies such Issuing Agent of any failure to satisfy or otherwise comply with such conditions and terms and directs such Issuing Agent not to take such action.

(c) *The Reimbursement Obligations.* Subject to Section 2.2(b) hereof, the obligation of Borrower to reimburse the applicable Issuing Agent for all drawings under a Letter of Credit (a “*Reimbursement Obligation*”) shall be governed, to the extent not inconsistent with this Agreement, by the Master Letter of Credit Agreement and the Application related to such Letter of Credit, except that reimbursement of each drawing shall be made in immediately available funds at the applicable Issuing Agent’s principal office in New York, New York by no later than 1:30 p.m. (New York time) on the date when such drawing is paid or, if such drawing was paid after 1:30 p.m. (New York time), by the end of such day. If Borrower does not make any such reimbursement payment on the date due (whether through a deemed request for a Base Rate Loan pursuant to Section 2.5(c) or otherwise) and the Banks fund their participations therein in the manner set

forth in Section 2.2(d) below, then all payments thereafter received by an Issuing Agent in discharge of any of the relevant Reimbursement Obligations shall be distributed in accordance with Section 2.2(d) below. An Issuing Agent shall notify Borrower promptly of its intent to pay, or payment of, a drawing under a Letter of Credit.

(d) *The Participating Interests.* Each Bank, by its acceptance hereof, severally agrees to purchase from each Issuing Agent, and each Issuing Agent hereby agrees to sell to each such Bank, an undivided percentage participating interest (a "*Participating Interest*"), to the extent of its Percentage, in each Letter of Credit issued by, and each Reimbursement Obligation owed to, such Issuing Agent. Upon any failure by Borrower to pay any Reimbursement Obligation at the time required on the date the related drawing is paid, as set forth in Section 2.2(c) above, or if an Issuing Agent is required at any time to return to Borrower or to a trustee, receiver, liquidator, custodian or other Person any portion of any payment of any Reimbursement Obligation, each Bank shall, not later than the Business Day it receives a demand from such Issuing Agent to such effect, if such demand is received before 2:00 p.m. (New York time), or not later than the following Business Day, if such demand is received after such time, pay to such Issuing Agent an amount equal to its Percentage of such unpaid or recaptured Reimbursement Obligation together with interest on such amount accrued from the date the related payment was made by such Issuing Agent to the date of such payment by such Bank a rate per annum equal to (i) from the date the related payment was made by such Issuing Agent to the date two (2) Business Days after payment by such Bank is due hereunder, the Federal Funds Rate for each such day and (ii) from the date two (2) Business Days after the date such payment is due from such Bank to the date such payment is made by such Bank, the Base Rate in effect for each such day. Each such Bank shall thereafter be entitled to receive its Percentage of each payment received in respect of the relevant Reimbursement Obligation and of interest paid thereon, with the applicable Issuing Agent retaining its Percentage as a Bank hereunder.

The several obligations of the Banks to the Issuing Agents under this Section 2.2 shall be absolute, irrevocable and unconditional under any and all circumstances whatsoever and shall not be subject to any set-off, counterclaim or defense to payment which any Bank may have or have had against Borrower, the Administrative Agent, the Issuing Agents, any Bank or any other Person whatsoever. Without limiting the generality of the foregoing, such obligations shall not be affected by any Default or Event of Default or by any reduction or termination of any Commitment of any Bank, and each payment by a Bank under this Section 2.2 shall be made without any offset, abatement, withholding or reduction whatsoever. The Issuing Agents and the Administrative Agent shall be entitled to offset amounts received for the account of a Bank under the Credit Documents against unpaid amounts due from such Bank to the applicable Issuing Agent or the Administrative Agent, as applicable, hereunder (whether as fundings of participations, indemnities or otherwise).

(e) *Indemnification.* The Banks shall, to the extent of their respective Percentages, indemnify each Issuing Agent (to the extent not reimbursed by Borrower) against any cost, expense (including reasonable counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from such Issuing Agent's gross negligence or willful misconduct) that an Issuing Agent may suffer or incur in connection



with any Letter of Credit issued by it. The Issuing Agents shall be entitled to all of the rights and protections afforded the Administrative Agent under Section 10 hereof. The obligations of the Banks under this Section 2.2(e) and all other parts of this Section 2.2 shall survive termination of this Agreement and of all other L/C Documents.

(f) *Issuing Agents.* Each Bank hereby appoints U.S. Bank, National Association, and any other Person who satisfies the definition of Issuing Agent, as the Issuing Agents hereunder and hereby authorizes each of the Issuing Agent to take such action as Issuing Agent on its behalf and to exercise such powers under the Credit Documents as are delegated to the Issuing Agents by the terms thereof, together with such powers as are reasonably incidental thereto. The relationship between each of the Issuing Agents and the Banks is and shall be that of agent and principal only, and nothing contained in this Agreement or any other Credit Document shall be construed to constitute a Issuing Agent as a trustee or fiduciary for any Bank or the Borrower.

Section 2.3 *Applicable Interest Rates.* (a) *Base Rate Loans.* Each Base Rate Loan made or maintained by a Bank shall bear interest during each Interest Period it is outstanding (computed (x) at all times the Base Rate is based on the rate described in clause (i) of the definition thereof, on the basis of a year of 365 or 366 days, as applicable, and actual days elapsed or (y) at all times the Base Rate is based on the rate described in clause (ii) of the definition thereof, on the basis of a year of 360 days and actual days elapsed) on the unpaid principal amount thereof from the date such Loan is advanced, continued or created by conversion from a Eurodollar Loan until maturity (whether by acceleration or otherwise) at a rate per annum equal to the sum of the Applicable Margin plus the Base Rate from time to time in effect, payable on the last day of its Interest Period and at maturity (whether by acceleration or otherwise).

“Base Rate” means for any day the greater of:

(i) the rate of interest announced by ABN AMRO Bank N.V. from time to time as its prime rate, or equivalent, for U.S. Dollar loans within the United States as in effect on such day, with any change in the Base Rate resulting from a change in said prime rate to be effective as of the date of the relevant change in said prime rate; and

(ii) the sum of (x) the Federal Funds Rate, plus (y) one half of one percent (0.50%).

(b) *Eurodollar Loans.* Each Eurodollar Loan made or maintained by a Bank shall bear interest during each Interest Period it is outstanding (computed on the basis of a year of 360 days and actual days elapsed) on the unpaid principal amount thereof from the date such Loan is advanced, continued, or created by conversion from a Base Rate Loan until maturity (whether by acceleration or otherwise) at a rate per annum equal to the sum of the Applicable Margin plus the Adjusted LIBOR applicable for such Interest Period, payable on the last day of the Interest Period and at maturity (whether by acceleration or otherwise), and, if the applicable Interest Period is longer than three

months, on each day occurring every three months after the commencement of such Interest Period.

“Adjusted LIBOR” means, for any Borrowing of Eurodollar Loans, a rate per annum determined in accordance with the following formula:

$$\text{Adjusted LIBOR} = \frac{\text{LIBOR}}{1 - \text{Eurodollar Reserve Percentage}} -$$

“LIBOR” means, for an Interest Period for a Borrowing of Eurodollar Loans, (a) the LIBOR Index Rate for such Interest Period, if such rate is available, and (b) if the LIBOR Index Rate cannot be determined, the arithmetical average of the rates of interest per annum (rounded upwards, if necessary, to the nearest one-sixteenth of one percent) at which deposits in U.S. Dollars, in immediately available funds are offered to the Administrative Agent at 11:00 a.m. (London, England time) two (2) Business Days before the beginning of such Interest Period by major banks in the interbank eurodollar market for delivery on the first day of and for a period equal to such Interest Period in an amount equal or comparable to the principal amount of the Eurodollar Loan scheduled to be made by each Bank as part of such Borrowing.

“LIBOR Index Rate” means, for any Interest Period, the rate per annum (rounded upwards, if necessary, to the next higher one-sixteenth of one percent) for deposits in U.S. Dollars for delivery on the first day of and for a period equal to such Interest Period in an amount equal or comparable to the principal amount of the Eurodollar Loan scheduled to be made by each Bank as part of such Borrowing, which appears on the Applicable Telerate Page as of 11:00 a.m. (London, England time) on the day two (2) Business Days before the commencement of such Interest Period.

“Applicable Telerate Page” means the display page designated as “Page 3750” on the Telerate Service (or such other pages as may replace any such page on that service or such other service as may be nominated by the British Bankers’ Association as the information vendor for the purpose of displaying British Bankers’ Association Interest Settlement Rates for deposits in U.S. Dollars).

“Eurodollar Reserve Percentage” means for an Borrowing of Eurodollar Loans from any Bank, the daily average for the applicable Interest Period of the actual effective rate, expressed as a decimal, at which reserves (including, without limitation, any supplemental, marginal and emergency reserves) are maintained by such Bank during such Interest Period pursuant to Regulation D of the Board of Governors of the Federal Reserve System (or any successor) on “eurocurrency liabilities”, as defined in such Board’s Regulation D (or in respect of any other category of liabilities that includes deposits by reference to which the interest rate on Eurodollar Loans is determined or any category of extensions of credit or other assets that include loans by non-United States offices of any Bank to United States residents), subject to any amendments of such reserve requirement by such Board or its successor, taking into account any transitional adjustments thereto. For purposes of this definition, the Eurodollar Loans shall be deemed to be “eurocurrency liabilities” as defined in Regulation D without benefit or credit for any proratations, exemptions or offsets under Regulation D.

(c) *Rate Determinations.* The Administrative Agent shall determine each interest rate applicable to Obligations, and a determination thereof by the Administrative Agent shall be conclusive and binding except in the case of manifest error.

Section 2.4 *Minimum Borrowing Amounts.* Each Borrowing of Base Rate Loans and Eurodollar Loans shall be in an amount not less than (i) if such Borrowing is comprised of Borrowing of Base Rate Loans, \$1,000,000 and integral multiples of \$500,000 in excess thereof, and (ii) if such Borrowing is comprised of Borrowing of Eurodollar Loans, \$2,000,000 and integral multiples of \$1,000,000 in excess thereof, provided that a Borrowing of Base Rate Loans applied to pay a Reimbursement Obligation pursuant to Section 2.5(c) hereof shall be in an amount equal to such Reimbursement Obligation.

Section 2.5 *Manner of Borrowing Loans and Designating Interest Rates Applicable to Loans.*

(a) *Notice to the Administrative Agent.* The Borrower shall give notice to the Administrative Agent by no later than 12:00 noon (New York time) (i) at least three (3) Business Days before the date on which Borrower requests the Banks to advance a Borrowing of Eurodollar Loans, or (ii) on the date on which Borrower requests the Banks to advance a Borrowing of Base Rate Loans. The Loans included in each Borrowing shall bear interest initially at the type of rate specified in such notice of a new Borrowing. Thereafter, Borrower may from time to time elect to change or continue the type of interest rate borne by each Borrowing or, subject to Section 2.4's minimum amount requirement for each outstanding Borrowing, a portion thereof, as follows: (i) if such Borrowing is of Eurodollar Loans, on the last day of the Interest Period applicable thereto, Borrower may continue part or all of such Borrowing as Eurodollar Loans for an Interest Period or Interest Periods specified by Borrower or convert part or all of such Borrowing into Base Rate Loans, and (ii) if such Borrowing is of Base Rate Loans, on any Business Day, Borrower may convert all or part of such Borrowing into Eurodollar Loans for an Interest Period or Interest Periods specified by Borrower. Borrower shall give all such notices requesting, the advance, continuation, or conversion of a Borrowing to the Administrative Agent by telephone or telecopy (which notice shall be irrevocable once given and, if by telephone, shall be promptly confirmed in writing). Notices of the continuation of a Borrowing of Eurodollar Loans for an additional Interest Period or of the conversion of part or all of a Borrowing of Eurodollar Loans into Base Rate Loans or of Base Rate Loans into Eurodollar Loans must be given by no later than 12:00 noon (New York time) at least three (3) Business Days before the date of the requested continuation or conversion. All such notices concerning the advance, continuation, or conversion of a Borrowing shall be irrevocable once given and shall specify the date of the requested advance, continuation or conversion of a Borrowing (which shall be a Business Day), the amount of the requested Borrowing to be advanced, continued, or converted, the type of Loans to comprise such new, continued or converted Borrowing and, if such Borrowing is to be comprised of Eurodollar Loans, the Interest Period applicable thereto. Borrower agrees that the Administrative Agent may rely on any such telephonic or telecopy notice given by any person it in good faith believes is an Authorized Representative without the necessity of independent investigation, and in the event any such notice by telephone conflicts with any written confirmation, such

telephonic notice shall govern if the Administrative Agent has acted in reliance thereon. There may be no more than six different Interest Periods in effect at any one time, provided that for purposes of determining the number of Interest Periods in effect at any one time, all Base Rate Loans shall be deemed to have one and the same Interest Period.

(b) *Notice to the Banks.* The Administrative Agent shall give prompt telephonic or teletype notice to each Bank of any notice from Borrower received pursuant to Section 2.5(a) above. The Administrative Agent shall give notice to Borrower and each Bank by like means of the interest rate applicable to each Borrowing of Eurodollar Loans.

(c) *Borrower's Failure to Notify.* Any outstanding Borrowing of Base Rate Loans shall, subject to Section 6.2 hereof, automatically be continued for an additional Interest Period on the last day of its then current Interest Period unless Borrower has notified the Administrative Agent within the period required by Section 2.5(a) that it intends to convert such Borrowing into a Borrowing of Eurodollar Loans or notifies the Administrative Agent within the period required by Section 2.8(a) that it intends to prepay such Borrowing. If Borrower fails to give notice pursuant to Section 2.5(a) above of the continuation or conversion of any outstanding principal amount of a Borrowing of Eurodollar Loans before the last day of its then current Interest Period within the period required by Section 2.5(a) and has not notified the Administrative Agent within the period required by Section 2.8(a) that it intends to prepay such Borrowing, such Borrowing shall automatically be converted into a Borrowing of Base Rate Loans, subject to Section 6.2 hereof. The Administrative Agent shall promptly notify the Banks of Borrower's failure to so give a notice under Section 2.5(a). In the event Borrower fails to give notice pursuant to Section 2.5(a) above of a Borrowing equal to the amount of a Reimbursement Obligation and has not notified the Administrative Agent by 12:00 noon (New York time) on the day such Reimbursement Obligation becomes due that it intends to repay such Reimbursement Obligation through funds not borrowed under this Agreement, Borrower shall be deemed to have requested a Borrowing of Base Rate Loans on such day in the amount of the Reimbursement Obligation then due, subject to Section 6.2 hereof, which Borrowing shall be applied to pay the Reimbursement Obligation then due.

(d) *Disbursement of Loans.* Not later than 12:00 noon (New York time) on the date of any requested advance of a new Borrowing of Eurodollar Loans, and not later than 2:00 p.m. (New York time) on the date of any requested advance of a new Borrowing of Base Rate Loans, subject to Section 6 hereof, each Bank shall make available its Loan comprising part of such Borrowing in funds immediately available at the principal office of the Administrative Agent in New York, New York. The Administrative Agent shall make available to Borrower Loans at the Administrative Agent's principal office in New York, New York or such other office as the Administrative Agent has previously agreed in writing to with Borrower, in each case in the type of funds received by the Administrative Agent from the Banks.

(e) *Administrative Agent Reliance on Bank Funding.* Unless the Administrative Agent shall have been notified by a Bank before the date on which such

Bank is scheduled to make payment to the Administrative Agent of the proceeds of a Loan (which notice shall be effective upon receipt) that such Bank does not intend to make such payment, the Administrative Agent may assume that such Bank has made such payment when due and the Administrative Agent may in reliance upon such assumption (but shall not be required to) make available to Borrower the proceeds of the Loan to be made by such Bank and, if any Bank has not in fact made such payment to the Administrative Agent, such Bank shall, on demand, pay to the Administrative Agent the amount made available to Borrower attributable to such Bank together with interest thereon in respect of each day during the period commencing on the date such amount was made available to Borrower and ending on (but excluding) the date such Bank pays such amount to the Administrative Agent at a rate per annum equal to (i) from the date the related payment was made by the Administrative Agent to the date two (2) Business Days after payment by such Bank is due hereunder, the Federal Funds Rate for each such day and (ii) from the date two (2) Business Days after the date such payment is due from such Bank to the date such payment is made by such Bank, the Base Rate in effect for each such day. If such amount is not received from such Bank by the Administrative Agent immediately upon demand, Borrower will, on demand, repay to the Administrative Agent the proceeds of the Loan attributable to such Bank with interest thereon at a rate per annum equal to the interest rate applicable to the relevant Loan.

Section 2.6 *Interest Periods*. As provided in Section 2.5(a) hereof, at the time of each request of a Borrowing of Eurodollar Loans, Borrower shall select an Interest Period applicable to such Loans from among the available options. The term “*Interest Period*” means the period commencing on the date a Borrowing of Loans is advanced, continued, or created by conversion and ending: (a) in the case of Base Rate Loans, on the last Business Day of the calendar quarter in which such Borrowing is advanced, continued, or created by conversion (or on the last day of the following calendar quarter if such Loan is advanced, continued or created by conversion on the last Business Day of a calendar quarter), and (b) in the case of Eurodollar Loans, 1, 2, 3, 6, or, if agreed to by the Administrative Agent, 12 months thereafter; *provided, however*, that:

(a) any Interest Period for a Borrowing of Base Rate Loans that otherwise would end after the Termination Date shall end on the Termination Date;

(b) for any Borrowing of Eurodollar Loans, Borrower may not select an Interest Period that extends beyond either (i) the fifth to last Business Day of any calendar year or (ii) the Termination Date;

(c) whenever the last day of any Interest Period would otherwise be a day that is not a Business Day, the last day of such Interest Period shall be extended to the next succeeding Business Day, provided that, if such extension would cause the last day of an Interest Period for a Borrowing of Eurodollar Loans to occur in the following calendar month, the last day of such Interest Period shall be the immediately preceding Business Day; and

(d) for purposes of determining an Interest Period for a Borrowing of Eurodollar Loans, a month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month; *provided*,

however, that if there is no numerically corresponding day in the month in which such an Interest Period is to end or if such an Interest Period begins on the last Business Day of a calendar month, then such Interest Period shall end on the last Business Day of the calendar month in which such Interest Period is to end.

Section 2.7 *Maturity of Loans*. Unless an earlier maturity is provided for hereunder (whether by acceleration or otherwise), all Obligations (including principal and interest on all outstanding Loans) shall mature and become due and payable by Borrower on the Termination Date.

Section 2.8 *Prepayments*.

(a) Borrower may prepay without premium or penalty and in whole or in part (but, if in part, then (i) in an amount not less than \$5,000,000 and integral multiples of \$1,000,000 in excess thereof, and (ii) in an amount such that the minimum amount required for a Borrowing pursuant to Section 2.4 hereof remains outstanding) any Borrowing of Eurodollar Loans upon three (3) Business Days' prior irrevocable notice to the Administrative Agent or, in the case of a Borrowing of Base Rate Loans, irrevocable notice delivered to the Administrative Agent no later than 12:00 noon (New York time) on the date of prepayment, such prepayment to be made by the payment of the principal amount to be prepaid and accrued interest thereon to the date fixed for prepayment. In the case of Eurodollar Loans, any amounts owing under Section 2.11 hereof as a result of such prepayment shall be paid contemporaneously with such prepayment. The Administrative Agent will promptly advise each Bank of any such prepayment notice it receives from Borrower. Any amount paid or prepaid before the Termination Date may, subject to the terms and conditions of this Agreement, be borrowed, repaid and borrowed again.

(b) If the aggregate amount of outstanding Loans and L/C Obligations shall at any time for any reason exceed the Commitments then in effect or the amount of L/C Obligations at any time outstanding attributable to Marketing Subsidiary Letters of Credit exceeds the Marketing Subsidiary Sublimit, Borrower shall, immediately and without notice or demand, pay the amount of such excess to the Administrative Agent for the ratable benefit of the Banks as a prepayment of the Loans and, if necessary, a prefunding of Letters of Credit. Immediately upon determining the need to make any such prepayment Borrower shall notify the Administrative Agent of such required prepayment. Each such prepayment shall be accompanied by a payment of all accrued and unpaid interest on the Loans prepaid and shall be subject to Section 2.11.

Section 2.9 *Default Rate*. If any payment of principal or interest on any Loan, or payment of any other Obligation, is not made when due (whether by acceleration or otherwise), such principal, interest or other Obligation shall bear interest (computed on the basis of a year of 360 days and actual days elapsed or, if based on the rate described in clause (i) of the definition of Base Rate, on the basis of a year of 365 or 366 days, as applicable, and the actual number of days elapsed) from the date such payment was due until paid in full, payable on demand, at a rate per annum equal to:

(a) for any Obligation other than a Eurodollar Loan (including principal and interest relating to Base Rate Loans and interest on Eurodollar Loans), the sum of two percent (2%) plus the Applicable Margin plus the Base Rate from time to time in effect; and

(b) for the principal of any Eurodollar Loan, the sum of two percent (2%) plus the rate of interest in effect thereon at the time of such default until the end of the Interest Period applicable thereto and, thereafter, at a rate per annum equal to the sum of two percent (2%) plus the Applicable Margin plus the Base Rate from time to time in effect.

Section 2.10 *The Notes*.

(a) The Loans made to Borrower by each Bank shall be evidenced by a single promissory note of Borrower issued to such Bank in the form of Exhibit A hereto. Each such promissory note is hereinafter referred to as a “Note” and collectively such promissory notes are referred to as the “Notes.”

(b) Each Bank shall record on its books and records or on a schedule to its Note the amount of each Loan advanced, continued, or converted by it, all payments of principal and interest and the principal balance from time to time outstanding thereon, the type of such Loan, and, for any Eurodollar Loan, the Interest Period and the interest rate applicable thereto. The record thereof, whether shown on such books and records of a Bank or on a schedule to any Note, shall be *prima facie* evidence of the same; *provided, however*, that the failure of any Bank to record any of the foregoing or any error in any such record shall not limit or otherwise affect the obligation of Borrower to repay all Loans made hereunder together with accrued interest thereon. At the request of any Bank and upon such Bank tendering to Borrower the Note to be replaced, Borrower shall furnish a new Note to such Bank to replace any outstanding Note, and at such time the first notation appearing on a schedule on the reverse side of, or attached to, such Note shall set forth the aggregate unpaid principal amount of all Loans, if any, then outstanding thereon.

Section 2.11 *Funding Indemnity*. If any Bank shall incur any loss, cost or expense (including, without limitation, any loss, cost or expense (excluding loss of margin) incurred by reason of the liquidation or re-employment of deposits or other funds acquired by such Bank to fund or maintain any Eurodollar Loan or the relending or reinvesting of such deposits or amounts paid or prepaid to such Bank) as a result of:

(a) any payment (whether by acceleration or otherwise), prepayment or conversion of a Eurodollar Loan on a date other than the last day of its Interest Period,

(b) any failure (because of a failure to meet the conditions of Section 6 or otherwise) by Borrower to borrow or continue a Eurodollar Loan, or to convert a Base Rate Loan into a Eurodollar Loan, on the date specified in a notice given pursuant to Section 2.5(a) or established pursuant to Section 2.5(c) hereof,

(c) any failure by Borrower to make any payment or prepayment of principal on any Eurodollar Loan when due (whether by acceleration or otherwise), or

(d) any acceleration of the maturity of a Eurodollar Loan as a result of the occurrence of any Event of Default hereunder,

(e) then, upon the demand of such Bank, Borrower shall pay to such Bank such amount as will reimburse such Bank for such loss, cost or expense. If any Bank makes such a claim for compensation, it shall provide to Borrower, with a copy to the Administrative Agent, a certificate executed by an officer of such Bank setting forth the amount of such loss, cost or expense in reasonable detail (including an explanation of the basis for and the computation of such loss, cost or expense) and the amounts shown on such certificate if reasonably calculated shall be *prima facie* evidence of the amount of such loss, cost or expense.

Section 2.12 *Commitments*.

(a) Borrower shall have the right at any time and from time to time, upon five (5) Business Days' prior written notice to the Administrative Agent, to terminate the Commitments without premium or penalty, in whole or in part, any partial termination to be (i) in an amount not less than \$5,000,000 and integral multiples of \$1,000,000 in excess thereof, and (ii) allocated ratably among the Banks in proportion to their respective Percentages, provided that the Commitments may not be reduced to an amount less than the sum of the Loans and all L/C Obligations then outstanding. The Administrative Agent shall give prompt notice to each Bank of any such termination of Commitments. Any termination of Commitments pursuant to this Section 2.12 may not be reinstated.

(b) The Borrower and the Administrative Agent may from time to time add additional financial institutions as parties to this Agreement or, with the written consent of an existing Bank, increase the Commitment of such existing Bank (any such financial institution or existing Bank which is increasing its commitment being referred to as an "Added Bank") pursuant to documentation reasonably satisfactory to the Borrower and the Administrative Agent and any such Added Bank shall for all purposes be considered a Bank for purposes of this Agreement and the other Credit Documents with a Commitment as set forth in such documentation. Any such Added Bank shall on the date it is deemed a party to this Agreement purchase from the other Banks its Percentage (or the increase in its Percentage, in the case of an Added Bank which is an existing Bank) of the Loans outstanding and shall be deemed to purchase pursuant to Section 2.2(d) a Participating Interest in all Letters of Credit and Reimbursement Obligations outstanding on such date to the extent of its Percentage (or the increase in its Percentage, in the case of an Added Bank which is an existing Bank). Notwithstanding anything contained in this Section 2.12(b) to the contrary, the aggregate amount of Commitments may not at any time exceed \$500,000,000 without the consent of the Required Banks.

Section 2.13 *BHP Borrowings*. The Borrower agrees to reserve under the Commitments at all times an aggregate amount equal to \$3,100,000 (the "*BHP Reserve*") to be used by the Borrower to fund, directly or indirectly, any liquidity needs arising under or in connection with that certain Loan Agreement between the City of Gillette, Campbell County, Wyoming and BHP (fka Black Hills Corporation), dated June 1, 1994, as such Loan Agreement is amended,



modified, supplemented or refinanced from time to time (the “*BHP Liquidity Requirements*”). The BHP Reserve shall be: (i) reduced for each Loan requested by the Borrower, the proceeds of which are used to fund, directly or indirectly, the BHP Liquidity Requirements, and (ii) increased, up to the limit of \$3,100,000 at any time, for any such Loan that is repaid in accordance with the terms of this Agreement. Nothing in this paragraph shall restrict Borrower’s use of other Loans made under this Agreement in accordance with the terms and conditions of this Agreement. The Administrative Agent and the Banks shall have no responsibility for ensuring that the proceeds of Loans made under the BHP Reserve are used for the BHP Liquidity Requirements.

### SECTION 3. FEES.

#### Section 3.1 Fees.

(a) *Facility Fee.* From and after the Effective Date, Borrower shall pay to the Administrative Agent for the ratable account of the Banks in accordance with their Percentages a facility fee accruing at a rate per annum equal to the Facility Fee Rate on the average daily amount of the Commitments (whether used or unused), or if the Commitments have expired or terminated, on the principal amount of Loans and L/C Obligations then outstanding. Such facility fee is payable in arrears on the last Business Day of each calendar quarter and on the Termination Date, and if the Commitments are terminated in whole prior to the Termination Date, the fee for the period to but not including the date of such termination shall be paid in whole on the date of such termination.

(b) *Letter of Credit Fees.*

(i) Borrower shall pay to the Administrative Agent for the account of each Bank letter of credit fees with respect to the Letters of Credit at a rate per annum equal to the L/C Fee Rate on the average daily maximum undrawn face amount of such outstanding Letters of Credit (including any Letters of Credit outstanding after the termination of the Commitments), computed in each case on a quarterly basis in arrears on the last Business Day of each calendar quarter and on the Termination Date.

(ii) Borrower shall pay to the Administrative Agent for the benefit of each Issuing Agent, as issuer of each Letter of Credit issued by such Issuing Agent, for the sole account of such Issuing Agent, a letter of credit fronting fee for each outstanding Letter of Credit issued by such Issuing Agent at the rate per annum equal to 0.125% on the average daily maximum undrawn face amount of outstanding Letters of Credit (including any Letters of Credit outstanding after the termination of the Commitments), computed on the last Business Day of each calendar quarter and on the Termination Date.

(iii) The letter of credit fees payable under Section 3.1(b)(i) and the fronting fees payable under Section 3.1(b)(ii) shall be due and payable quarterly

in arrears on the last Business Day of each calendar quarter during which Letters of Credit are outstanding, commencing on the first such quarterly date to occur after the Effective Date, and on the Termination Date, and if the Commitments are terminated in whole on an earlier date, the fee for the period to but not including the date of such termination shall be paid in whole on the date of such termination.

(iv) Borrower shall pay to each Issuing Agent from time to time on demand the normal issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such Issuing Agent relating to letters of credit as from time to time in effect.

(c) *Utilization Fee.* From and after the Effective Date, for any day on which the aggregate principal amount of Loans and L/C Obligations then outstanding exceeds fifty percent (50%) of the Commitments then in effect, Borrower shall pay to the Administrative Agent for the ratable account of the Banks in accordance with their Percentages a utilization fee accruing at a rate per annum equal to the Utilization Fee Rate on the aggregate amount of Loans and L/C Obligations outstanding on such date. Such fee is payable in arrears on the last Business Day of each calendar quarter and on the Termination Date, and if the Commitments are terminated in whole prior to the Termination Date, the fee for the period to but not including the date of such termination shall be paid in whole on the date of such termination.

(d) *Arranger Fees.* Borrower shall pay to the Arrangers for the accounts of the Arrangers (and no other Persons) the fees agreed to among the Arrangers and Borrower in the Mandate Letter or as otherwise agreed in writing among them.

(e) *Fee Calculations.* All fees payable under this Agreement shall be payable in U.S. Dollars and shall be computed on the basis of a year of 360 days, for the actual number of days elapsed. All determinations of the amount of fees owing hereunder (and the components thereof) shall be made by the Administrative Agent and shall be *prima facie* evidence of the amount of such fee.

#### SECTION 4. PLACE AND APPLICATION OF PAYMENTS.

Section 4.1 *Place and Application of Payments.* All payments of principal of and interest on the Loans, and of all other Obligations and other amounts payable by Borrower under the Credit Documents, shall be made by Borrower in U.S. Dollars to the Administrative Agent or the applicable Issuing Agent if such payment is being made with respect to a Reimbursement Obligation, by no later than 2:00 p.m. (New York time) on the due date thereof at the principal office of the Administrative Agent or the applicable Issuing Agent, as applicable, in New York, New York pursuant to the payment instructions set forth on Part A of Schedule 4 hereof (or such other location in the, United States as the Administrative Agent or the applicable Issuing Agent, as applicable, may designate to Borrower) or, if such payment is on a Reimbursement Obligation, no later than provided by Section 2.2(c) hereof, in each case for the benefit of the Person or Persons entitled thereto. Any payments received after such time shall be deemed to have been received by the Administrative Agent or the Issuing Agent on the next Business Day.

All such payments shall be made free and clear of, and without deduction for, any set-off, defense, counterclaim, levy, or any other deduction of any kind in immediately available funds at the place of payment. The Administrative Agent or the applicable Issuing Agent, as applicable, will promptly thereafter cause to be distributed like funds relating to the payment of principal or interest on Loans or applicable fees ratably to the Banks and like funds relating to the payment of any other amount payable to any Person to such Person, in each case to be applied in accordance with the terms of this Agreement.

#### SECTION 5. REPRESENTATIONS AND WARRANTIES.

The Borrower hereby represents and warrants to each Bank as to itself and, where the following representations and warranties apply to its Subsidiaries, as to each Subsidiary of Borrower, as follows:

Section 5.1 *Corporate Organization and Authority*. Borrower is duly organized and existing in good standing under the laws of the state of South Dakota; has all necessary corporate power to carry on its present business; and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business transacted by it or the nature of the Property owned or leased by it makes such licensing, qualification or good standing necessary and in which the failure to be so licensed, qualified or in good standing would have a Material Adverse Effect.

Section 5.2 *Subsidiaries*. **Schedule 5.2** (as updated from time to time pursuant to Section 7.1) hereto identifies each Subsidiary of Borrower, the jurisdiction of organization, the percentage of issued and outstanding equity securities owned by the Borrower and its Subsidiaries and, if such percentage is not one hundred percent (100%) (excluding directors' qualifying shares as required by law), a description of each class of its equity securities and the number of securities issued and outstanding. Each Subsidiary is duly organized and existing in good standing under the laws of the jurisdiction of its organization, has all necessary corporate or equivalent power to carry on its present business, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business transacted by it or the nature of the Property owned or leased by it makes such licensing or qualification necessary and in which the failure to be so licensed or qualified would have a Material Adverse Effect. All of the issued and outstanding securities of each Subsidiary owned directly or indirectly by Borrower are validly issued and outstanding and fully paid and nonassessable except as set forth on **Schedule 5.2** hereto. All such securities owned by Borrower are owned beneficially, and of record, free of any Lien, except as permitted in Section 7.9.

Section 5.3 *Corporate Authority and Validity of Obligations*. Borrower has full right and authority to enter into this Agreement and the other Credit Documents to which it is a party, to make the borrowings herein provided for, to issue its Notes in evidence thereof, to apply (and to have applied) for the issuance of the Letters of Credit, and to perform all of its obligations under the Credit Documents to which it is a party. Each Credit Document to which it is a party has been duly authorized, executed and delivered by Borrower and constitutes valid and binding obligations of Borrower enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforceability of creditors' rights generally and by equitable principles of general

applicability (regardless of whether such enforceability is considered in a proceeding in equity or at law). No Credit Document, nor the performance or observance by Borrower of any of the matters or things therein provided for, contravenes any provision of law or any charter or by-law provision of Borrower or any material Contractual Obligation of or affecting Borrower or any of Borrower's Properties or results in or requires the creation or imposition of any Lien on any of the Properties or revenues of Borrower.

Section 5.4 *Financial Statements*. All financial statements heretofore delivered to the Banks showing historical performance of Borrower for Borrower's fiscal years ending on or before December 31, 2004, have been prepared in accordance generally accepted accounting principles applied on a basis consistent, except as otherwise noted therein, with that of the previous fiscal year. The unaudited financial statements for the fiscal period ended March 31, 2005 have been prepared in accordance generally accepted accounting principles applicable to interim financial statements applied on a basis consistent, except as otherwise noted therein, with the previous same fiscal period of Borrower in the prior fiscal year (subject to normal year-end adjustments). Each of such financial statements fairly presents on a consolidated basis the financial condition of Borrower and its Subsidiaries as of the dates thereof and the results of operations for the periods covered thereby. Borrower and its Subsidiaries have no material contingent liabilities other than those disclosed in such financial statements referred to in this Section 5.4 or in comments or footnotes thereto, or in any report supplementary thereto, heretofore furnished to the Banks. Since December 31, 2004, there has been no event or series of events which has resulted in, or reasonably could be expected to result in, a Material Adverse Effect.

Section 5.5 *No Litigation; No Labor Controversies*.

(a) Except as set forth on **Schedule 5.5**, there is no litigation or governmental proceeding pending, or to the knowledge of Borrower, threatened, against Borrower or any Subsidiary of Borrower in which there is a reasonable possibility of an adverse decision which, if adversely determined, could (individually or in the aggregate) have a Material Adverse Effect.

(b) Except as set forth on **Schedule 5.5**, there are no labor controversies pending or, to the best knowledge of Borrower, threatened against Borrower or any Subsidiary of Borrower which could (individually or in the aggregate) have a Material Adverse Effect.

Section 5.6 *Taxes*. Borrower and its Subsidiaries have filed all United States federal tax returns, and all other foreign, state, local and other tax returns, required to be filed and have paid all taxes due pursuant to such returns or pursuant to any assessment received by Borrower or any Subsidiary of Borrower, except such taxes, if any, as are being contested in good faith and for which adequate reserves have been provided. No notices of tax liens have been filed and no claims are being asserted concerning any such taxes, which liens or claims are material to the financial condition of Borrower or any of its Subsidiaries (individually or in the aggregate). The charges, accruals and reserves on the books of Borrower and its Subsidiaries for any taxes or other governmental charges are adequate and in conformance with GAAP.

Section 5.7 *Approvals*. No authorization, consent, approval, license, exemption, filing or registration with any court or governmental department, agency or instrumentality which have not already been obtained, nor any approval or consent of the stockholders of Borrower or any Subsidiary of Borrower or from any other Person, is necessary to the valid execution, delivery or performance by Borrower or any Subsidiary of Borrower of any Credit Document to which it is a party.

Section 5.8 *ERISA*. With respect to each Plan, Borrower and each other member of the Controlled Group has fulfilled its obligations under the minimum funding standards of and is in compliance in all material respects with the Employee Retirement Income Security Act of 1974, as amended (“*ERISA*”), and with the Code to the extent applicable to it and has not incurred any liability to the Pension Benefit Guaranty Corporation (“*PBGC*”) or a Plan under Title IV of ERISA other than a liability to the PBGC for premiums under Section 4007 of ERISA. Neither Borrower nor any Subsidiary of Borrower has any contingent liabilities for any post-retirement benefits under a Welfare Plan, other than liability for continuation coverage described in Part 6 of Title I of ERISA.

Section 5.9 *Government Regulation*.

(a) Neither Borrower nor any Subsidiary of Borrower is an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

(b) Borrower is a “registered holding company” within the meaning of PUHCA, and the entering into of, and the performance by the Borrower of its obligations under, the Credit Documents (including its utilization of the credit provided for under the Credit Documents) (x) does not violate PUHCA or the rules promulgated thereunder (including by the SEC), and (y) has received all necessary approvals required pursuant to PUHCA and the rules promulgated thereunder (including by the SEC).

Section 5.10 *Margin Stock; Use of Proceeds*. Neither Borrower nor any Subsidiary of Borrower is engaged principally, or as one of its primary activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (“*margin stock*” to have the same meaning herein as in Regulation U of the Board of Governors of the Federal Reserve System). The proceeds of the Loans and Letters of Credit are to be used solely (i) to fund Borrower’s working capital needs, and (ii) for general corporate purposes of Borrower. Borrower will not use the proceeds of any Loan or Letter of Credit in a manner that violates any provision of Regulation U or X of the Board of Governors of the Federal Reserve System.

Section 5.11 *Licenses and Authorizations; Compliance with Laws*.

(a) Borrower and each of its Subsidiaries has all necessary licenses, permits and governmental authorizations to own and operate its Properties and to carry on its business as currently conducted and contemplated. Borrower and each of its Subsidiaries is in compliance with all applicable laws, regulations, ordinances and orders of any governmental or judicial authorities except for any such law, regulation, ordinance or order which, the failure to comply therewith, could not reasonably be expected to have a Material Adverse Effect.

(b) In the ordinary course of its business, Borrower and each of its Subsidiaries conduct an ongoing review of the effect of Environmental and Health Laws on the Properties and all aspects of the business and operations of such Borrower and its Subsidiaries in the course of which such Borrower identifies and evaluates associated liabilities and costs (including, without limitation, any capital or operating expenditures required for clean-up or closure of Properties currently or previously owned, any capital or operating expenditures required to achieve or maintain compliance with standards imposed by law and any actual or potential liabilities to third parties, including employees or governmental entities, and any related costs and expenses). On the basis of this review, Borrower has reasonably concluded that Environmental and Health Laws are unlikely to have any Material Adverse Effect.

(c) Except as set forth on **Schedule 5.11** (as amended from time to time in accordance with the provisions hereof), neither the Borrower nor any Subsidiary of Borrower has given, nor is it required to give, nor has it received, any notice, letter, citation, order, warning, complaint, inquiry, claim or demand to or from any governmental entity or in connection with any court proceeding which could reasonably have a Material Adverse Effect claiming that: (i) Borrower or any Subsidiary of Borrower has violated, or is about to violate, any Environmental and Health Law; (ii) there has been a release, or there is a threat of release, of Hazardous Materials from Borrower's or any of its Subsidiary's Property, facilities, equipment or vehicles; (iii) Borrower or any of its Subsidiary may be or is liable, in whole or in part, for the costs of cleaning up, remediating or responding to a release of Hazardous Materials; or (iv) any of Borrower's or any of its Subsidiary's Property or assets are subject to a Lien in favor of any governmental entity for any liability, costs or damages, under any Environmental and Health Law arising from, or costs incurred by such governmental entity in response to, a release of a Hazardous Materials.

Section 5.12 *Ownership of Property; Liens.* Borrower and each Subsidiary of Borrower has good title to or valid leasehold interests in all its Property. None of Borrower's or any Subsidiary's Property is subject to any Lien, except as permitted in Section 7.9.

Section 5.13 *No Burdensome Restrictions; Compliance with Agreements.* Neither Borrower nor any Subsidiary of Borrower is (a) party or subject to any law, regulation, rule or order, or any Contractual Obligation, that (individually or in the aggregate) materially adversely affects the business, operations, Property or financial or other condition of Borrower and its Subsidiaries (individually or in the aggregate) or (b) in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement to which it is a party (including any Contractual Obligation), which default could materially adversely affect the business, operations, Property or financial or other condition of Borrower and its Subsidiaries (individually or in the aggregate).

Section 5.14 *Full Disclosure.* All information heretofore furnished by Borrower to the Administrative Agent or any Bank for purposes of or in connection with the Credit Documents or any transaction contemplated thereby is, and all such information hereafter furnished by Borrower to the Administrative Agent or any Bank will be, true and accurate in all material respects and not misleading.

Section 5.15 *Solvency*. Borrower and each of its Subsidiaries, individually and on a consolidated basis, is Solvent.

## SECTION 6. CONDITIONS PRECEDENT.

The obligation of each Bank to effect a Borrowing, or of an Issuing Agent to issue, extend the expiration date of or increase the amount of any Letter of Credit, shall be subject to the following conditions precedent:

Section 6.1 *Initial Credit Event*. On or before the Effective Date:

(a) The Administrative Agent shall have received for each Bank the favorable written opinion of (i) Morgan, Lewis & Bockius LLP, counsel to Borrower, (ii) General Counsel to the Borrower; provided, either such opinion shall include a legal opinion to the effect that Borrower has obtained all necessary approvals under such PUHCA in connection with its obligations under the Credit Documents, and such other related matters as the Administrative Agent may reasonably request;

(b) The Administrative Agent shall have received for each Bank copies of Borrower's (i) Articles of Incorporation, together with all amendments and (ii) bylaws (or comparable constituent documents) and any amendments thereto, certified in each instance by its Secretary or an Assistant Secretary;

(c) The Administrative Agent shall have received for each Bank copies of resolutions of Borrower's Board of Directors authorizing the execution and delivery of the Credit Documents and the consummation of the transactions contemplated thereby together with specimen signatures of the persons authorized to execute such documents on such Borrower's behalf, all certified in each instance by its Secretary or Assistant Secretary;

(d) The Administrative Agent shall have received for each Bank which has requested same such Bank's duly executed Note of Borrower dated the date hereof and otherwise in compliance with the provisions of Section 2.10(a) hereof;

(e) The Administrative Agent shall have received a duly executed set of the Credit Documents;

(f) All legal matters incident to the execution and delivery of the Credit Documents shall be satisfactory to the Banks;

(g) The Administrative Agent shall have received a duly executed original of the Mandate Letter;

(h) The Administrative Agent shall have received a duly executed Compliance Certificate containing financial information as of March 31, 2005;

(i) With respect to all Indebtedness and other obligations, absolute or contingent, under the credit facilities created by the following agreements, a payoff letter

from each lender or agent for a group of lenders in form and substance reasonably satisfactory to the Administrative Agent, together with such termination statements, releases of mortgage Liens and other instruments, documents and/or agreements necessary or appropriate to terminate any Liens in favor of such lenders securing such obligations which is to be paid off on the Effective Date as the Administrative Agent may reasonably request, duly executed and in form and substance reasonably satisfactory to the Administrative Agent: **(i)** that certain 364-Day Credit Agreement among the Borrower, the financial institutions party thereto, as lenders, and ABN AMRO Bank N.V., as administrative agent for such lenders, dated as of May 13, 2004, as amended from time to time and **(ii)** that certain Multi-Year Credit Agreement among the Borrower, the financial institutions party thereto, as lenders, and ABN AMRO Bank N.V., as administrative agent for such lenders, dated as of August 21, 2003, as amended from time to time;

(j) During the period from December 31, 2004 to the Effective Date, neither Borrower nor any of its Subsidiaries have, except as specifically set forth on Schedule 6.1, issued, incurred, assumed, created, become liable for, contingently or otherwise, any material Indebtedness;

(k) The Borrower shall have provided a certificate stating that the conditions precedent set forth in this Section 6.1 have been satisfied;

(l) The Borrower shall have paid to each Bank the applicable fees for providing its Commitment under this Agreement; and

(m) The Administrative Agent shall have received such other documents and information as it may reasonably request.

Section 6.2 *All Credit Events*. As of the time of each Credit Event hereunder:

(a) In the case of a Borrowing, the Administrative Agent shall have received the notice required by Section 2.5 hereof, in the case of the issuance of any Letter of Credit, the applicable Issuing Agent shall have received the request for such Letter of Credit required by Section 2.2(b), and a duly completed Application for a Letter of Credit and, in the case of an extension or increase in the amount of a Letter of Credit, the applicable Issuing Agent shall have received a written request therefor, in a form acceptable to such Issuing Agent;

(b) Each of the representations and warranties set forth in Section 5 hereof shall be and remain true and correct in all material respects (unless such representation or warranty is already qualified with respect to materiality, in which case it shall be and remain true and correct in all respects) as of said time, except that if any such representation or warranty relates solely to an earlier date it need only remain true in all material respects (unless such representation or warranty is already qualified with respect to materiality, in which case it shall be and remain true and correct in all respects) as of such date; and



(c) Borrower shall be in full compliance with all of the terms and conditions hereof, and no Default or Event of Default shall have occurred and be continuing or would occur as a result of such Credit Event.

Each request for a Credit Event shall be deemed to be a representation and warranty by Borrower on the date of such Credit Event as to the facts specified in paragraphs (b) and (c) of this Section 6.2.

#### SECTION 7. COVENANTS.

Borrower covenants and agrees that, so long as any Note, Loan or L/C Obligation is outstanding hereunder, or any Commitment is available to or in use by Borrower hereunder, except to the extent compliance in any case is waived in writing by the Required Banks:

Section 7.1 *Corporate Existence; Subsidiaries*. Borrower shall, and shall cause each of its Subsidiaries to, preserve and maintain its corporate existence, subject to the provisions of Section 7.12 hereof. Together with any financial statements delivered pursuant to Section 7.6 hereof, Borrower shall deliver an updated **Schedule 5.2** to reflect any changes from the existing **Schedule 5.2**.

Section 7.2 *Maintenance*. Borrower will maintain, preserve and keep its plants, Properties and equipment necessary to the proper conduct of its business in reasonably good repair, working order and condition and will from time to time make all reasonably necessary repairs, renewals, replacements, additions and betterments thereto so that at all times such plants, Properties and equipment shall be reasonably preserved and maintained, and Borrower will cause each of its Subsidiaries to do so in respect of Property owned or used by it; *provided, however*, that nothing in this Section 7.2 shall prevent Borrower or a Subsidiary of Borrower from discontinuing the operation or maintenance of any such Properties if such discontinuance is not disadvantageous to the Banks or the holders of the Notes, does not materially impair the operations of Borrower or any Subsidiary of Borrower and is, in the judgment of Borrower, desirable in the conduct of its business or the business of its Subsidiaries.

Section 7.3 *Taxes*. Borrower will duly pay and discharge, and will cause each of its Subsidiaries duly to pay and discharge, all taxes, rates, assessments, fees and governmental charges upon or against it or against its Properties, in each case before the same becomes delinquent and before penalties accrue thereon, unless and to the extent that the same is being contested in good faith by appropriate proceedings and reserves in conformity with GAAP have been provided therefor on the books of Borrower.

Section 7.4 *ERISA*. Borrower will, and will cause each of its Subsidiaries to, promptly pay and discharge all obligations and liabilities arising under ERISA of a character which if unpaid or unperformed might result in the imposition of a Lien against any of its properties or assets and will promptly notify the Administrative Agent of (i) the occurrence of any reportable event (as defined in ERISA) affecting a Plan, other than any such event of which the PBGC has waived notice by regulation, (ii) receipt of any notice from PBGC of its intention to seek termination of any Plan or appointment of a trustee therefor, (iii) its or any of its Subsidiaries' intention to terminate or withdraw from any Plan, and (iv) the occurrence of any event affecting

any Plan which could result in the incurrence by Borrower or any of its Subsidiaries of any material liability, fine or penalty, or any material increase in the contingent liability of Borrower or any of its Subsidiaries under any post-retirement Welfare Plan benefit. The Administrative Agent will promptly distribute to each Bank any notice it receives from Borrower pursuant to this Section 7.4.

Section 7.5 *Insurance*. Borrower will insure, and keep insured, and will cause each of its Subsidiaries to insure, and keep insured, with good and responsible insurance companies, all insurable Property owned by it of a character usually insured by companies similarly situated and operating like Property. To the extent usually insured by companies similarly situated and conducting similar businesses, Borrower will also insure, and cause each of its Subsidiaries to insure, employers' and public and product liability risks with good and responsible insurance companies. Borrower will, upon request of any Bank, furnish to such Bank a summary setting forth the nature and extent of the insurance maintained pursuant to this Section 7.5.

Section 7.6 *Financial Reports and Other Information*.

(a) Borrower will maintain a system of accounting in accordance with GAAP and will furnish to the Banks and their respective duly authorized representatives such information respecting the business and financial condition of Borrower and its Subsidiaries as any Bank may reasonably request; and without any request, the Borrower shall deliver to the Administrative Agent in form and detail satisfactory to the Administrative Agent, with copies for each Bank in form and substance satisfactory to them, each of the following:

(i) within 120 days after the end of each fiscal year of Borrower, a copy of Borrower financial statements for such fiscal year, including the consolidated balance sheet of Borrower and its Subsidiaries for such year and the related statements of income and statements of cash flow, each as certified by independent public accountants of recognized national standing selected by Borrower in accordance with GAAP with such accountants' unqualified opinion to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in all material respects in accordance with GAAP the consolidated financial position of Borrower and its Subsidiaries as of the close of such fiscal year and the results of their operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances, provided that if Borrower files its annual report on Form 10-K for the applicable annual period, and such annual report contains the financial statements and accountants certifications, opinions and statements described above, the Borrower may satisfy the requirements of this Section 7.6(a)(i) by delivering a copy of such annual report to each Bank. Together with such information the Borrower shall provide to each Bank such consolidating information as may be necessary for the Banks to determine the Borrower's compliance with Section 7.17 hereof;

(ii) within 60 days after the end of each of the first three quarterly fiscal periods of Borrower, a consolidated unaudited balance sheet of Borrower and its Subsidiaries, and the related statements of income and statements of cash flow, as of the close of such period, all of the foregoing prepared by Borrower in reasonable detail in accordance with GAAP and certified by Borrower's chief financial officer or corporate controller as fairly presenting the financial condition as at the dates thereof and the results of operations for the periods covered thereby, provided that if Borrower files a Form 10-Q for the applicable quarterly period, and such quarterly report contains the financial statements and certifications described above, the Borrower may satisfy the requirements of this Section 7.6(a)(ii) by delivering a copy of such quarterly report to each Bank. Together with such information the Borrower shall provide to each Bank such consolidating information as may be necessary for the Banks to determine the Borrower's compliance with Section 7.17 hereof;

(iii) within the period provided in subsection (i) above, the written statement of the accountants who certified the audit report thereby required that in the course of their audit they have obtained no knowledge of any Default or Event of Default, or, if such accountants have obtained knowledge of any such Default or Event of Default, they shall disclose in such statement the nature and period of the existence thereof; and

(iv) promptly after the sending or filing thereof, copies of all proxy statements, financial statements and reports Borrower or any of its Subsidiaries sends to their shareholders, and copies of all other regular, periodic and special reports and all registration statements Borrower or any of its Subsidiaries file with the SEC or any successor thereto, or with any national securities exchanges.

(b) Each financial statement furnished to the Banks pursuant to subsection (i) or (ii) of this Section 7.6 shall be accompanied by (A) a written certificate signed by Borrower's chief financial officer or corporate controller to the effect that (i) no Default or Event of Default has occurred during the period covered by such statements or, if any such Default or Event of Default has occurred during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by Borrower to remedy the same, (ii) the representations and warranties contained in Section 5 hereof are true and correct in all material respects as though made on the date of such certificate (other than those made solely as of an earlier date, which need only remain true as of such date), except as otherwise described therein, and (B) a Compliance Certificate in the form of **Exhibit B** hereto showing Borrower's compliance with the covenants set forth in Sections 7.9, 7.11, 7.12 and 7.14 through 7.19 hereof.

(c) Borrower will promptly (and in any event within three Business Days after an officer of Borrower has knowledge thereof) give notice to the Administrative Agent and each Bank:

(i) of the occurrence of any Default or Event of Default;

- (ii) any event or condition which could reasonably be expected to have a Material Adverse Effect;
- (iii) of any litigation or governmental proceeding of the type described in Section 5.5 hereof;
- (iv) of any material change in the information set forth on the Schedules hereto; and
- (v) of the entering into of any Long-Term Guaranties, and Borrower shall promptly provide the Administrative Agent with a copy of any such Guarantee and any modification to such Guarantee.

Section 7.7 *Bank Inspection Rights*. For purposes of confirming compliance with the Credit Documents or after the occurrence and during the continuance of an Event of Default, upon reasonable notice from the Administrative Agent or the Required Banks, Borrower will, at Borrower's expense, permit such Banks (and such Persons as any Bank may designate) during normal business hours to visit and inspect, under Borrower's guidance, any of the Properties of Borrower or any of its Subsidiaries, to examine all of their books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers, employees and with their independent public accountants (and by this provision Borrower authorizes such accountants to discuss with the Banks (and such Persons as any Bank may designate) the finances and affairs of Borrower and its Subsidiaries) all at such reasonable times and as often as may be reasonably requested; *provided, however*, that except upon the occurrence and during the continuation of any Default or Event of Default, not more than one such visit and inspection may be conducted each calendar quarter.

Section 7.8 *Conduct of Business*. Neither Borrower nor any Subsidiary of Borrower will engage in any line of business other than business activities in the field of (i) cogeneration and related thermal uses, (ii) energy production, (iii) energy development, (iv) energy recovery, (v) utility operation and management, (vi) demand side management services, (vii) energy trading, (viii) management of investment funds which invest in energy related businesses and investments in such funds, (ix) hedging but not speculative activities relating to any of the foregoing lines of business, (x) telecommunications, (xi) management and operating services related to any of the foregoing lines of business, and (xii) other businesses not described in the foregoing so long as the Investments and expenses made in such other businesses does not exceed \$40,000,000.

Section 7.9 *Liens*. Borrower will not, and will not permit any of its Subsidiaries to, create, incur, permit to exist or to be incurred any Lien of any kind on any Property owned by the Borrower or any Subsidiary of Borrower; *provided, however*, that this Section 7.9 shall not apply to or operate to prevent:

- (a) Liens arising by operation of law in respect of Property of Borrower or any of its Subsidiaries which are incurred in the ordinary course of business which do not

in the aggregate materially detract from the value of such Property or materially impair the use thereof in the operation of the business of Borrower or any of its Subsidiaries;

(b) Liens securing (i) Non-Recourse Indebtedness of any Subsidiary of Borrower or (ii) the obligations of a Project Finance Subsidiary under a power purchase agreement, *provided* that in the case of clause (i) above any such Lien is limited to the Property being financed or refinanced by such Indebtedness and the stock (or similar equity interest) of the Subsidiary which incurred such Non-Recourse Indebtedness, and in the case of clause (ii) above any such Lien is limited to the Property and the stock (or similar equity interest) of such Project Finance Subsidiary;

(c) Liens for taxes or assessments or other government charges or levies on Borrower or any Subsidiary of Borrower or their respective Properties which are being contested in good faith by appropriate proceedings and for which reserves in conformity with GAAP have been provided on the books of Borrower; *provided* that the aggregate amount of liabilities (including interest and penalties, if any) of Borrower and its Subsidiaries secured by such Liens shall not exceed \$20,000,000 at any one time outstanding;

(d) Liens arising out of judgments or awards against Borrower or any Subsidiary of Borrower, or in connection with surety or appeal bonds in connection with bonding such judgments or awards, the time for appeal from which or petition for rehearing of which shall not have expired or with respect to which such Borrower or such Subsidiary shall be prosecuting an appeal or proceeding for review, and with respect to which it shall have obtained a stay of execution pending such appeal or proceeding for review; *provided* that the aggregate amount of liabilities (including interest and penalties, if any) of Borrower and its Subsidiaries secured by such Liens shall not exceed \$20,000,000 at any one time outstanding;

(e) Survey exceptions or encumbrances, easements or reservations, or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of real properties which are necessary for the conduct of the activities of Borrower and any Subsidiary of Borrower or which customarily exist on properties of corporations engaged in similar activities and similarly situated and which do not in any event materially impair their use in the operation of the business of Borrower or any Subsidiary of Borrower;

(f) Liens existing on the date hereof and listed on **Schedule 7.9** hereto;

(g) Liens securing (i) Indebtedness evidencing the deferred purchase price of newly acquired property or incurred to finance the acquisition of personal property of Borrower or a Subsidiary of Borrower used in the ordinary course of business of Borrower or a Subsidiary of Borrower, so long as such Lien is limited to the property being financed or acquired and proceeds thereof, (ii) Capitalized Lease Obligations, so long as such Lien is limited to the property subject to the related Capital Lease and proceeds thereof, and (iii) the performance of tenders, statutory obligations, bids, leases or other similar obligations (other than for borrowed money) entered into in the ordinary

course of business or to secure obligations on performance bonds; *provided*, that such Liens shall only be permitted to the extent the aggregate amount of Indebtedness and other obligations secured by all such Liens does not exceed five percent (5%) of Consolidated Assets as reflected on the most recent balance sheet delivered by Borrower pursuant to Section 7.6;

(h) Liens in favor of carriers, warehousemen, mechanics, materialmen and landlords granted in the ordinary course of business for amounts not overdue or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(i) Liens incurred or deposits made in the ordinary course of business in connection with worker's compensation, unemployment insurance or other forms of governmental insurance or benefits;

(j) Liens relating to synthetic lease arrangements of Borrower or a Subsidiary of Borrower, *provided* that (i) such Lien is limited to the Property being leased, and (ii) to the extent the lessor or any other Person has recourse to the Borrower, any Subsidiary or any of their Property (other than the Property being so leased), through a Guarantee (including a residual guarantee) or otherwise, such Lien shall be permitted if Borrower has included the recourse portion of such obligations as Indebtedness for all purposes (including financial covenant calculations) under the Credit Documents;

(k) Liens on assets of the Marketing Subsidiaries granted in the ordinary course of business securing the reimbursement obligations of Marketing Subsidiaries with respect to letters of credit and any working capital facility of the Marketing Subsidiaries so long as the holder of such reimbursement obligation or provider of such working capital facility has no recourse against Borrower or a Consolidated Subsidiary of Borrower other than such Marketing Subsidiary or any of their other assets (whether directly, through a Guarantee or otherwise) other than pursuant to a Guarantee permitted pursuant to Section 7.15(f);

(l) Liens securing Indebtedness issued pursuant to (i) that certain Restated and Amended Indenture of Mortgage and Deed of Trust dated as of September 1, 1999 between BHP and The Chase Manhattan Bank, as trustee (and any successor trustee thereunder), together with all amendments and supplemental indentures thereto, and (ii) the CLF&P Indenture, together with all amendments and supplemental indentures thereto; and

(m) Any extension, renewal or replacement (or successive extensions, renewals or replacements) in whole or in part of any Lien referred to in the foregoing paragraphs (a) through (j), inclusive, *provided, however*, that the principal amount of Indebtedness secured thereby shall not exceed the principal amount of Indebtedness so secured at the time of such extension, renewal or replacement, and that such extension, renewal or replacement shall be limited to the Property which was subject to the Lien so extended, renewed or replaced.

*provided*, that the foregoing paragraphs shall not be deemed under any circumstance to permit a Lien to exist on any capital stock or other equity interests of the Material Subsidiaries.

Section 7.10 *Use of Proceeds; Regulation U*. The proceeds of each Borrowing, and the credit provided by Letters of Credit, will be used by Borrower solely (i) to fund Borrower's working capital needs, and (ii) for general corporate purposes of Borrower. Borrower will not use any part of the proceeds of any of the Borrowings or of the Letters of Credit directly or indirectly to purchase or carry any margin stock (as defined in Section 5.10 hereof) or to extend credit to others for the purpose of purchasing or carrying any such margin stock.

Section 7.11 *Sales and Leasebacks*. Borrower will not, nor will it permit any of its Subsidiaries to, enter into any arrangement with any bank, insurance company or other lender or investor providing for the leasing by Borrower or any Subsidiary of Borrower of any Property theretofore owned by it and which has been or is to be sold or transferred by such owner to such lender or investor if the total amount of rent and other obligations of the Borrower and its Subsidiaries under such lease, when combined with all rent and other obligations of Borrower and its Subsidiaries under all such leases, would exceed \$30,000,000 in the aggregate, provided that Borrower and its Subsidiaries may engage in synthetic lease transactions so long as the Borrower's or such Subsidiary's, as applicable, obligations under such synthetic leases are included as Indebtedness for all purposes (including financial covenant calculations) under the Credit Documents.

Section 7.12 *Mergers, Consolidations and Sales of Assets*.

(a) Borrower will not, and will not permit any of its Material Subsidiaries to, (i) consolidate with or be a party to merger with any other Person or (ii) sell, lease or otherwise dispose of all or a "substantial part" of the assets of Borrower and its Subsidiaries; *provided, however*, that (w) the foregoing shall not prohibit any sale, lease, transfer or disposition to which the Required Banks have consented, such consent not to be unreasonably withheld if (A) such transaction does not result in a downgrade of either Borrower's S&P Rating or Moody's Rating, (B) such transaction is for cash consideration (or other consideration acceptable to the Required Banks) in an amount not less than the fair market value of the applicable assets, and (C) such transaction, when combined with all other such transactions, would not have a Material Adverse Effect, taken as a whole, (x) any Subsidiary of Borrower may merge or consolidate with or into or sell, lease or otherwise convey all or a substantial part of its assets to Borrower or any Subsidiary of which Borrower holds (directly or indirectly) at least the same percentage equity ownership; *provided that* in any such merger or consolidation involving Borrower, Borrower shall be the surviving or continuing corporation, (y) Borrower and its Subsidiaries may sell inventory, reserves and electricity in the ordinary course of business, and (z) Borrower may enter into a merger with, or acquisition of all of, another Person so long as:

- (i) Borrower is the surviving entity,

(ii) unless consented to by the Required Banks, no downgrade in the Borrower's S&P Rating or Moody's Rating would occur as a result of the consummation of such a transaction,

(iii) if such transaction is an acquisition, the Board of Directors (or similar governing body) of the Person being acquired has approved being so acquired, and

(iv) no Default or Event of Default would have occurred and is continuing at the time of, or would occur as a result of, such transaction.

As used in this Section 7.12(a), a sale, lease, transfer or disposition of assets during any fiscal year shall be deemed to be of a "substantial part" of the consolidated assets of Borrower and its Subsidiaries if the net book value of such assets, when added to the net book value of all other assets sold, leased, transferred or disposed of by the Borrower and its Subsidiaries (excluding the Marketing Subsidiaries) during such fiscal year (other than inventory, reserves and electricity in the ordinary course of business) exceeds ten percent (10%) of the total assets of Borrower and its Consolidated Subsidiaries, determined on a consolidated basis as of the last day of the immediately preceding fiscal year.

(b) Except as permitted pursuant to Section 7.12(a) or Section 7.14 hereof, Borrower will not sell, transfer or otherwise dispose of, or permit any of its Subsidiaries to issue, sell, transfer or otherwise dispose of, any shares of stock of any class (including as "stock" for purposes of this Section, any warrants, rights or options to purchase or otherwise acquire stock or other Securities exchangeable for or convertible into stock) of any Subsidiary of Borrower, except to Borrower or a Wholly-Owned Subsidiary of Borrower or except for the purpose of qualifying directors; provided, however, nothing in this Agreement shall be deemed to prohibit, for so long as no Event of Default has occurred and is continuing at such time, the contemplated sale of the equity interests in Black Hills Fiber Systems, Inc. owned by Borrower or any of its Subsidiaries on the Effective Date on substantially the same terms and conditions disclosed by Borrower to Administrative Agent prior to the Effective Date.

*Section 7.13 Use of Property and Facilities; Environmental and Health and Safety Laws.*

(a) Borrower will, and will cause each of its Subsidiaries to, comply in all material respects with the requirements of all Environmental and Health Laws applicable to or pertaining to the Properties or business operations of Borrower or any Subsidiary of Borrower. Without limiting the foregoing, Borrower will not, and will not permit any Person to, except in accordance with applicable law, dispose of any Hazardous Material into, onto or upon any real property owned or operated by Borrower or any of its Subsidiaries.

(b) Borrower will promptly provide the Banks with copies of any notice or other instrument of the type described in Section 5.11(b) hereof, and in no event later than five (5) Business Days after an officer of Borrower or a Subsidiary of Borrower receives such notice or instrument.



Section 7.14 *Investments, Acquisitions, Loans, Advances and Guaranties*. Borrower will not, nor will it permit any Subsidiary of Borrower to, directly or indirectly, make, retain or have outstanding any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances to, any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof, or be or become liable as endorser, guarantor, surety or otherwise (such as liability as a general partner) for any debt, obligation or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person (cumulatively, all of the foregoing “*Investments*”); *provided, however*, that the foregoing provisions shall not apply to nor operate to prevent:

(a) investments in direct obligations of the United States of America or of any agency or instrumentality thereof whose obligations constitute full faith and credit obligations of the United States of America, *provided* that (i) any such obligation matures within ten years from the date it is acquired by Borrower or Subsidiary, (ii) on any day, the aggregate amount of all such investments maturing beyond one year from such date shall not exceed \$100,000,000 and (iii) on any day, the aggregate amount of all such investments does not exceed five percent (5%) of Consolidated Assets as reflected on the most recent balance sheet delivered by Borrower pursuant to Section 7.6;

(b) investments in (i) commercial paper rated P-1 by Moody’s Investors Services, Inc. or A-1 by Standard & Poor’s Corporation maturing within one year of its date of issuance, and (ii) debt and auction preferred securities rated Aaa by Moody’s Investors Services, Inc. or AAA by Standard & Poor’s Corporation maturing within one year of their respective dates of purchase;

(c) investments in certificates of deposit issued by any Bank or any United States commercial bank having capital and surplus of not less than \$200,000,000 maturing within one year from the date of issuance thereof or in banker’s acceptances endorsed by any Bank or other such commercial bank and maturing within six months of the date of acceptance;

(d) investments in repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in subsection (a) above entered into with any bank meeting the qualifications specified in subsection (c) above, *provided* all such agreements require physical delivery of the securities securing such repurchase agreement, except those delivered through the Federal Reserve Book Entry System;

(e) investments in money market funds that invest solely, and which are restricted by their respective charters to invest solely, in investments of the type described in the immediately preceding subsections (a), (b), (c) and (d) above;

(f) ownership of stock, obligations or securities received in settlement of debts (created in the ordinary course of business) owing to Borrower or any Subsidiary;

(g) endorsements of negotiable instruments for collection in the ordinary course of business;

(h) loans and advances to employees in the ordinary course of business for travel, relocation, and similar purposes;

(i) Investments (i) existing on the Effective Date in Subsidiaries of Borrower, (ii) existing on the Effective Date and identified in Schedule 7.14 hereof, or (iii) consisting of intercompany loans permitted pursuant to Section 7.15(e);

(j) Investments constituting (i) accounts receivable arising, (ii) trade debt granted, or (iii) deposits made in connection with the purchase price of goods or services, in each case in the ordinary course of business;

(k) Investments in Persons other than Marketing Subsidiaries engaged in lines of business related to the lines of business described in Section 7.8 so long as (i) both before and after giving effect to such Investment no Default or Event of Default shall have occurred and be continuing, (ii) such Investments do not permit any creditor of such Person recourse to Borrower or any other Subsidiary of Borrower or any of their assets (other than the assets and/or the stock or similar equity interest of such Person) and (iii) if such Investments are in Persons engaged in the lines of business described in clause (xii) of Section 7.8, such Investments and expenses in the aggregate do not exceed \$40,000,000 outstanding at any time;

(l) Guaranties, other than Long-Term Guaranties, so long as such Indebtedness is permitted pursuant to Section 7.15;

(m) transactions permitted pursuant to Section 7.12(a);

(n) Investments constituting Long-Term Guaranties other than Long-Term Guarantees of Indebtedness of the Marketing Subsidiaries;

(o) (i) Investments in Marketing Subsidiaries (other than Investments in Marketing Subsidiaries consisting of Guaranties of Indebtedness of Marketing Subsidiaries) existing on December 31, 2004 and listed on Schedule 7.14 and (ii) Investments consisting of Guaranties of Indebtedness of Marketing Subsidiaries in existence on December 31, 2004 and Investments in Marketing Subsidiaries made after December 31, 2004 (including through Guaranties (including Long-Term Guaranties)) provided, that the aggregate amount of Investments permitted by this clause (ii) when combined with the amount of intercompany Indebtedness owing by Marketing Subsidiaries permitted pursuant to Section 7.15(e)(iii) plus the aggregate amount of L/C Obligations outstanding attributable to Marketing Subsidiary Letters of Credit shall not in the aggregate exceed the Marketing Subsidiary Sublimit (it being understood that any increase in the value of any such Investment attributable to the undistributed net earnings of the Marketing Subsidiaries shall not be deemed a violation of this Section 7.14(o)); and

(p) Investments consisting of promissory notes issued in consideration for the sale by the Borrower or a Subsidiary of a portion of the stock (or similar equity interests) of a Subsidiary where (i) such note is secured by the stock (or similar equity interest) sold, and (ii) one of the purposes of such sale is to ensure that such Subsidiary qualifies as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978, as amended

Any Investment which when made complies with the requirements of paragraphs (a) through (e) may continue to be held notwithstanding that such Investment if made thereafter would not comply with such requirements;

In determining the amount of investments, acquisitions, loans, advances and guarantees permitted under this Section 7.14, investments and acquisitions shall always be taken at the original cost thereof (regardless of any subsequent appreciation or depreciation therein), loans and advances shall be taken at the principal amount thereof then remaining unpaid, and guarantees shall be taken at the amount of obligations guaranteed thereby.

Section 7.15 *Restrictions on Indebtedness*. Borrower will not, nor will it permit any Subsidiary of Borrower to, issue, incur, assume, create, become liable for, contingently or otherwise, or have outstanding any Indebtedness; *provided, however*, that the foregoing provisions shall not restrict nor operate to prevent the following Indebtedness, so long as the incurrence and maintenance of such Indebtedness would not cause the Borrower to be in violation of Section 7.17 hereof if compliance with such covenant were measured on the date of the incurrence of such Indebtedness:

(a) the Obligations;

(b) Non-Recourse Indebtedness of any Project Finance Subsidiary;

(c) so long as the Borrower would be in compliance with Section 7.17 hereof (calculated as of the date of, and after giving affect to, the incurrence of such Indebtedness), secured Indebtedness (excluding Indebtedness of the type described in (e), (f), and (g) below but including the pledge of stock or similar equity interest of any Project Finance Subsidiary or any Subsidiary which is an entity whose sole purpose and extent of business activities is to own the stock or similar equity interest of a Project Finance Subsidiary) (A) set forth on Schedule 7.15(b) hereto, (B) (i) of BHP, (ii) evidencing the deferred purchase price of newly acquired property or incurred to finance the acquisition of personal property of the Borrower or a Subsidiary of the Borrower used in the ordinary course of business of the Borrower or Subsidiary, (iii) constituting Capitalized Lease Obligations or with respect to synthetic (or similar type) lease arrangements, or (iv) incurred in connection with the performance of tenders, statutory obligations, bids, leases or other similar obligations (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on performance bonds; *provided*, that the aggregate amount of Indebtedness permitted by this clause (B) at any time outstanding shall not exceed 5% of Consolidated Assets as reflected on the most recent balance sheet delivered by the Borrower pursuant to Section 7.6, provided that Borrower shall promptly provide the Administrative Agent with a copy of any

documentation evidencing such Indebtedness in excess of \$25,000,000 and any modification to such Indebtedness, and (C) of CLF&P outstanding under the CLF&P Indenture;

(d) so long as the Borrower would be in compliance with Section 7.17 hereof (calculated as of the date of, and after giving affect to, the incurrence of such Indebtedness), other Indebtedness (excluding Indebtedness of the type described in (e), (f), and (g) below) which is unsecured and either junior in right of payment to the Obligations or *pari passu* to the Obligations or is equally and ratably secured with the Obligations, provided that Borrower shall promptly provide the Administrative Agent with a copy of any documentation evidencing such Indebtedness in excess of \$25,000,000 and any modification to such Indebtedness;

(e) intercompany loans (i) from (x) Subsidiary to Borrower so long as such loans are subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent, and (y) Borrower to a Subsidiary of Borrower, (ii) among Wholly-Owned Subsidiaries, and (iii) from a Subsidiary of Borrower to a Marketing Subsidiary, so long as the aggregate amount of such loans from time to time owing by the Marketing Subsidiaries does not exceed the difference between (I) the Marketing Subsidiary Sublimit, less (II) the sum of (A) the aggregate amount of Guaranties outstanding pursuant to Section 7.15(f), and (B) the aggregate amount of other Investments then made in the Marketing Subsidiaries pursuant to Section 7.14(o)(ii) (it being understood that to the extent such limit is exceeded solely as a result of an increase in the value of any such Investment attributable to the undistributed net earnings of the Marketing Subsidiaries, it shall not be deemed a violation of this Section 7.15(e));

(f) Indebtedness consisting of Guaranties of the Indebtedness of the Marketing Subsidiaries (including Long-Term Guaranties), provided that such Indebtedness shall only be permitted to the extent the aggregate amount of such Indebtedness, when added to the sum of (i) the aggregate amount of all intercompany loans made to the Marketing Subsidiaries pursuant to Section 7.15(e), plus (ii) the aggregate amount of all other Investments made in Marketing Subsidiaries pursuant to Section 7.14(o)(ii), plus (iii) the aggregate amount of L/C Obligations outstanding attributable to Marketing Subsidiary Letters of Credit, does not exceed the Marketing Subsidiary Sublimit (it being understood that to the extent such limit is exceeded solely as a result of an increase in the value of any such Investment attributable to the undistributed net earnings of the Marketing Subsidiaries, it shall not be deemed a violation of this Section 7.15(f)) provided, further that Borrower shall promptly provide the Administrative Agent with a copy of any such Guarantee and any modification to such Guarantee;

(g) Indebtedness of the Marketing Subsidiaries under Marketing Subsidiary Excluded Credit Facilities in an aggregate amount not to exceed the Marketing Subsidiary Indebtedness Limit;

(h) Permitted Derivative Obligations; and

(i) Indebtedness pursuant to Long-Term Guaranties (other than Long-Term Guaranties of Indebtedness of Marketing Subsidiaries).

Indebtedness shall only be permitted under (e), (f), (h), and (i) above to the extent such Indebtedness will have a priority of payment with the Obligations which is no greater than *pari passu*.

Section 7.16 *Consolidated Net Worth*. Borrower will at the end of each fiscal quarter maintain Consolidated Net Worth in an amount of not less than the sum of (i) \$625,000,000 *plus* (ii) fifty percent (50%) of the aggregate Consolidated Net Income, if positive, for the period beginning January 1, 2005 and ending on the last day of such fiscal quarter.

Section 7.17 *Recourse Leverage Ratio*. Borrower will not at the end of any fiscal quarter permit the Recourse Leverage Ratio to exceed 0.65 to 1.00.

Section 7.18 *Interest Expense Coverage Ratio*. Borrower will maintain a Interest Expense Coverage Ratio of not less than 2.50:1.00, as determined at the end of each fiscal quarter.

Section 7.19 *Dividends and Other Shareholder Distributions*.

(a) Borrower shall not (i) declare or pay any dividends or make a distribution of any kind (including by redemption or purchase) on or relating to its outstanding capital stock, or (ii) repay (directly, through sinking fund payments or otherwise) any Indebtedness or other obligations owing to a shareholder unless in either circumstance no Default or Event of Default exists prior to or would result after giving effect to such action.

(b) Except (i) to the extent such an encumbrance or restriction is imposed by PUHCA, the rules and regulations promulgated thereunder or any order of the SEC issued pursuant thereto, (ii) as set forth on **Schedule 7.19**, or (iii) in connection with Non-Recourse Indebtedness of a Project Finance Subsidiary, Borrower will not, and will not permit any of its Subsidiaries, directly or indirectly to create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any such Subsidiary to: (1) pay dividends or make any other distribution on any of such Subsidiary's capital stock owned by Borrower or any Subsidiary of Borrower; (2) pay any Indebtedness owed to Borrower or any other Subsidiary; (3) make loans or advances to Borrower or any other Subsidiary; or (4) transfer any of its property or assets to Borrower or any other Subsidiary.

Section 7.20 *No Negative Pledge*. Except (i) as set forth on **Schedule 7.19** or (ii) in connection with Non-Recourse Indebtedness of a Project Finance Subsidiary, the Borrower will not, and will not permit any of its Subsidiaries (other than Project Finance Subsidiaries), directly or indirectly to enter into or assume any agreement (other than customary non-assignment and no sub-letting provisions in leases consistent with Borrower's past practices and the Credit Documents and, solely with respect to the asset so financed, Capitalized Leases, to the extent

such Indebtedness is permitted herein) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired.

Section 7.21 *Transactions with Affiliates*. Except as is required by PUHCA or the rules and regulations promulgated thereunder, Borrower will not, and will not permit any of its Subsidiaries to, enter into or be a party to any material transaction or arrangement with any Affiliate of such Person (other than Borrower), including without limitation, the purchase from, sale to or exchange of Property with, any merger or consolidation with or into, or the rendering of any service by or for, any Affiliate, except in the ordinary course of and pursuant to the reasonable requirements of Borrower's or such Subsidiary's business and upon terms no less favorable to such Borrower or such Subsidiary than could be obtained in a similar transaction involving a third-party.

Section 7.22 *Compliance with Laws*. Without limiting any of the other covenants of Borrower in this Section 7, Borrower will, and will cause each of its Subsidiaries to, conduct its business, and otherwise be, in compliance with all applicable laws, regulations, ordinances and orders of any governmental or judicial authorities; *provided, however*, that neither Borrower nor any Subsidiary of Borrower shall be required to comply with any such law, regulation, ordinance or order if the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

Section 7.23 *Pari-Passu*. Borrower will at all times cause the Obligations to rank at least *pari passu* with all other senior unsecured Indebtedness of Borrower.

Section 7.24 *Certain Subsidiaries*. Unless pursuant to Indebtedness which is authorized pursuant to this Agreement, Borrower will not, and the Subsidiaries of Borrower will not, permit any creditor of a Marketing Subsidiary or a Project Finance Subsidiary to have recourse to any Borrower or any Subsidiary of Borrower or any of their assets (other than (i) the stock or similar equity interest of the applicable Subsidiary and (ii) with respect to a Permitted Derivative Obligation) other than recourse under Guaranties permitted pursuant to Sections 7.15(f) and (i).

Section 7.25 *Ratings*. Borrower will at all times this Agreement is in effect maintain a S&P Rating and a Moody's Rating (or if one or both of such ratings are unavailable, rating(s) from such other recognized national rating agency or agencies as may be acceptable to the Administrative Agent and the Required Banks).

## SECTION 8. EVENTS OF DEFAULT AND REMEDIES.

Section 8.1 *Events of Default*. Any one or more of the following shall constitute an Event of Default:

(a) (i) default in the payment when due of any fees, interest or of any other Obligation not covered by clause (ii) below and such payment default continues for three (3) days or (ii) default in the payment when due of the principal amount of any Loan or of any Reimbursement Obligation;

(b) default by Borrower or any Subsidiary in the observance or performance of any covenant set forth in Section 7.1, Section 7.6(c), Section 7.9 through 7.12, Sections 7.14 through 7.21, 7.23, 7.24 and 7.25 hereof;

(c) default by Borrower or any Subsidiary in the observance or performance of any provision hereof or of any other Credit Document not mentioned in (a) or (b) above, which is not remedied within thirty (30) days after notice thereof shall have been given to the Borrower by the Administrative Agent;

(d) (i) failure to pay when due Indebtedness in an aggregate principal amount of \$20,000,000 or more of Borrower or any Material Subsidiary, or (ii) default shall occur under one or more indentures, agreements or other instruments under which any Indebtedness of Borrower or any of its Material Subsidiary in an aggregate principal amount of \$20,000,000 or more may be issued or created and such default shall continue for a period of time sufficient to permit the holder or beneficiary of such Indebtedness or a trustee therefor to cause the acceleration of the maturity of any such Indebtedness or any mandatory unscheduled prepayment, purchase or funding thereof;

(e) any representation or warranty made herein or in any other Credit Document by Borrower or any Subsidiary of Borrower, or in any statement or certificate furnished pursuant hereto or pursuant to any other Credit Document by Borrower or any Subsidiary of Borrower, or in connection with any Credit Document, proves untrue in any material respect as of the date of the issuance or making, or deemed making or issuance, thereof;

(f) Borrower or any Material Subsidiary shall (i) fail to pay its debts generally as they become due or admit in writing its inability to pay its debts generally as they become due, (ii) make an assignment for the benefit of creditors, (iii) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (iv) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it or any analogous action is taken under any other applicable law relating to bankruptcy or insolvency, (v) take any corporate action (such as the passage by its board of directors of a resolution) in furtherance of any matter described in parts (i)-(iv) above, or (vi) fail to contest in good faith any appointment or proceeding described in Section 8.1(g) hereof;

(g) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for Borrower or any Material Subsidiary, or any substantial part of any of their Property, or a proceeding described in Section 8.1(f)(iv) shall be instituted against Borrower or any Material Subsidiary, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) days;

(h) Borrower or any Material Subsidiary shall fail within thirty (30) days to pay, bond or otherwise discharge any judgment or order for the payment of money in excess of \$20,000,000, which is not stayed on appeal or otherwise being appropriately contested in good faith in a manner that stays execution thereon;

(i) Borrower or any other member of the Controlled Group shall fail to pay when due an amount or amounts which it shall have become liable, to pay to the PBGC or to a Plan under Title IV of ERISA; or notice of intent to terminate a Plan or Plans having aggregate Unfunded Vested Liabilities in excess of \$20,000,000 (collectively, a "*Material Plan*") shall be filed under Title IV of ERISA by Borrower or any Subsidiary of Borrower or any other member of the Controlled Group, any plan administrator or any combination of the foregoing; or the PBGC shall institute proceedings under Title IV of ERISA to terminate or to cause a trustee to be appointed to administer any Material Plan or a proceeding shall be instituted by a fiduciary of any Material Plan against Borrower or any other member of the Controlled Group to enforce Section 515 or 4219(c)(5) of ERISA and such proceeding shall not have been dismissed within thirty (30) days thereafter; or a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any Material Plan must be terminated;

(j) Borrower or any Subsidiary of Borrower or any Person acting on behalf of Borrower, a Subsidiary or any governmental authority challenges the validity of any Credit Document or Borrower's or one of its Subsidiary's obligations thereunder or any Credit Document ceases to be in full force and effect or is modified other than in accordance with the terms thereof and hereof;

(k) a Change of Control Event shall have occurred; or

(l) Borrower shall for any reason cease to be wholly liable for the full amount of the Obligations.

Section 8.2 *Non-Bankruptcy Defaults*. When any Event of Default other than those described in subsections (f) or (g) of Section 8.1 hereof has occurred and is continuing, the Administrative Agent shall, if so directed by the Required Banks, by written notice to Borrower: (a) terminate the remaining Commitments and all other obligations of the Banks hereunder on the date stated in such notice (which may be the date thereof); (b) declare the principal of and the accrued interest on all outstanding Notes to be forthwith due and payable and thereupon all outstanding Notes, including both principal and interest thereon, and all other Obligations, shall be and become immediately due and payable together with all other amounts payable under the Credit Documents without further demand, presentment, protest or notice of any kind; and (c) demand that Borrower immediately pay to the Administrative Agent, subject to Section 8.4, the full amount then available for drawing under each or any Letter of Credit, and Borrower agrees to immediately make such payment and acknowledge and agrees that the Banks would not have an adequate remedy at law for failure by Borrower to honor any such demand and that the Administrative Agent, for the benefit of the Banks, shall have the right to require Borrower to specifically perform such undertaking whether or not any drawings or other demands for payment have been made under any Letter of Credit. The Administrative Agent, after giving notice to Borrower pursuant to Section 8.1(c) or this Section 8.2, shall also promptly send a copy



of such notice to the other Banks, but the failure to do so shall not impair or annul the effect of such notice.

Section 8.3 *Bankruptcy Defaults*. When any Event of Default described in subsections (f) or (g) of Section 8.1 hereof has occurred and is continuing, then all outstanding Notes, including both interest and principal thereon, and all other Obligations shall immediately become due and payable together with all other amounts payable under the Credit Documents without presentment, demand, protest or notice of any kind, the obligation of the Banks to extend further credit pursuant to any of the terms hereof shall immediately terminate and Borrower shall immediately pay to the Administrative Agent, subject to Section 8.4, the full amount then available for drawing, under all outstanding Letters of Credit, Borrower acknowledging that the Banks would not have an adequate remedy at law for failure by Borrower to honor any such demand and that the Banks, and the Administrative Agent on their behalf, shall have the right to require Borrower to specifically perform such undertaking whether or not any draws or other demands for payment have been made under any of the Letters of Credit.

Section 8.4 *Collateral for Outstanding Letters of Credit*.

(a) If the payment or prepayment of the amount available for drawing under any or all outstanding Letters of Credit is required under Section 2.2(b), Section 2.8(b) or under Section 8.2 or 8.3 above, Borrower shall forthwith pay the amount required to be so prepaid, to be held by the Administrative Agent as provided in subsection (b) below.

(b) All amounts prepaid pursuant to subsection (a) above shall be held by the Administrative Agent in a separate collateral account (such account, and the credit balances, properties and any investments from time to time held therein, and any substitutions for such account, any certificate of deposit or other instrument evidencing any of the foregoing and all proceeds of and earnings on any of the foregoing being collectively called the "Account") as security for, and for application by the Administrative Agent (to the extent available) to, the reimbursement of any payment under any Letter of Credit then or thereafter made by the Issuing Agents, and to the payment of the unpaid balance of any Loans and all other Obligations. The Account shall be held in the name of and subject to the exclusive dominion and control of the Administrative Agent for the benefit of the Administrative Agent, the Issuing Agents and the Banks, and Borrower hereby grants to the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Agents and the Banks, a security interest in all of Borrower's rights, title and interest in and to the Account and all property (including investment property) contained therein or credited thereto. So long as no Default or Event of Default has occurred, if and when requested by Borrower, the Administrative Agent shall invest funds held in the Account from time to time in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America with a remaining maturity of one year or less, *provided*, that the Administrative Agent is irrevocably authorized to sell investments held in the Account when and as required to make payments out of the Account for application to amounts due and owing from Borrower to the Administrative Agent, the Issuing Agents or Banks, and *provided, further*, that if a Default or Event of Default has then occurred and is continuing, Borrower shall have no access to or right to control the Account. If (i)

Borrower shall have made payment of all such obligations referred to in subsection (a) above, (ii) all relevant preference or other disgorgement periods relating to the receipt of such payments have passed, and (iii) no Letters of Credit, Commitments, Loans or other Obligations remain outstanding hereunder, then the Administrative Agent shall repay to Borrower any remaining amounts held in the Account.

Section 8.5 *Expenses*. Borrower agrees to pay to the Administrative Agent, the Issuing Agents and each Bank, and any other holder of any Note outstanding hereunder, all costs and expenses incurred or paid by the Administrative Agent, the Issuing Agents or such Bank or any such holder, including attorneys' fees (including allocable fees of in-house counsel) and court costs, in connection with (i) any amendment or waiver to the Credit Documents requested by Borrower, (ii) any Default or Event of Default by Borrower hereunder, or (iii) the enforcement of any of the Credit Documents.

#### SECTION 9. CHANGE IN CIRCUMSTANCES.

Section 9.1 *Change of Law*. Notwithstanding any other provisions of this Agreement or any Note, if at any time after the date hereof any change in applicable law or regulation or in the interpretation thereof makes it unlawful for any Bank to make or continue to maintain Eurodollar Loans or to perform its obligations as contemplated hereby, such Bank shall promptly give notice thereof to Borrower and such Bank's obligations to make or maintain Eurodollar Loans under this Agreement shall terminate until it is no longer unlawful for such Bank to make or maintain Eurodollar Loans. Borrower shall prepay on demand the outstanding principal amount of any such affected Eurodollar Loans, together with all interest accrued thereon at a rate per annum equal to the interest rate applicable to such Loan; *provided, however*, subject to all of the terms and conditions of this Agreement, Borrower may then elect to borrow the principal amount of the affected Eurodollar Loans from such Bank by means of Base Rate Loans from such Bank, which Base Rate Loans shall not be made ratably by the Banks but only from such affected Bank.

Section 9.2 *Unavailability of Deposits or Inability to Ascertain, or Inadequacy of, LIBOR*. If on or prior to the first day of any Interest Period for any Borrowing of Eurodollar Loans:

(a) the Administrative Agent determines that deposits in U.S. Dollars (in the applicable amounts) are not being offered to major banks in the eurodollar interbank market for such Interest Period, or that by reason of circumstances affecting the interbank eurodollar market adequate and reasonable means do not exist for ascertaining the applicable LIBOR, or

(b) Banks having more than 33% percent (33%) or more of the aggregate amount of the Commitments reasonably determine and so advise the Administrative Agent that LIBOR as reasonably determined by the Administrative Agent will not adequately and fairly reflect the cost to such Banks or Bank of funding their or its Eurodollar Loans or Loan for such Interest Period,

then the Administrative Agent shall forthwith give notice thereof to Borrower and the Banks, whereupon until the Administrative Agent notifies Borrower that the circumstances giving rise to such suspension no longer exist, the obligations of the Banks or of the relevant Bank to make Eurodollar Loans shall be suspended.

Section 9.3 *Increased Cost and Reduced Return.*

(a) If, on or after the date hereof, the adoption of any applicable law, rule or regulation, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Bank (or its Lending Office) with any request or directive (whether or not having the force of law but, if not having the force of law, compliance with which is customary in the relevant jurisdiction) of any such authority, central bank or comparable agency:

(i) shall subject any Bank (or its Lending Office) to any tax, duty or other charge with respect to its Eurodollar Loans, its Notes, its Letter(s) of Credit, or its participation in any thereof, any Reimbursement Obligations owed to it or its obligation to make Eurodollar Loans, issue a Letter of Credit, or to participate therein, or shall change the basis of taxation of payments to any Bank (or its Lending Office) of the principal of or interest on its Eurodollar Loans, Letter(s) of Credit, or participations therein or any other amounts due under this Agreement in respect of its Eurodollar Loans, Letter(s) of Credit, or participations therein, any Reimbursement Obligations owed to it, or its obligation to make Eurodollar Loans, issue a Letter of Credit, or acquire participations therein (except for changes in the rate of tax on the overall net income or profits of such Bank or its Lending Office imposed by the jurisdiction in which such Bank or its lending office is incorporated in which such Bank's principal executive office or Lending Office is located); or

(ii) shall impose, modify or deem applicable any reserve, special deposit or similar requirement (including, without limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System, but excluding with respect to any Eurodollar Loans any such requirement included in an applicable Eurodollar Reserve Percentage) against assets of, deposits with or for the account of, or credit extended by, any Bank (or its Lending Office) or shall impose on any Bank (or its Lending Office) or on the interbank market any other condition affecting its Eurodollar Loans, its Notes, its Letter(s) of Credit, or its participation in any thereof, any Reimbursement Obligation owed to it, or its obligation to make Eurodollar Loans, to issue a Letter of Credit, or to participate therein;

and the result of any of the foregoing is to increase the cost to such Bank (or its Lending Office) of making or maintaining any Eurodollar Loan, issuing or maintaining a Letter of Credit, or participating therein, or to reduce the amount of any sum received or receivable by such Bank (or its Lending Office) under this Agreement or under its Notes with respect thereto, by an amount deemed by such Bank to be material, then, within fifteen (15) days after demand by such Bank

(with a copy to the Administrative Agent), Borrower shall be obligated to pay to such Bank such additional amount or amounts as will compensate such Bank for such increased cost or reduction. In the event any law, rule, regulation or interpretation described above is revoked, declared invalid or inapplicable or is otherwise rescinded, and as a result thereof a Bank is determined to be entitled to a refund from the applicable authority for any amount or amounts which were paid or reimbursed by Borrower to such Bank hereunder, such Bank shall refund such amount or amounts to Borrower without interest.

(b) If, after the date hereof, any Bank or the Administrative Agent shall have determined that the adoption of any applicable law, rule or regulation regarding capital adequacy, or any change therein (including, without limitation, any revision in the Final Risk-Based Capital Guidelines of the Board of Governors of the Federal Reserve System (12 CFR Part 208, Appendix A; 12 CFR Part 225, Appendix A) or of the Office of the Comptroller of the Currency (12 CFR Part 3, Appendix A), or in any other applicable capital rules heretofore adopted and issued by any governmental authority), or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Bank (or its Lending Office) with any request or directive regarding capital adequacy (whether or not having the force of law but, if not having the force of law, compliance with which is customary in the applicable jurisdiction) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Bank's capital, or on the capital of any corporation controlling such Bank, as a consequence of its obligations hereunder to a level below that which such Bank could have achieved but for such adoption, change or compliance (taking into consideration such Bank's policies with respect to capital adequacy) by an amount deemed by such Bank to be material, then from time to time, within fifteen (15) days after demand by such Bank (with a copy to the Administrative Agent), Borrower shall pay to such Bank such additional amount or amounts as will compensate such Bank for such reduction.

(c) Each Bank that determines to seek compensation under this Section 9.3 shall notify Borrower and the Administrative Agent of the circumstances that entitle the Bank to such compensation pursuant to this Section 9.3 and will designate a different Lending Office if such designation will avoid the need for, or reduce the amount of, such compensation and will not, in the sole judgment of such Bank, be otherwise disadvantageous to such Bank. A certificate of any Bank claiming compensation under this Section 9.3 and setting forth the additional amount or amounts to be paid to it hereunder submitted to Borrower and the Administrative Agent by such Bank in good faith shall be *prima facie* evidence of the amount of such compensation. In determining such amount, such Bank may use any reasonable averaging and attribution methods.

Section 9.4 *Lending Offices*. Each Bank may, at its option, elect to make its Loans hereunder at the branch, office or affiliate specified on the appropriate signature page hereof or in the assignment agreement which any assignee bank executes pursuant to Section 11.12 hereof (each a "*Lending Office*") for each type of Loan available hereunder or at such other of its branches, offices or affiliates as it may from time to time elect and designate in a written notice

to Borrower and the Administrative Agent, so long as such election does not increase costs or other amounts payable by Borrower to such Bank hereunder.

Section 9.5 *Discretion of Bank as to Manner of Funding*. Notwithstanding any other provision of this Agreement, each Bank shall be entitled to fund and maintain its funding of all or any part of its Loans in any manner it sees fit, it being understood, however, that for the purposes of this Agreement all determinations hereunder shall be made as if each Bank had actually funded and maintained each Eurodollar Loan through the purchase of deposits in the eurodollar interbank market having a maturity corresponding to such Loan's Interest Period and bearing an interest rate equal to LIBOR for such Interest Period.

#### SECTION 10. THE AGENT.

Section 10.1 *Appointment and Authorization of Administrative Agent*. Each Bank hereby appoints ABN AMRO Bank N.V. as the Administrative Agent under the Credit Documents and hereby authorizes the Administrative Agent to take such action as Administrative Agent on its behalf and to exercise such powers under the Credit Documents as are delegated to the Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto. The Administrative Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and the Credit Documents. The duties of the Administrative Agent shall be mechanical and administrative in nature; the Administrative Agent shall not have by reason of this Agreement or any other Credit Document a fiduciary relationship in respect of any Bank, the holder of any Note or any other Person; and nothing in this Agreement or any other Credit Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent any obligations in respect of this Agreement or any other Credit Document except as expressly set forth herein or therein.

Section 10.2 *Administrative Agent and its Affiliates*. The Administrative Agent shall have the same rights and powers under this Agreement and the other Credit Documents as any other Bank and may exercise or refrain from exercising the same as though it were not the Administrative Agent, and the Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of business with Borrower or any Affiliate of Borrower as if it were not the Administrative Agent under the Credit Documents.

Section 10.3 *Action by Administrative Agent*. If the Administrative Agent receives from Borrower a written notice of an Event of Default pursuant to Section 7.6(c)(i) hereof, the Administrative Agent shall promptly give each of the Banks written notice thereof. The obligations of the Administrative Agent under the Credit Documents are only those expressly set forth therein. Without limiting the generality of the foregoing, the Administrative Agent shall not be required to take any action hereunder with respect to any Default or Event of Default, except as expressly provided in Sections 8.2 and 8.3. In no event, however, shall the Administrative Agent be required to take any action in violation of applicable law or of any provision of any Credit Document, and the Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder or under any other Credit Document unless it shall be first indemnified to its reasonable satisfaction by the Banks against any and all costs, expense, and liability which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall be entitled to assume that no Default or Event of Default

exists unless notified to the contrary in writing by a Bank or Borrower. In all cases in which this Agreement and the other Credit Documents do not require the Administrative Agent to take certain actions, the Administrative Agent shall be fully justified in using its discretion in failing to take or in taking any action hereunder and thereunder.

Section 10.4 *Consultation with Experts*. The Administrative Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 10.5 *Liability of Administrative Agent; Credit Decision*. Neither the Administrative Agent nor any of its directors, officers, agents, or employees shall be liable for any action taken or not taken by it in connection with the Credit Documents (i) with the consent or at the request of the Required Banks or (ii) in the absence of its own gross negligence or willful misconduct. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into or verify (i) any statement, warranty or representation made in connection with this Agreement, any other Credit Document or any Credit Event; (ii) the performance or observance of any of the covenants or agreements of Borrower or any other party contained herein or in any other Credit Document; (iii) the satisfaction of any condition specified in Section 6 hereof; or (iv) the validity, effectiveness, genuineness, enforceability, perfection, value, worth or collectibility hereof or of any other Credit Document or of any other documents or writing furnished in connection with any Credit Document; and the Administrative Agent makes no representation of any kind or character with respect to any such matter mentioned in this sentence. The Administrative Agent may execute any of its duties under any of the Credit Documents by or through employees, agents, and attorneys-in-fact and shall not be answerable to the Banks, Borrower, or any other Person for the default or misconduct of any such agents or attorneys-in-fact selected with reasonable care. The Administrative Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, other document or statement (whether written or oral) believed by it to be genuine or to be sent by the proper party or parties. In particular and without limiting any of the foregoing, the Administrative Agent shall have no responsibility for confirming the accuracy of any Compliance Certificate or other document or instrument received by it under the Credit Documents. The Administrative Agent may treat the payee of any Note as the holder thereof until written notice of transfer shall have been filed with the Administrative Agent signed by such payee in form satisfactory to the Administrative Agent. Each Bank acknowledges that it has independently and without reliance on the Administrative Agent or any other Bank, and based upon such information, investigations and inquiries as it deems appropriate, made its own credit analysis and decision to extend credit to Borrower in the manner set forth in the Credit Documents. It shall be the responsibility of each Bank to keep itself informed as to the creditworthiness of Borrower and any other relevant Person, and the Administrative Agent shall have no liability to any Bank with respect thereto.

Section 10.6 *Indemnity*. The Banks shall ratably, in accordance with their respective Percentages, indemnify and hold the Administrative Agent, and its directors, officers, employees, agents and representatives harmless from and against any liabilities, losses, costs or expenses suffered or incurred by it under any Credit Document or in connection with the transactions contemplated thereby, regardless of when asserted or arising, except to the extent the

Administrative Agent is promptly reimbursed for the same by Borrower and except to the extent that any event giving rise to a claim was caused by the gross negligence or willful misconduct of the party seeking to be indemnified. The obligations of the Banks under this Section 10.6 shall survive termination of this Agreement.

Section 10.7 *Resignation of Administrative Agent and Successor Administrative Agent.* The Administrative Agent may resign at any time by giving written notice thereof to the Banks and Borrower. Upon any such resignation of the Administrative Agent, the Required Banks shall have the right to appoint a successor Administrative Agent with the consent of Borrower. If no successor Administrative Agent shall have been so appointed by the Required Banks, and shall have accepted such appointment, within thirty (30) days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Banks, appoint a successor Administrative Agent, which shall be any Bank hereunder or any commercial bank organized under the laws of the United States of America or of any State thereof and having a combined capital and surplus of at least \$200,000,000. Upon the acceptance of its appointment as the Administrative Agent hereunder, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights and duties of the retiring or removed Administrative Agent under the Credit Documents, and the retiring Administrative Agent shall be discharged from its duties and obligations thereunder. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Section 10 and all protective provisions of the other Credit Documents shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent.

## SECTION 11. MISCELLANEOUS.

### Section 11.1 *Withholding Taxes.*

(a) *Payments Free of Withholding.* Subject to Section 11.1 (b) hereof, each payment by Borrower under this Agreement or the other Credit Documents shall be made without withholding for or on account of any present or future taxes (other than overall net income taxes on the recipient). If any such withholding is so required, Borrower shall make the withholding, pay the amount withheld to the appropriate governmental authority before penalties attach thereto or interest accrues thereon and forthwith pay such additional amount as may be necessary to ensure that the net amount actually received by each Bank and the Administrative Agent free and clear of such taxes (including such taxes on such additional amount) is equal to the amount which that Bank or the Administrative Agent (as the case may be) would have received had such withholding not been made. If the Administrative Agent or any Bank pays any amount in respect of any such taxes, penalties or interest Borrower shall reimburse the Administrative Agent or that Bank for that payment on demand in the currency in which such payment was made. If Borrower pay any such taxes, penalties or interest, they shall deliver official tax receipts evidencing that payment or certified copies thereof to the Bank or Administrative Agent on whose account such withholding was made (with a copy to the Administrative Agent if not the recipient of the original) on or before the thirtieth day after payment. If any Bank or the Administrative Agent determines it has received or been granted a credit against or relief or remission for, or repayment of, any taxes paid or payable by it because of any taxes, penalties or interest paid by Borrower

and evidenced by such a tax receipt, such Bank or Administrative Agent shall, to the extent it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment, pay to Borrower such amount as such Bank or Administrative Agent determines is attributable to such deduction or withholding and which will leave such Bank or Administrative Agent (after such payment) in no better or worse position than it would have been in if Borrower had not been required to make such deduction or withholding. Nothing in this Agreement shall interfere with the right of each Bank and the Administrative Agent to arrange its tax affairs in whatever manner it thinks fit nor obligate any Bank or the Administrative Agent to disclose any information relating to its tax affairs or any computations in connection with such taxes.

(b) *U.S. Withholding Tax Exemptions.* Each Bank that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) shall submit to Borrower and the Administrative Agent on or before the date of the initial Borrowing hereunder two duly completed and signed copies of either Form W8BEN (relating to such Bank and entitling it to a complete exemption from withholding under the Code on all amounts to be received by such Bank, including fees, pursuant to the Credit Documents and the Loans) or Form W8ECI (relating to all amounts to be received by such Bank, including fees, pursuant to the Credit Documents and the Loans) of the United States Internal Revenue Service. Thereafter and from time to time, each Bank shall submit to Borrower and the Administrative Agent such additional duly completed and signed copies of one or the other of such Forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may be (i) requested by Borrower in a written notice, directly or through the Administrative Agent, to such Bank and (ii) required under then current United States law or regulations to avoid or reduce United States withholding taxes on payments in respect of all amounts to be received by such Bank, including fees, pursuant to the Credit Documents or the Loans.

(c) *Inability of Bank to Submit Forms.* If any Bank determines, as a result of any change in applicable law, regulation or treaty, or in any official application or interpretation thereof, that it is unable to submit to Borrower or Administrative Agent any form or certificate that such Bank is obligated to submit pursuant to subsection (b) of this Section 11.1 or that such Bank is required to withdraw or cancel any such form or certificate previously submitted or any such form or certificate otherwise becomes ineffective or inaccurate, such Bank shall promptly notify Borrower and Administrative Agent of such fact and the Bank shall to that extent not be obligated to provide any such form or certificate and will be entitled to withdraw or cancel any affected form or certificate, as applicable.

Section 11.2 *No Waiver of Rights.* No delay or failure on the part of the Administrative Agent or any Bank or on the part of the holder or holders of any Note in the exercise of any power or right under any Credit Document shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise thereof preclude any other or further exercise of any other power or right, and the rights and remedies hereunder of the Administrative Agent, the Banks and the holder or holders of any Notes are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have.



Section 11.3 *Non-Business Day*. If any payment of principal or interest on any Loan or of any other Obligation shall fall due on a day which is not a Business Day, interest or fees (as applicable) at the rate, if any, such Loan or other Obligation bears for the period prior to maturity shall continue to accrue on such Obligation from the stated due date thereof to and including the next succeeding Business Day, on which the same shall be payable.

Section 11.4 *Documentary Taxes*. Borrower agrees that it will pay any documentary, stamp or similar taxes payable in respect to any Credit Document, including interest and penalties, in the event any such taxes are assessed, irrespective of when such assessment is made and whether or not any credit is then in use or available hereunder.

Section 11.5 *Survival of Representations*. All representations and warranties made herein or in certificates given pursuant hereto shall survive the execution and delivery of this Agreement and the other Credit Documents, and shall continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

Section 11.6 *Survival of Indemnities*. All indemnities and all other provisions relative to reimbursement to the Banks of amounts sufficient to protect the yield of the Banks with respect to the Loans, including, but not limited to, Section 2.11, Section 9.3 and Section 11.13 hereof, shall survive the termination of this Agreement and the other Credit Documents and the payment of the Loans and all other Obligations.

Section 11.7 *Set-Off*.

(a) In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default, each Bank and each subsequent holder of any Note is hereby authorized by Borrower at any time or from time to time, without notice to Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, Indebtedness evidenced by certificates of deposit, whether matured or unmatured, or otherwise fully matured, and in whatever currency denominated) and any other Indebtedness at any time held or owing by that Bank or that subsequent holder to or for the credit or the account of Borrower, whether or not matured, against and on account of the obligations and liabilities of Borrower to that Bank or that subsequent holder under the Credit Documents, including, but not limited to, all claims of any nature or description arising out of or connected with the Credit Documents, irrespective of whether or not (a) that Bank or that subsequent holder shall have made any demand hereunder or (b) the principal of or the interest on the Loans or Notes and other amounts due hereunder shall have become due and payable pursuant to Section 8 and although said obligations and liabilities, or any of them, may be contingent or unmatured.

(b) Each Bank agrees with each other Bank a party hereto that if such Bank shall receive and retain any payment, whether by set-off or application of deposit balances or otherwise, on any of the Loans or Reimbursement Obligations in excess of its ratable share of payments on all such obligations then outstanding to the Banks, then such

Bank shall purchase for cash at face value, but without recourse, ratably from each of the other Banks such amount of the Loans or Reimbursement Obligations, or participations therein, held by each such other Banks (or interest therein) as shall be necessary to cause such Bank to share such excess payment ratably with all the other Banks; provided, however, that if any such purchase is made by any Bank, and if such excess payment or part thereof is thereafter recovered from such purchasing Bank, the related purchases from the other Banks shall be rescinded ratably and the purchase price restored as to the portion of such excess payment so recovered, but without interest. For purposes of this Section 11.7(b), amounts owed to or recovered by, an Issuing Agent in connection with Reimbursement Obligations in which Banks have been required to fund their participation shall be treated as amounts owed to or recovered by such Issuing Agent as a Bank hereunder.

Section 11.8 *Notices*. Except as otherwise specified herein, all notices under the Credit Documents shall be in writing (including facsimile or other electronic communication) and shall be given to a party hereunder at its address or facsimile number set forth below or such other address or facsimile number as such party may hereafter specify by notice to the Administrative Agent and Borrower, given by courier, by United States certified or registered mail, or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices under the Credit Documents to the Banks shall be addressed to their respective addresses, facsimile or telephone numbers set forth on the signature pages hereof or in the assignment agreement which any assignee bank executes pursuant to Section 11.12 hereof, and to Borrower and to the Administrative Agent to:

If to Borrower:

Black Hills Corporation  
625 9<sup>th</sup> Street  
Rapid City, South Dakota 57709  
Attention: Garner M. Anderson  
Facsimile: 605.721.2597  
Telephone: 605.721.2311

with copies to:

Black Hills Corporation  
625 9<sup>th</sup> Street  
Rapid City, South Dakota 57709  
Attention: Steven J. Helmers  
Facsimile: 605.721.2550  
Telephone: 605.721.2303

If to the Administrative Agent:

Notices shall be sent to the applicable address set forth on Part B of Schedule 4 hereto.

With copies of all such notices to:

ABN AMRO Bank N.V.  
4400 Post Oak Parkway  
Suite 1500  
Houston, TX 77027  
Attention: Frank TJ van Deur  
Facsimile: 832-681-7141  
Telephone 832-681-7100

Each such notice, request or other communication shall be effective (i) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this Section 11.8 or on the signature pages hereof and a confirmation of receipt of such facsimile has been received by the sender, (ii) if given by courier, when delivered, (iii) if given by mail, three business days after such communication is deposited in the mail, registered with return receipt requested, addressed as aforesaid or (iv) if given by any other means, when delivered at the addresses specified in this Section 11.8; *provided* that any notice given pursuant to Section 2 hereof shall be effective only upon receipt.

Section 11.9 *Counterparts*. This Agreement may be executed in any number of counterpart signature pages, and by the different parties on different counterparts, each of which when executed shall be deemed an original but all such counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart hereof via facsimile or electronic means shall for all purposes be as effective as delivery of an original counterpart.

Section 11.10 *Successors and Assigns*.

(a) *Successors and Assigns Generally*. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign any of its rights or obligations under any Credit Document unless such assignment occurs in connection with a merger or acquisition by Borrower which is otherwise permitted under the terms of this Agreement and the appropriate Credit Documents, if applicable, and Borrower obtains the prior written consent of all of the Banks, which consent shall be in form and substance satisfactory to the Administrative Agent. No Bank may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the

Related Parties of each of the Administrative Agent and the Banks) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) *Assignments by Banks.* Any Bank may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that

(i) except in the case of an assignment of the entire remaining amount of the assigning Bank's Commitment and the Loans at the time owing to it or in the case of an assignment to a Bank or an Affiliate of a Bank or an Approved Fund with respect to a Bank, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loan of the assigning Bank subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower, otherwise consents (each such consent not to be unreasonably withheld or delayed);

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Bank's rights and obligations under this Agreement with respect to the Loan, L/C Obligations or the Commitment assigned;

(iii) any assignment of a Commitment must be approved by the Administrative Agent and the Issuing Agent unless the Person that is the proposed assignee is itself a Bank with a Commitment (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500, and the Eligible Assignee, if it shall not be a Bank, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Bank under this Agreement, and the assigning Bank thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Bank's rights and obligations under this Agreement, such Bank shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 9.3 and 9.4 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any

assignment or transfer by a Bank of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Bank of a participation in such rights and obligations in accordance with paragraph (d) of this Section. The Borrower shall execute and deliver to the assignee a Note upon written request from such assignee. The assignor shall promptly return to the Borrower its Note if after giving effect to such assignment such assignor has no Commitment and no Obligations are owing to such assignor.

(c) *Register.* The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in Chicago, Illinois a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Banks, and the Commitments of, and principal amounts of the Loans owing to, each Bank pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Banks may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Bank hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Bank, at any reasonable time and from time to time upon reasonable prior notice.

(d) *Participations.* Any Bank may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "*Participant*") in all or a portion of such Bank's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Bank's obligations under this Agreement shall remain unchanged, (ii) such Bank shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the other Banks shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations under this Agreement.

(e) Any agreement or instrument pursuant to which a Bank sells such a participation shall provide that such Bank shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Bank will not, without the consent of the Participant, agree to any amendment, modification or waiver of the type described in Section 11.11(i) that affects such Participant. Subject to paragraph (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 9.3 and 9.4 to the same extent as if it were a Bank and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.7(a) as though it were a Bank, provided such Participant agrees to be subject to Section 11.7(b) as though it were a Bank.

(f) *Limitations upon Participant Rights.* A Participant shall not be entitled to receive any greater payment under Sections 9.3 and 9.4 than the applicable Bank would have been entitled to receive with respect to the participation sold to such Participant,

unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Bank if it were a Bank shall not be entitled to the benefits of Section 9.4 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 9.4 as though it were a Bank.

(g) *Certain Pledges.* Any Bank may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Bank, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Bank from any of its obligations hereunder or substitute any such pledgee or assignee for such Bank as a party hereto.

(h) *Certain Funding Arrangements.* Notwithstanding anything to the contrary contained herein, any Bank (a "Granting Bank") may grant to a special purpose funding vehicle which is an Affiliate of such Bank (a "SPC"), identified as such in writing from time to time by the Granting Bank to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Bank would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Bank shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Bank to the same extent, and as if, such Loan were made by such Granting Bank. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Bank). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 11.10, any SPC may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Bank or to any financial institutions (consented to by the Borrower and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC. This section may not be amended without the written consent of the SPC.

(i) *Farm Credit System.* Notwithstanding anything in this Section to the contrary, any bank that is a member of the Farm Credit System that: (x) has purchased a participation in the minimum amount of \$10,000,000 on or after the Effective Date, (y) is, by written notice to the Borrower and the Administrative Agent ("Voting Participant

*Notification*"), designated by the selling Bank as being entitled to be accorded the rights of a Voting Participant hereunder (any bank that is a member of the Farm Credit System so designated being called a "Voting Participant") and (z) receives the prior written consent of the Borrower and the Administrative Agent to become a Voting Participant, shall be entitled to vote (and the voting rights of the selling Bank shall be correspondingly reduced), on a dollar for dollar basis, as if such participant were a Bank, on any matter requiring or allowing a Bank to provide or withhold its consent, or to otherwise vote on any proposed action. To be effective, each Voting Participant Notification shall, with respect to any Voting Participant: (i) state the full name, as well as all contact information required of an Assignee as set forth in Exhibit D hereto and (ii) state the dollar amount of the participation purchased. The Borrower and the Administrative Agent shall be entitled to conclusively rely on information contained in notices delivered pursuant to this paragraph.

Section 11.11 *Amendments*. Any provision of the Credit Documents may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by (a) Borrower, (b) the Required Banks, and (c) if the rights or duties of the Administrative Agent are affected thereby, the Administrative Agent; *provided that*:

(i) no amendment or waiver pursuant to this Section 11.11 shall (A) increase, decrease or extend any Commitment of any Bank without the consent of such Bank or (B) reduce the amount of or postpone any fixed date for payment of any principal of or interest on any Loan or Reimbursement Obligation or of any fee or other Obligation payable hereunder without the consent of each Bank; and

(ii) no amendment or waiver pursuant to this Section 11.11 shall, unless signed by each Bank, change this Section 11.11, or the definition of Required Banks, or affect the number of Banks required to take any action under the Credit Documents.

Anything in this Agreement to the contrary notwithstanding, if at any time when the conditions precedent set forth in Section 6.2 hereof to any Loan hereunder are satisfied, any Bank shall fail to fulfill its obligations to make such Loan or such Bank shall fail to fund its Participating Interest pursuant to Section 2.2(d) (any such Bank, a "Defaulting Bank") then, for so long as such failure shall continue, the Defaulting Bank shall (unless Borrower, the Administrative Agent and the Required Banks (determined as if the Defaulting Bank were not a Bank hereunder) shall otherwise consent in writing) be deemed for all purposes related to amendments, modifications, waivers or consents under this Agreement (other than amendments or waivers referred to in clause (i) and (ii) above) to have no Loans or Commitments and shall not be treated as a Bank hereunder when performing the computation of the Required Banks. To the extent the Administrative Agent receives any payments or other amounts for the account of a Defaulting Bank such Defaulting Bank shall be deemed to have requested that the Administrative Agent use such payment or other amount first, to fund its purchase of its Participating Interest pursuant to Section 2.2(d) and secondly, to fulfill its obligations to make such Loan.

Section 11.12 *Headings*. Section headings used in this Agreement are for reference only and shall not affect the construction of this Agreement.

Section 11.13 *Legal Fees, Other Costs and Indemnification*. Borrower agrees to pay all reasonable costs and expenses of the Arrangers in connection with the preparation and negotiation of the Credit Documents (including past and future reasonable out-of-pocket expenses incurred by the Arrangers in connection with the syndication of the transaction), including without limitation, the reasonable fees and disbursements of counsel to the Arrangers, in connection with the preparation and execution of the Credit Documents, and any amendment, waiver or consent related hereto, whether or not the transactions contemplated herein are consummated. Borrower further agrees to indemnify each Bank, the Administrative Agent and the Issuing Agents, and their respective directors, agents, officers and employees, against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, all expenses of litigation or preparation therefor, whether or not the indemnified Person is a party thereto) which any of them may incur or reasonably pay arising out of or relating to any Credit Document (including any relating to a misrepresentation by Borrower under any Credit Document) or any of the transactions contemplated thereby or the direct or indirect application or proposed application of the proceeds of any Loan or Letter of Credit, other than those which arise from the gross negligence or willful misconduct of the party claiming indemnification. Borrower, upon demand by any of the Administrative Agent, an Issuing Agent or a Bank at any time, shall reimburse the Administrative Agent, such Issuing Agent or Bank for any reasonable legal or other expenses (including allocable fees and expenses of in-house counsel) incurred in connection with investigating or defending against any of the foregoing except if the same is directly due to the gross negligence or willful misconduct of the party to be indemnified, provided that with respect to legal costs and expenses incurred in connection with the enforcement of the Banks rights hereunder or any work-out or similar situation, Borrower shall only be obligated to pay the legal fees of the Administrative Agent and not of any other Bank.

Section 11.14 *Entire Agreement*. The Credit Documents constitute the entire understanding of the parties thereto with respect to the subject matter thereof and any prior or contemporaneous agreements, whether written or oral, with respect thereto are superseded thereby.

Section 11.15 *Construction*. The parties hereto acknowledge and agree that neither this Agreement nor the other Credit Documents shall be construed more favorably in favor of one than the other based upon which party drafted the same, it being acknowledged that all parties hereto contributed substantially to the negotiation of this Agreement and the other Credit Documents.

Section 11.16 *Governing Law*. This Agreement and the other Credit Documents, and the rights and duties of the parties hereto, shall be construed and determined in accordance with the internal laws of the State of New York.

Section 11.17 **SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL. BORROWER HEREBY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF**



NEW YORK AND OF ANY NEW YORK STATE COURT SITTING IN THE CITY OF NEW YORK FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. BORROWER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.

Section 11.18 *Replacement of Bank*. Each Bank agrees that, upon the occurrence of any event set forth in Sections 9.1, 9.3 and 11.1, such Bank will use reasonable efforts to book and maintain its Loans through a different Lending Office or to transfer its Loans to an Affiliate with the objective of avoiding or minimizing the consequences of such event; provided that such booking or transfer is not otherwise disadvantageous to such Bank as determined by such Bank in its sole and absolute discretion. If any Bank has demanded to be paid additional amounts pursuant to Sections 9.1, 9.3 and 11.1, and the payment of such additional amounts are, and are likely to continue to be, more onerous in the reasonable judgment of Borrower than with respect to the other Banks, then Borrower shall have the right at any time when no Default or Event of Default shall have occurred and be continuing to seek one or more financial institutions which are not Affiliates of Borrower (each, a "Replacement Bank") to purchase with the written consent of the Administrative Agent (which consent shall not be (x) required if such proposed Replacement Bank is already a Bank, or an Affiliate of a Bank, or (y) unreasonably delayed or withheld) the outstanding Loans and Commitments of such Bank (the "Affected Bank"), and if Borrower locate a Replacement Bank, the Affected Bank shall, upon

- i. prior written notice to the Administrative Agent,
- ii. (i) payment to the Affected Bank of the purchase price agreed between it and the Replacement Bank (or, failing such agreement, a purchase price in the amount of the outstanding principal amount of the Affected Bank's Loans and accrued interest thereon to the date of payment) by the Replacement Bank plus (ii) payment by Borrower of all Obligations (other than principal and interest with respect to Loans) then due to the Affected Bank or accrued for its account hereunder or under any other Loan Document,
- iii. satisfaction of the provisions set forth in Section 11.10, and
- iv. payment by Borrower to the Affected Bank and the Administrative Agent of all reasonable out-of-pocket expenses in connection with such assignment and assumption (including the recordation fee described in Section 11.10),

assign and delegate all its rights and obligations under this Agreement and any other Credit Document to which it is a party (including its outstanding Loans) to the Replacement Bank (such assignment to be made without recourse, representation or warranty), and the Replacement Bank shall assume such rights and obligations, whereupon the Replacement Bank shall in accordance with Section 11.10 become a party to each Credit Document to which the Affected Bank is a party and shall have the rights and obligations of a Bank thereunder and the Affected Bank shall be released from its obligations hereunder and each other Credit Document to the extent of such assignment and delegation.

Section 11.19 *Confidentiality*. The Administrative Agent and the Banks shall hold all non-public information provided to them by Borrower pursuant to or in connection with this Agreement in accordance with their customary procedures for handling confidential information of this nature, but may make disclosure to any of their examiners, regulators, Affiliates, outside auditors, counsel and other professional advisors in connection with this Agreement or any other Credit Document or as reasonably required by any potential bona fide transferee, participant or assignee, or in connection with the exercise of remedies under a Credit Document, or to any direct or indirect contractual counterparty in swap agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 11.19), or to any nationally recognized rating agency that requires access to information about a Bank's investment portfolio in connection with ratings issued with respect to such Bank, or as requested by any governmental agency or representative thereof or pursuant to legal process; provided, however, that unless specifically prohibited by applicable law or court order, the Administrative Agent and each Bank shall use reasonable efforts to promptly notify Borrower of any request by any governmental agency or representative thereof (other than any such request in connection with an examination of the financial condition of the Administrative Agent or such Bank by such governmental agency) for disclosure of any such non-public information and, where practicable, prior to disclosure of such information. Prior to any such disclosure pursuant to this Section 11.19, the Administrative Agent and each Bank shall require any such bona fide transferee, participant and assignee receiving a disclosure of non-public information to agree, for the benefit of Borrower, in writing to be bound by this Section 11.19; and to require such Person to require any other Person to whom such Person discloses such non-public information to be similarly bound by this Section 11.19.

Notwithstanding anything herein to the contrary, "confidential information" shall not include, and the Administrative Agent and each Bank may disclose to any and all persons, without limitation of any kind, any information with respect to the U.S. federal income tax treatment and U.S. federal income tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to the Administrative Agent or such Bank relating to such tax treatment and tax structure.

Section 11.20 *Rights and Liabilities of Co-Syndication Agents, Co-Documentation Agents and Arrangers*. Neither any Co-Syndication Agent, any Co-Documentation Agent nor any Arranger have any special rights, powers, obligations, liabilities, responsibilities or duties under this Agreement as a result of acting in the capacity of Co-Syndication Agent, Co-Documentation Agent or Arranger, as applicable, other than those applicable to them in their capacity as Banks hereunder (if any). Without limiting the foregoing, neither any Co-

Syndication Agent, any Co-Documentation Agent nor any Arranger shall have or be deemed to have a fiduciary relationship with any Bank. Each Bank hereby makes the same acknowledgments and undertakings with respect to each Co-Syndication Agent, each Co-Documentation Agent and each Arranger as it makes with respect to the Administrative Agent and any directors, officers, agents and employees of the Administrative Agent in Section 10.5.

Section 11.21 *Absence of Termination-Related Events of Defaults in Prior Facilities.* Administrative Agent and the Banks which were party to: **(i)** that certain 364-Day Credit Agreement among the Borrower, the financial institutions party thereto, as lenders, and ABN AMRO Bank N.V., as administrative agent for such lenders, dated as of May 13, 2004, as amended from time to time and/or **(ii)** that certain Multi-Year Credit Agreement among the Borrower, the financial institutions party thereto, as lenders, and ABN AMRO Bank N.V., as administrative agent for such lenders, dated as of August 21, 2003, as amended from time to time each hereby waive any “Events of Default” which may have arisen thereunder as a result of the failure Borrower to give the “Administrative Agent” thereunder at least five (5) “Business Days” prior written notice under subsection 2.12(a) of both such agreements of its desire to terminate the “Commitments” thereunder on the Effective Date (as all such terms are defined thereunder).

Section 11.22 *Severability of Provisions.* Any provision in this Agreement or any other Credit Document that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Agreement and the other Credit Documents are declared to be severable.

- Remainder of Page Intentionally Left Blank; Signature Page Follows -

In Witness Whereof, the parties hereto have caused this Agreement to be duly executed and delivered in New York, New York by their duly authorized officers as of the day and year first above written.

**BLACK HILLS CORPORATION**, a South  
Dakota corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Credit Agreement

**EXHIBIT A**

**NOTE**

May \_\_, 2005

FOR VALUE RECEIVED, the undersigned, Black Hills Corporation, a South Dakota corporation (“Borrower”), promises to pay to the order of [\_\_\_\_\_] (the “Bank”) on the Termination Date of the hereinafter defined Credit Agreement, at the principal office of ABN AMRO Bank N.V., in New York, New York, in accordance with Section 4.1 of the Credit Agreement (as hereafter defined), the aggregate unpaid principal amount of all Loans made by the Bank to Borrower pursuant to the Credit Agreement, together with interest on the principal amount of each Loan from time to time outstanding hereunder at the rates, and payable in the manner and on the dates, specified in the Credit Agreement.

The Bank shall record on its books or records or on a schedule attached to this Note, which is a part hereof, each Loan made by it pursuant to the Credit Agreement, together with all payments of principal and interest and the principal balances from time to time outstanding hereon, whether the Loan is a Base Rate Loan or a Eurodollar Loan, and the interest rate and Interest Period applicable thereto, provided that prior to the transfer of this Note all such amounts shall be recorded on a schedule attached to this Note. The record thereof, whether shown on such books or records or on a schedule to this Note, shall be *prima facie* evidence of the same; provided, however, that the failure of the Bank to record any of the foregoing or any error in any such record shall not limit or otherwise affect the obligation of Borrower to repay all Loans made to it pursuant to the Credit Agreement together with accrued interest thereon.

This Note is one of the Notes referred to in the Credit Agreement dated as of May [5], 2005, among Borrower, ABN AMRO Bank N.V., as Administrative Agent, U.S. Bank, National Association as Co-Syndication Agent, Union Bank of California, N.A., as Co-Syndication Agent, Bank of America, N.A., as Co-Documentation Agent, Bank of Montreal dba Harris Nesbitt, as Co-Documentation Agent and the financial institutions party thereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), and this Note and the holder hereof are entitled to all the benefits provided for thereby or referred to therein, to which Credit Agreement reference is hereby made for a statement thereof. All defined terms used in this Note, except terms otherwise defined herein, shall have the same meaning as in the Credit Agreement. This Note shall be governed by and construed in accordance with the internal laws of the State of New York.

Prepayments may be made hereon and this Note may be declared due prior to the expressed maturity hereof, all in the events, on the terms and in the manner as provided for in the Credit Agreement.

- Remainder of Page Intentionally Left Blank; Signature Page Follows -

The Borrower hereby waives demand, presentment, protest or notice of any kind hereunder.

**BLACK HILLS CORPORATION**, a South  
Dakota corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Credit Agreement

**EXHIBIT B**

**COMPLIANCE CERTIFICATE**

This Compliance Certificate is furnished to ABN AMRO Bank N.V., as Administrative Agent pursuant to the Credit Agreement dated as of May 5, 2005, among Black Hills Corporation, a South Dakota corporation (“Borrower”), ABN AMRO Bank N.V., as Administrative Agent, U.S. Bank, National Association, as Co-Syndication Agent, Union Bank of California, N.A., as Co-Syndication Agent, Bank of America, N.A., as Co-Documentation Agent, Bank of Montreal dba Harris Nesbitt, as Co-Documentation Agent, and the financial institutions party thereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”). Unless otherwise defined herein, the terms used in this Compliance Certificate have the meanings ascribed thereto in the Credit Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am the duly elected or appointed \_\_\_\_\_ of Borrower;
2. I have reviewed the terms of the Credit Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of Borrower and its Subsidiaries during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes a Default or an Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. **Schedule 1** attached hereto sets forth financial data and computations evidencing compliance with certain covenants of the Credit Agreement, all of which data and computations are true, complete and correct. All computations are made in accordance with the terms of the Credit Agreement.

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which Borrower has taken, is taking, or proposes to take with respect to each such condition or event:

The foregoing certifications, together with the computations set forth in Schedule 1 hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

Credit Agreement

**SCHEDULE 1 TO COMPLIANCE CERTIFICATE**  
Compliance Calculations for Credit Agreement

**CALCULATION AS OF \_\_\_\_\_, 200\_**

**A. Liens (Sec. 7.9(c), (d), and (g))**

- |    |   |                        |
|----|---|------------------------|
| 1. | Liens securing taxes or assessments or other government charges or levies equal to or less than \$20,000,000 (Section 7.9(c))   | (Answer should be yes) |
| 2. | Liens securing judgments or awards or surety or appeal bonds issued in connection therewith equal to or less than \$20,000,000 (Section 7.9(d))   | (Answer should be yes) |
| 3. | Is the aggregate amount of Indebtedness and other obligations consisting of (i) the deferred purchase price of newly acquired property or incurred to finance the acquisition of personal property of Borrower used in the ordinary course of business of such Borrower, (ii) Capitalized Lease Obligations, and (iii) the performance of tenders, statutory obligations, bids, leases or other similar obligations (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on performance bonds which is secured by Liens equal to or less than 5% of Consolidated Assets as reflected on the most recent balance sheet delivered by Borrower (Section 7.9(g)). | (Answer should be yes) |

**B. Sale and Leasebacks (Section 7.11)**

- |    |   |    |                                      |
|----|---|----|--------------------------------------|
| 1. | Aggregate obligations under all Sale and Leasebacks arrangements (other than synthetic lease transactions excluded by Section 7.11) | \$ | (Line B1 not to exceed \$30,000,000) |
|----|---|----|--------------------------------------|

**C. Sale of Assets (Section 7.12)**

- |    |   |    |  |
|----|---|----|--|
| 1. | Net book value of assets (other than inventory, reserves and electricity in the ordinary course of business) sold during this fiscal year | \$ | (Line C1 not to exceed 10% of total consolidated assets) |
|----|---|----|--|

Credit Agreement



D. Permitted Investments (Section 7.14)			
1.	Aggregate amount of Investments in Marketing Subsidiaries made after December 31, 2004 (Section 7.14(o)(ii))	\$	
2.	Investments consisting of Guaranties of Indebtedness of Marketing Subsidiaries existing on the Effective Date	\$	
3.	Intercompany loans permitted pursuant to Section 7.15(e)(iii) owing by Marketing Subsidiaries (Line E3)	\$	Line E3
4.	Outstanding L/C Obligations attributable to Marketing Subsidiary Letters of Credit	\$	
5.	Sum of Lines D1, D2, D3 and D4	\$	
6.	Is Line D5 equal to or less than the Marketing Subsidiary Sublimit?		(Answer should be yes)
7.	Aggregate amount of Investments in Persons engaged in the lines of business described in clause (xii) of Section 7.8 (Section 7.14(k))	\$	(Line D7 not to exceed \$40,000,000)
E. Permitted Indebtedness (Section 7.15)			
1.	Secured Indebtedness except as set forth on Schedule 7.15(b): (i) of BHP (ii) evidencing the deferred purchase price of newly acquired property or incurred to finance the acquisition of personal property of Borrower or a Subsidiary used in the ordinary course of business of the Borrower of a Subsidiary, (iii) constituting Capitalized Lease Obligations or with respect to synthetic (or similar type) lease transactions, or (iv) incurred in connection with the performance of tenders, statutory obligations, bids, leases or other similar obligations (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on performance bonds (Section 7.15(c))	\$	(Line E1 not to exceed 5% of Consolidated Assets)
2.	Intercompany loans owing by Borrower (Section 7.15(e)(i)(x))	\$	(Must be subordinated to Obligations)

Credit Agreement

3.	Intercompany Indebtedness owing by Marketing Subsidiaries to Subsidiaries (Section 7.15(e)(iii))	\$	(Line E3 not to exceed the difference between (i) the Marketing Subsidiary Sublimit less (ii) the sum of Lines E4, D1 and D4)
4.	Indebtedness consisting of Guarantees (including Long-Term Guaranties) of Marketing Subsidiary Indebtedness (Section 7.15(f))	\$	(Line E4 not to exceed the difference between (i) the Marketing Subsidiary Sublimit less (ii) the sum of Lines E3 and D1)
5.	Indebtedness of Marketing Subsidiaries under Marketing Subsidiary Excluded Credit Facilities (Section 7.15(g))	\$	(Line E5 not to exceed Marketing Subsidiary Indebtedness Limit)
F.	Consolidated Net Worth (Section 7.16)		
1.	Consolidated Net Worth	\$	
2.	50% of aggregate Consolidated Net Income, if positive, from and including January 1, 2005	\$	
3.	Does Line F1 exceed sum of (i) \$625,000,000 plus (ii) line F2		(Answer should be yes)
G.	Recourse Leverage Ratio (Section 7.17)		
1.	consolidated Indebtedness	\$	
2.	Non-Recourse Indebtedness	\$	
3.	Recourse Indebtedness (Line G1 minus Line G2)	\$	
4.	Indebtedness of Marketing Subsidiaries under Marketing Subsidiary Excluded Credit Facilities (Line E5)	\$	(Not to exceed Marketing Subsidiary Indebtedness Limit)
5.	Consolidated Net Worth	\$	
6.	Capital (Line G3 minus Line G4 plus Line G5)	\$	
7.	Recourse Leverage Ratio	:1.00	(ratio of (A) difference between (x) Line G3 minus (y) Line G4 to (B) Line G6 not to exceed 0.65 to 1.00)

Credit Agreement

H. Interest Expense Coverage Ratio (Section 7.18)

1.	Consolidated Net Income for past four fiscal quarters	\$	
2.	Income taxes for past four fiscal quarters (to the extent subtracted in calculating H1)	\$	
3.	Consolidated Interest Expense for past four fiscal quarters (to the extent subtracted in calculating H1)	\$	Insert amount from Line H13
4.	Amortization expense for intangible assets for past four fiscal quarters (to the extent subtracted in calculating H1)	\$	
5.	Depreciation and depletion expense for past four fiscal quarters (to the extent subtracted in calculating H1)	\$	
6.	Losses on sales of assets (excluding sales in the ordinary course of business) and other extraordinary losses for past four fiscal quarters (to the extent subtracted in calculating H1)	\$	
7.	Interest income for past four fiscal quarters arising from traditional investment activities with banks, investment banks and other financial institutions or relating to governmental or other marketable securities (to the extent added in calculating H1)	\$	
8.	Gains on sales of assets (excluding sales in the ordinary course of business) and other extraordinary gains for past four fiscal quarters (to the extent added in calculating H1)	\$	
9.	Consolidated EBITDA (sum of Lines H1, H2, H3, H4, H5 and H6 less sum of Lines H7 and H8)	\$	

Credit Agreement



10.	All interest charges (including capitalized interest, imputed interest charges with respect to Capitalized Lease Obligations and all amortization of debt discount and expense and other deferred financing charges) of the Borrower and its Subsidiaries on a consolidated basis for such period determined in accordance with GAAP	\$		
11.	All commitment or other fees payable in respect of the issuance of standby letters of credit or other credit facilities for the account of the Borrower or its Subsidiaries	\$		
12.	Net costs/expenses incurred by the Borrower and its Subsidiaries under Derivative Arrangements	\$		
13.	Consolidated Interest Expense (Sum of Lines H10, H11 and H12)	\$		
14.	Interest Expense Coverage Ratio (ratio of (i) Line H9 to (ii) Line H13)		:1.00	(ratio must not be less than 2.50 to 1.00)

EXHIBIT C

**ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between **[Insert name of Assignor]** (the “Assignor”) and **[Insert name of Assignee]** (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Bank under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Bank) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_
2. Assignee: \_\_\_\_\_  
[and is an Affiliate/Approved Fund of [identify Bank]<sup>1</sup>
3. Borrower(s): Black Hills Corporation

<sup>1</sup>Select as applicable.

4. Administrative Agent: ABN AMRO Bank N.V., as the administrative agent under the Credit Agreement

5. Credit Agreement: The Credit Agreement dated as of May 5, 2005 among Black Hills Corporation, the Banks parties thereto, and ABN AMRO Bank N.V., as Administrative Agent, **as amended**.

6. Assigned Interest:

Amount of Commitment/Loans of Assignor prior to Trade Date	Amount of Commitment/Loans of Assignee prior to Trade Date	Amount of Commitment/Loans Assigned	Amount of Commitment/Loans of Assignor after Trade Date	Amount of Commitment/Loans of Assignee after Trade Date
\$	\$	\$	\$	\$

[7. Trade Date: \_\_\_\_\_]<sup>2</sup>

Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR  
[NAME OF ASSIGNOR]

By:

Title:

ASSIGNEE  
[NAME OF ASSIGNEE]

By:

Title:

[Consented to and]<sup>3</sup> Accepted:

ABN AMRO Bank N.V., as  
Administrative Agent

By:

Title:

<sup>2</sup> To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

<sup>3</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

Credit Agreement

[Consented to:]<sup>4</sup>

BLACK HILLS CORPORATION

By:

Title:

[ISSUING AGENTS]

By:

Title:

<sup>4</sup>To be added only if the consent of the Borrower and/or other parties (e.g. L/C Issuer) is required by the terms of the Credit Agreement.

Credit Agreement

STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION

a. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Credit Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Credit Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Credit Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Bank under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Bank thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Bank thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 7.6 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Bank, and (v) if it is not a United States person (as defined in Section 7701(a)(30) of the Code), it shall have attached to the Assignment and Assumption the documentation specified in Section 11.1(b) of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Documents are required to be performed by it as a Bank.

b. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in

Credit Agreement



payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

c. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

Credit Agreement

**EXHIBIT D**

**FORM OF VOTING PARTICIPANT NOTIFICATION AND CONSENT**

**Voting Participant Notification and Consent**

Reference is made to the Credit Agreement dated as of May 5, 2005 by and among Black Hills Corporation, a South Dakota corporation ("*Borrower*"), ABN AMRO Bank N.V., as Administrative Agent, U.S. Bank, National Association, as Co-Syndication Agent, Union Bank of California, N.A., as Co-Syndication Agent, Bank of America, N.A., as Co-Documentation Agent, Bank of Montreal dba Harris Nesbitt, as Co-Documentation Agent, and the financial institutions party thereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Credit Agreement*"). Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

Pursuant to Section 11.10(i) of the Credit Agreement, the Bank identified below hereby notifies Administrative Agent that it is designating the participant identified below as being entitled to be accorded the rights of a Voting Participant.

Bank:

Voting Participant:<sup>1</sup>

Full Legal Name:

Address for Notices:

Attention:

Amount of Participation Purchased: \$

Date of Notification:

Credit Agreement

1 Voting Participants must be members of the Farm Credit System, have purchased a participation in the minimum amount of \$<> on or after the Effective Date and have received the written consent of Borrower and the Administrative Agent.

Voting Participant Notification and Consent

Bank

Voting Participant

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:

Pursuant to Section <> of the Credit Agreement, the undersigned hereby consent to the institution identified herein becoming a Voting Participant.

**[Borrower]**

By: \_\_\_\_\_

Name:

Title:

**[Administrative Agent]**

By:

Name:

Title:

**SCHEDULE 1**

**PRICING GRID**

If the Level Status Is	The Facility Fee Rate is:	The Utilization Fee Rate is:	The Eurodollar Margin is:	The Base Rate Margin is:	The L/C Fee Rate is:
Level I Status	0.100%	0.125%	0.400%	0.000%	0.400%
Level II Status	0.125%	0.125%	0.500%	0.000%	0.500%
Level III Status	0.150%	0.125%	0.600%	0.000%	0.600%
Level IV Status	0.175%	0.125%	0.700%	0.000%	0.700%
Level V Status	0.300%	0.250%	0.950%	0.250%	0.950%
Level VI Status	0.500%	0.250%	1.500%	1.000%	1.500%

Each change in a rating shall be effective as of the date it is announced by the applicable rating agency.

In the event that the Moody's Rating and the S&P Rating fall in consecutive Levels, the rating falling in the lower Level (with Level I being the highest Level and Level VI being the lowest Level) shall govern for purposes of determining the applicable pricing pursuant to the above pricing grid. In the event that the Moody's Rating and the S&P Rating fall in non-consecutive Levels, the Level immediately above the Level in which the lower rating falls (with Level I being the highest Level and Level VI being the lowest Level) shall govern for purposes of determining the applicable pricing pursuant to the above pricing grid.

Credit Agreement

**SCHEDULE 1.1**

**EXISTING LETTERS OF CREDIT**

<u>L/C #</u>	<u>"Bill To"</u> <u>Company</u>	<u>Beneficiary</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
SLCMMSP01645	BH Colorado	Bank of Nova Scotia	7,000,000.00	8/28/2001	8/30/2005
SLCMMSP01646	BH Colorado	PSCO	15,800,000.00	8/28/2001	8/31/2005
SLCMMSP01647	BH Nevada	Southwestern Gas Corp	722,876.00	8/30/2001	8/30/2005
SLCMMSP01648	BH Nevada	Duke Energy Mktg LLC	3,000,000.00	8/30/2001	5/31/2005
SLCMMSP01649	BH Nevada	Nevada Power Co.	278,300.00	8/31/2001	8/31/2005
SLCMMSP01651	BH Nevada	City of North Las Vegas	1,805,276.75	8/28/2001	6/22/2005
SLCMMSP01653	BH Nevada	Southwest Gas Corp	3,632,717.00	8/31/2001	8/30/2005
SLCMMSP01837	BH Power/ BH WY (50%/50%)	Bear Paw Energy LLC	888,579.39	1/17/2002	2/28/2006
SLCMMSP01964	BH Expl & Prod	Bureau of Land Mgmt	25,000.00	5/31/2004	5/31/2005
SLCMMSP01974	BH Fountain Valley	Union Bank of California	4,500,000.00	4/30/2004	4/30/2006
SLCMMSP02624	LV Cogen	Sempra Energy Solutions	200,000.00	6/01/2004	6/01/2005
SLCMMSP02668	BH Gas Resources	US Dept of Interior-BIA	75,000.00	6/27/2003	8/28/2005
SLCMMSP02676	BH Gas Resources	US Dept of Interior-BIA	75,000.00	6/27/2003	8/28/2005
SLCMMSP02667	BH Gas Resources	US Dept of Interior-BLM	25,000.00	6/27/2003	8/28/2005
SLCMMSP02666	BH Gas Resources	USDA Forest Service	10,000.00	6/27/2003	8/28/2005
SLCMMSP02670	BH Gas Resources	ST of NM-Oil Conservation Dv	50,000.00	6/27/2003	7/02/2005
SLCMMSP02898	LV Cogen II	Nevada Power Co.	476,056.00	12/02/2003	1/05/2006
MS1450874	Harbor	Southern California Gas	400,000.00	12/12/2003	10/31/2005
MS1451064	LV Cogen II	Nevada Power Co.	5,000,000.00	12/18/2003	12/19/2005
SLCMMSP02979	BH Gas Resources	Costa Rica	275,000.00	1/28/2004	1/28/2006
SLCMMSP03082	BH Ontario	Southern California Gas	400,000.00	4/09/2004	03/31/2006

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SLCMMSP03548	BH Harbor	Southern California Edison	3,500,000.00	2/11/2005	1/31/2006
SLCMMSP03646	BH Generation	Pacific Gas & Electric Co.	813,500.00	4/27/2005	12/31/2005
SLCMMSP03647	BH Generation	Pacific Gas & Electric Co.	577,500.00	4/27/2005	12/31/2005
SLCMMSP03648	BH Generation	Pacific Gas & Electric Co.	577,500.00	4/27/2005	12/31/2005
SLCMMSP03649	BH Generation	Pacific Gas & Electric Co.	825,000.00	4/27/2005	12/31/2005
SLCMMSP03650	BH Generation	Pacific Gas & Electric Co.	605,500.00	4/27/2005	12/31/2005
SLCMMSP03651	BH Generation	Pacific Gas & Electric Co.	470,500.00	4/27/2005	12/31/2005
		<b>Total Current L/C's</b>	<b>52,008,305.14</b>		

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**SCHEDULE 2.1**

**COMMITMENTS**

<i><b>Bank</b></i>	<i><b>Commitment Amount</b></i>	<i><b>Pro Rata Share</b></i>
ABN AMRO Bank N.V.	\$32,000,000.00	8.00000000%
Union Bank of California, N.A.	\$32,000,000.00	8.00000000%
U.S. Bank National Association	\$32,000,000.00	8.00000000%
Bank of America, N.A.	\$30,000,000.00	7.50000000%
CoBank, ACB	\$62,000,000.00	15.50000000%
Harris Nesbitt Financing, Inc.	\$30,000,000.00	7.50000000%
The Bank of Nova Scotia	\$15,000,000.00	3.75000000%
Scotiabanc Inc.	\$15,000,000.00	3.75000000%
Wells Fargo Bank, N.A.	\$30,000,000.00	7.50000000%
Bayern LB	\$24,000,000.00	6.00000000%
Societe Generale	\$24,000,000.00	6.00000000%
Calyon, New York Branch	\$18,000,000.00	4.50000000%
Fifth Third Bank	\$14,000,000.00	3.50000000%
Mizuho Corporate Bank, Ltd.	\$14,000,000.00	3.50000000%
Royal Bank of Canada	\$14,000,000.00	3.50000000%
Royal Bank of Scotland	\$14,000,000.00	3.50000000%
<b>TOTALS</b>	<b>\$400,000,000.00</b>	<b>100.00000000%</b>

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**SCHEDULE 4**

**ADMINISTRATIVE AGENT'S NOTICE AND PAYMENT INFORMATION**

Part A – Payments

Loan Repayments, Interest, Fees:

ABN AMRO Bank N.V.  
New York, NY  
ABA # 026009580  
F/O ABN AMRO Bank, N.V.  
Chicago Branch CPU  
Account # 650-001-1789-41  
Reference: Agency Services – MTI#: 00488593  
Name: Black Hills Corporation

Letters of Credit:

ABN AMRO Bank N.V.  
New York, NY  
ABA # 026009580  
F/O ABN AMRO Bank N.V.  
Chicago Trade Services CPU  
Account # 655-001-1711-41  
Reference: Agency Services – MTI#: 00488593  
Name: Black Hills Corporation

Part B – Notices

Notices related to commitments, covenants or extensions of expiry/termination dates:

ABN AMRO Bank N.V.  
540 West Madison Street, Suite 2131  
Chicago, IL 60661-2591  
Attn: Agency Services  
E-Mail: [judith.kinney@abnamro.com](mailto:judith.kinney@abnamro.com)  
FAX: 312-992-5157

ABN AMRO Bank N.V.  
540 West Madison Street, Suite 2621  
Chicago, IL 60661-2591  
Attn: Credit Administration  
E-Mail: [melanie.dziobas@abnamro.com](mailto:melanie.dziobas@abnamro.com)  
FAX: 312-992-5111

ABN AMRO Bank N.V.

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4400 Post Oak Parkway  
Suite 1500  
Houston, TX 77027  
Attn: John Reed  
E-Mail:  
john.reed@abnamro.com  
FAX: 832-681-7141

Notices related to Loans, Letters of Credit and Fees:

ABN AMRO Bank N.V.  
540 West Madison Street, Suite 2131  
Chicago, IL 60661-2591  
Attn: Agency Services  
E-Mail: judith.kinney@abnamro.com  
FAX: 312-601-3611

Address for all Required Executed Documentation and Financial Information:

ABN AMRO Bank N.V.  
540 West Madison Street, Suite 2621  
Chicago, IL 60661-2591  
Attn: Credit Administration  
E-Mail: melanie.dziobas@abnamro.com  
FAX: 312-992-5111

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**SCHEDULE 5.2**

**BLACK HILLS CORPORATION SUBSIDIARIES**

	<b><u>Subsidiary Name</u></b>	<b><u>State of Origin</u></b>	<b><u>BHC's Ownership</u></b>	<b><u>Description of Subsidiary's Authorized Capital Stock, if not wholly owned</u></b>
1.	Acquisition Partners, L.P.	New York	100%	N/A
2.	Adirondack Hydro Development Corporation	Delaware	100%	N/A
3.	BHFC Publishing, LLC	Delaware	100%	N/A
4.	Black Hills Cabresto Pipeline, LLC	Delaware	100%	N/A
5.	Black Hills Colorado, LLC	Delaware	100%	N/A
6.	Black Hills Energy Pipeline, LLC	Delaware	100%	N/A
7.	Black Hills Energy Resources, Inc.	South Dakota	100%	N/A
8.	Black Hills Energy Terminal, LLC	South Dakota	100%	N/A
9.	Black Hills Energy, Inc.	South Dakota	100%	N/A
10.	Black Hills Exploration and Production, Inc.	Wyoming	100%	N/A
11.	Black Hills Fiber Systems, Inc.	South Dakota	100%	N/A
12.	Black Hills FiberCom, LLC	South Dakota	100%	N/A
13.	Black Hills Fountain Valley, LLC	Delaware	100%	N/A
14.	Black Hills Fountain Valley II, LLC	Colorado	100%	N/A
15.	Black Hills Gas Resources, Inc., (fka Mallon Oil Company)	Colorado	100%	N/A
16.	Black Hills Gas Holdings Corp. (fka Mallon Resources Corporation)	Colorado	100%	N/A
17.	Black Hills Generation, Inc.	Delaware	100%	N/A
18.	Black Hills Idaho Operations, LLC	Delaware	100%	N/A
19.	Black Hills Independent Power Fund, Inc.	Texas	100%	N/A
20.	Black Hills Ivanpah, LLC	Delaware	100%	N/A
21.	Black Hills Ivanpah GP, LLC	Delaware	100%	N/A
22.	Black Hills Kilgore Energy Pipeline, LLC	Delaware	100%	N/A

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23.	Black Hills Kilgore Pipeline, Inc.	Delaware	100%	N/A
24.	Black Hills Kilgore Pipeline Company, L.P.	Texas	100%	N/A
25.	Black Hills Midstream, LLC	South Dakota	100%	N/A
26.	Black Hills Millennium Pipeline, Inc.	South Dakota	100%	N/A
27.	Black Hills Millennium Terminal, Inc.	South Dakota	100%	N/A
28.	Black Hills Nevada Operations, LLC	Delaware	100%	N/A
29.	Black Hills Nevada Real Estate Holdings, LLC	Delaware	100%	N/A
30.	Black Hills Nevada, LLC	Delaware	100%	N/A
31.	Black Hills Ontario, LLC	Delaware	50%	Black Hills Ontario, LLC has a single class of units of membership, of which 100 units are issued and outstanding. Black Hills Corporation indirectly holds 50 units.
32.	Black Hills Operating Company, LLC	Delaware	100%	N/A
33.	Black Hills Pepperell Power Associates, LLC	Delaware	100%	N/A
34.	Black Hills Power, Inc.	South Dakota	100%	N/A
35.	Black Hills Publishing Montana, LLC	Delaware	100%	N/A
36.	Black Hills Service Company, LLC	South Dakota	100%	N/A
37.	Black Hills Southwest, LLC	Delaware	100%	N/A
38.	Black Hills Valmont Colorado, Inc.	Delaware	100%	N/A
39.	Black Hills Waterville Station, LLC	South Dakota	100%	N/A
40.	Black Hills Wyoming, Inc.	Wyoming	100%	N/A
41.	Cheyenne Light, Fuel and Power Company	Wyoming	100%	N/A
42.	Daksoft, Inc.	South Dakota	100%	N/A

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43.	Desert Arc I, LLC	Delaware	50%	Desert Arc I, LLC has a single class of units of membership, of which Black Hills Corporation indirectly holds 50%.
44.	Desert Arc II, LLC	Delaware	50%	Desert Arc II, LLC has a single class of units of membership, of which Black Hills Corporation indirectly holds 50%.
45.	E-Next A Equipment Leasing Company, LLC	Delaware	100%	N/A
46.	EIF Investors, Inc.	Delaware	100%	N/A
47.	Enserco Energy Inc.	South Dakota	100%	N/A
48.	Fountain Valley Power, L.L.C.	Delaware	100%	N/A
49.	Harbor Cogeneration Company, LLC	Delaware	100%	N/A
50.	Las Vegas Cogeneration Energy Financing, LLC	Delaware	100%	N/A
51.	Las Vegas Cogeneration II, LLC	Delaware	100%	N/A
52.	Las Vegas Cogeneration Limited Partnership	Nevada	50%	Black Hills Corporation indirectly owns 50% of the 85% general partnership interest, and 50% of the 15% limited partnership interest.
53.	Millennium Pipeline Company, L.P.	Texas	100%	N/A
54.	Millennium Terminal Company, L.P.	Texas	100%	N/A
55.	NHP, L.P.	New York	100%	N/A
56.	Sunco, Ltd., a limited liability company	Nevada	100%	N/A
57.	VariFuel, LLC	South Dakota	100%	N/A
58.	West Cascade Energy, LLC	Delaware	100%	N/A
59.	Wyodak Resources Development Corp.	Delaware	100%	N/A

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## SCHEDULE 5.5

### LITIGATION AND LABOR CONTROVERSIES

#### 1. Hell Canyon Fire

In September 2001, a fire occurred in the southwestern Black Hills. It is alleged that the fire occurred when a high voltage electrical span maintained by Black Hills Power, Inc. (“BHP”) broke, and electrical arcing from the severed line ignited dry grass. The fire burned approximately 10,000 acres of land owned by the Black Hills National Forest, the Oglala Sioux Tribe, and other private landowners. The State of South Dakota initiated litigation against BHP, in the Seventh Judicial Circuit Court, Fall River County, South Dakota, on or about January 31, 2003. The Complaint seeks recovery of damages for alleged fire suppression and rehabilitation costs. A claim for treble damages is asserted with respect to the claim for injury to timber. A substantially similar suit was filed against BHP by the United States Forest Service, on June 30, 2003, in the United States District Court for the District of South Dakota, Western Division. The State subsequently joined its claim in the federal action. The State claims damages in the amount of approximately \$800,000 for fire suppression and rehabilitation costs. The United States Government’s claim for fire suppression and related costs has been submitted at approximately \$1,300,000. The Company continues to investigate the cause and origin of the fire, and the damage claims. A trial date is expected in 2005. The Company has denied all claims and will vigorously defend this matter, the timing or outcome of which is uncertain.

#### 2. Smith v. Black Hills Energy Resources, Inc.

In this litigation, private landowners have sued Black Hills Energy Resources (“BHER”) and Wickford Energy Marketing Company (the predecessor of BHER) in state court in the state of Arkansas. The lawsuit alleges claims against a number of oil producing and marketing Defendants as a consequence of an alleged oil spill affecting private property. BHER allegedly purchased oil directly from the production facility for truck transport. It did not have an ownership or operating interest in the production facility or the pipeline from which the spill allegedly occurred. BHER filed a Motion to Dismiss All Claims. The court denied BHER’s motion in order to allow limited discovery to proceed. A tentative settlement agreement in the amount of \$12,000 has been reached, pending approval of final documentation.

#### 3. Grizzly Gulch Fire

On June 29, 2002, a forest fire began near Deadwood, South Dakota. Before being contained more than eight days later, the fire consumed over 10,000 acres of public and private land, mostly consisting of rugged forested areas. The fire destroyed approximately 7 homes, and 15 outbuildings. There were no reported personal injuries. In addition, the fire burned to the edge of the City of Deadwood, forcing the evacuation of the City of Deadwood, and the adjacent City of Lead, South Dakota. These communities are active in the tourist and gaming industries. Individuals were ordered to leave their homes, and businesses were closed for a short period of time. On July 16, 2002, the State of South Dakota announced the results of its investigation of the cause and origin of the fire. The State asserted that the fire was caused by tree encroachment

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into and contact with a transmission line owned and maintained by Black Hills Power, Inc. (“BHP”).

On September 6, 2002, the State of South Dakota commenced litigation against BHP, in the Seventh Judicial Circuit Court, Pennington County, South Dakota. The Complaint seeks recovery of damages for alleged injury to timber, fire suppression and rehabilitation costs. A claim for treble damages is asserted with respect to the claim for injury to timber.

On March 3, 2003, the United States of America filed a similar suit against BHP, in the United States District Court, District of South Dakota, Western Division. The federal government’s Complaint likewise seeks recovery of damages for alleged injury to timber, fire suppression and rehabilitation costs. A similar claim for treble damages is asserted with respect to the claim for injury to timber. In April 2003, the State of South Dakota intervened in the federal action. Accordingly, the state court litigation will be stayed, and all governmental claims will be tried in U.S. District Court.

The state and federal government have claimed approximately \$5,300,000 for suppression costs, \$1,200,000 for rehabilitation costs, and \$610,000 for timber loss (which could be trebled). Additional claims could be asserted for alleged loss of habitat and aesthetics or for assistance to private landowners.

BHP is completing its own investigation of the fire cause and origin. BHP’s investigation is continuing, but based upon information currently available, BHP filed its Answer to the Complaints of both the State and the federal government, denying all claims, and asserting that the fire was caused by an independent intervening cause, or an act of God. The Company expects to vigorously defend all claims brought by governmental or private parties.

**A. *Dale Stoneberger and Collette Stoneberger v. Black Hills Power, Inc.***

On April 11, 2003, a private civil action was filed against BHP by Dale Stoneberger and Collette Stoneberger, asserting that the Grizzly Gulch Fire caused damage to their real property located in Meade County, South Dakota. The action was filed in the Fourth Judicial Circuit Court, Lawrence County, South Dakota. The Complaint seeks recovery on the same theories asserted in the governmental Complaints, but specifies no amount for a claim of damages. The parties have agreed to hold this matter in abeyance pending the outcome of the state and federal claims. The Company will vigorously defend this matter.

**B. *No Claim Jumpers Allowed, LLC v. Black Hills Power, Inc.***

On September 29, 2003, a private civil action was filed against BHP by No Claim Jumpers Allowed, LLC, asserting that the Grizzly Gulch Fire caused damage to its real property located in Lawrence County, South Dakota. The action was filed in the Fourth Judicial Circuit Court, Lawrence County, South Dakota. The Complaint seeks recovery on the same theories asserted in the governmental Complaints, but specifies no amount for a claim of damages. The parties filed a Stipulation for Stay of Litigation pending the outcome of the state and federal claims. The Company will vigorously defend this matter.

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**C. *Frank Seiler v. Black Hills Power, Inc.***

On November 6, 2003, a private civil action was filed against BHP by Frank Seiler, asserting that the Grizzly Gulch Fire caused damage to his real property located in Lawrence County, South Dakota. The action was filed in the Fourth Judicial Circuit Court, Lawrence County, South Dakota. The Complaint seeks recovery on the same theories asserted in the governmental Complaints, but specifies no amount for a claim of damages. The parties filed a Stipulation for Stay of Litigation pending the outcome of the state and federal claims. The Company will vigorously defend this matter.

**D. *Timothy and Sandy Cleveringa v. Black Hills Power, Inc.***

On November 6, 2003, a private civil action was filed against BHP by Timothy and Sandy Cleveringa, asserting that the Grizzly Gulch Fire caused damage to their real property located in Lawrence County, South Dakota. The action was filed in the Fourth Judicial Circuit Court, Lawrence County, South Dakota. The Complaint seeks recovery on the same theories asserted in the governmental Complaints, but specifies no amount for a claim of damages. The parties filed a Stipulation for Stay of Litigation pending the outcome of the state and federal claims. The Company will vigorously defend this matter.

**E. *Farm Bureau Mutual Insurance Company (Virginia Rantapaa) v. Black Hills Power, Inc.***

On November 26, 2003, a private civil action was filed against BHP by Farm Bureau Mutual Insurance Company, asserting that the Grizzly Gulch Fire caused damage to the real property of Virginia Rantapaa, their insured, located in Lawrence County, South Dakota. The subrogation action was filed in the Fourth Judicial Circuit Court, Lawrence County, South Dakota. The Complaint seeks recovery on the same theories asserted in the governmental Complaints, and specifies a claim for damages in the amount of \$4,329.76. The parties filed a Stipulation for Stay of Litigation pending the outcome of the state and federal claims. The Company will vigorously defend this matter.

**F. *Glenn Dale and Merrily Dale v. Black Hills Power, Inc.***

On April 28, 2004, a private civil action was filed against BHP by Glenn and Merrily Dale, asserting that the Grizzly Gulch Fire caused damage to their real property located in Lawrence County, South Dakota. The action was filed in the Fourth Judicial Circuit Court, Lawrence County, South Dakota. The Complaint seeks recovery on the same theories asserted in the governmental Complaints, but specifies no amount for a claim of damages. The Company will vigorously defend this matter.

**G. *Eugene Heisinger and Carina Heisinger v. Black Hills Power, Inc.***

On April 28, 2004, a private civil action was filed against BHP by Eugene and Carina Heisinger, asserting that the Grizzly Gulch Fire caused damage to their real

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property located in Lawrence County, South Dakota. The action was filed in the Fourth Judicial Circuit Court, Lawrence County, South Dakota. The Complaint seeks recovery on the same theories asserted in the governmental Complaints, but specifies no amount for a claim of damages. The Company will vigorously defend this matter.

**H. *David Sandidge and Linda Sandidge v. Black Hills Power, Inc.***

On June 2, 2004, a private civil action was filed against BHP by David and Linda Sandidge, asserting that the Grizzly Gulch Fire caused damage to their real property located in Lawrence County, South Dakota. The action was filed in the Fourth Judicial Circuit Court, Lawrence County, South Dakota. The Complaint seeks recovery on the same theories asserted in the governmental Complaints, but specifies no amount for a claim of damages. The Company will vigorously defend this matter.

**I. *Diane Graff v. Black Hills Power, Inc.***

On June 11, 2004, a private civil action was filed against BHP by Diane Graff, asserting that the Grizzly Gulch Fire caused damage to her real property located in Lawrence County, South Dakota. The action was filed in the Fourth Judicial Circuit Court, Lawrence County, South Dakota. The Complaint seeks recovery on the same theories asserted in the governmental Complaints, but specifies no amount for a claim of damages. The Company will vigorously defend this matter.

**J. *Deweese Corporation v. Black Hills Power, Inc.***

On July 7, 2004, a private civil action was filed against BHP by Deweese Corporation, asserting that the Grizzly Gulch Fire caused damage to its real property located in Lawrence County, South Dakota. The action was filed in the Fourth Judicial Circuit Court, Lawrence County, South Dakota. The Complaint seeks recovery on the same theories asserted in the governmental Complaints, but specifies no amount for a claim of damages. The parties filed a Stipulation for Stay of Litigation pending the outcome of the state and federal claims. The Company will vigorously defend this matter.

**K. *Federal Insurance Company (Exports, Inc.)***

On September 14, 2004, Black Hills Corporation was notified of a subrogation claim in the amount of \$63,467.24 by Federal Insurance Company, asserting that the Grizzly Gulch Fire caused damage to the real property of Exports, Inc., their insured, located in Lawrence County, South Dakota. A subrogation action has not yet been filed. The Company will vigorously defend this matter.

**L. *Daryle and Virginia Poling v. Black Hills Power, Inc.***

On February 18, 2005, a private civil action was filed against BHP by Daryle and Virginia Poling, asserting that the Grizzly Gulch Fire destroyed vegetation in the area of Plaintiffs' home, thus causing subsequent mud slides on August 8 and 24, 2002, which caused damage to Plaintiffs' real and personal property located in Lawrence County,

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South Dakota. The action was filed in the Fourth Judicial Circuit Court, Lawrence County, South Dakota. The Complaint seeks recovery on the same theories asserted in the governmental Complaints, but specifies no amount for a claim of damages. The parties filed a Stipulation for Stay of Litigation pending the outcome of the state and federal claims. The Company will vigorously defend this matter.

Additional claims could be made for individual and business losses relating to injury to personal and real property, and lost income.

#### **4. Price Reporting Class Actions**

##### **A. Cornerstone Propane Partners, L.P.**

On August 18, 2003, Cornerstone Propane Partners, L.P. commenced a putative class action lawsuit against over thirty energy companies. *Cornerstone Propane Partners, L.P. v. Reliant Energy Services, Inc., et. al., Civ. No. 03-CV-6168 (U.S. District Court, Southern District of New York)* (“*Cornerstone Propane Litigation*”). The Complaint, which names Enserco Energy Inc. as a defendant, asserts claims for an unspecified amount of damages, based upon alleged violations of the Commodity Exchange Act. General allegations in the Complaint assert that defendants manipulated natural gas futures contracts through false reporting of prices and volumes. Similar specific allegations are made against Enserco, based upon claims that former traders at Enserco reported false price and volume information to trade publications. Other defendants are alleged to have manipulated spot market gas prices by engaging in “wash trades” and/or by “churning” natural gas trades. Initially, the plaintiff seeks an order certifying the proceeding as a class action according to applicable rules. Enserco has denied all claims for damages and will vigorously defend this action, beginning with the request for class certification. Enserco cannot predict the outcome of this litigation, but based upon information currently available to the Company, we believe the likelihood that the action would have a material adverse effect upon its financial condition and results of operations is remote.

##### **B. Roberto E. Calle Gracey**

On October 1, 2003, Roberto E. Calle Gracey commenced a putative class action lawsuit against a group of defendants that sets forth claims and demands similar to those described above with respect to the *Cornerstone Propane Litigation*. Black Hills Corporation and Enserco Energy, Inc. are named as defendants in this action as well. *Gracey v. American Electric Power Company, Inc., et. al., Civ. No., 03-CV-7750 (U.S. District Court, Southern District of New York)*. Black Hills and Enserco will deny all claims for damages and vigorously defend this action, beginning with the request for class certification. Black Hills Corporation cannot predict the outcome of this litigation, but based upon information currently available to the Company, we believe the likelihood that the action would have a material adverse effect upon its financial condition and results of operations is remote.

##### **C. In re Natural Gas Commodity Litigation**

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On December 5, 2003, the actions cited in paragraphs A and B were consolidated, with other actions involving similar claims against other parties, in a civil action captioned *In re Natural Gas Commodity Litigation*, 03 CV 6186(VM), United States District Court, Southern District of New York. All further proceedings relative to these matters will be conducted in the consolidated action. The consolidated class action now includes claims against a number of companies, based upon a variety of alleged misconduct. The claims against Enserco comprise a relatively small part of only one category of the total claims included in this lawsuit. The action has not been certified to proceed as a class action. Motions to Dismiss were denied. Defendants will make an effort to “decertify” the matter as a class action based upon the dissimilarity of parties, claims and issues. While it is possible for an individual to state a claim for relief based upon allegations such as those made against Enserco, those Plaintiffs that have asserted claims against Enserco have a number of procedural and substantive hurdles to overcome. Even if Plaintiffs’ claims survive Motions to Dismiss, and successfully avoid class decertification, they still must prove actual damages as a result of the conduct of an individual Defendant, such as Enserco. Based upon information currently available, and given the current status of the litigation, we do not believe it is likely that Plaintiffs will be able to succeed in recovering on a claim that would be material to Enserco.

**5. Black Hills Power, Inc./PacifiCorp Power Marketing Dispute**

On January 2, 2004, PPM Energy, Inc. (“PPM”) delivered its Demand for Arbitration to Black Hills Power, Inc. (“BHP”). The Demand alleges claims for breach of contract and requests a declaration of the parties’ rights and responsibilities under an Exchange Agreement executed on or about April 3, 2001. Specifically, PPM asserts that the Exchange Agreement obligates BHP to accept receipt and cause corresponding delivery of electric energy, and to grant access to transmission rights allegedly covered by the Agreement. PPM requests an award of damages in an amount not less than \$20,000,000. BHP denies all claims and will vigorously defend this matter, the timing and outcome of which is uncertain. BHP filed its Response to Demand, including a Counterclaim that seeks recovery of sums PPM has refused to pay pursuant to the Exchange Agreement. The arbitration is scheduled for hearing in early June, 2005.

**6. Elley v. Black Hills Power, Inc.**

On March 8, 2004, Black Hills Power, Inc. (“BHP”) was served with a Complaint by Mae Elley and Patty Elley. The Complaint seeks recovery for alleged excessive cutting of trees, as well as treble and exemplary damages. The Company filed its Answer on May 7, 2004. On July 1, 2004, BHP served a Third Party Complaint against Willson’s Tree Service, Inc. for contribution and/or indemnification. Plaintiffs filed a Motion for Summary Judgment. The court granted Plaintiffs’ motion on the issue of treble damages only. A trial date is expected in 2005. The Company will vigorously defend this matter.

**7. Earn-Out Litigation**

On August 13, 2004, Gerald R. Forsythe and other individuals identified at “Stockholders” under an Agreement and Plan of Merger dated July 7, 2000, commenced litigation against Black Hills Corporation in United States District Court, Northeastern District of Illinois, Eastern Division. The lawsuit concerns the Company’s performance of its obligations

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under the “Earn-Out” provisions of the Agreement and Plan of Merger. Under these provisions, the Stockholders, who are former owners of Indeck Capital, Inc., were entitled to receive “contingent merger consideration” for a period of four years following the merger of Indeck Capital with Black Hills Energy Capital, Inc. The Stockholders allege that Black Hills failed to meet its obligation to produce documentation for its calculation of the contingent merger consideration, and in addition, failed to issue stock compensation in the full amount due to them. Black Hills denies these allegations and contends that it has fully and in good faith performed all of its obligations under the Agreement and Plan of Merger. In addition, Black Hills contends that the Agreement and Plan of Merger provides for mandatory arbitration as a medium for resolution of all disputes relating to the payment of contingent merger consideration, and will aggressively pursue the dismissal of the litigation.

The parties are currently sharing information and documentation, and have agreed that the federal court may issue a subpoena relating to the work papers of Deloitte & Touche. For that limited purpose alone, the court may supervise limited discovery, following which Black Hills will seek enforcement of the contractual remedy of arbitration. The outcome of this matter is uncertain, as is the amount of contingent merger consideration that could be awarded following arbitration or litigation.

**8. Peter C. Gasner v. A.O. Smith Corp., et al.**

On February 7, 2005, Black Hills Corporation received service of process for a lawsuit captioned *Peter C. Gasner v. A.O. Smith Corp., et al.*, Cause No. 2004-42761, 11<sup>th</sup> Judicial District Court of Harris County, Texas. This is a class action commenced under the Texas Rules of Civil Procedures. The Plaintiff alleges that during the course of his career, he was exposed to asbestos while working at the DuPont Chemical Plant in Victoria, Texas, among other facilities. The Defendants include a host of companies, large and small, that are divided into several categories. One group of Defendants is referred to as “Product Defendants,” another group is referred to as “Premises Defendants,” and the final group is called “Contractor Defendants.” Black Hills Corporation is named among the “Premises Defendants” (among a list of other parties) in which the only direct allegation is that Plaintiff was exposed to asbestos and asbestos-containing products while working at premises owned and controlled by Black Hills Corporation. The parties have reached a settlement on all issues. Final documentation of a full and final settlement, with dismissal of all claims, is being prepared.

**9. Mallon Tax and Royalty Litigation**

**A. Bayless/Jicarilla Lawsuit.**

From January 1984 through December 1996, Robert L. Bayless operated the majority of the gas wells that Black Hills Exploration and Production (“BHEP”) ultimately acquired from Mallon Resources, Inc. (“Mallon”) in March 2003. Mallon owned a significant working interest in these wells during that time. The Department of Interior - Minerals Management Service (“MMS”) and the Jicarilla Apache Nation believed that Bayless had failed to pay royalties using the correct pricing analysis. Bayless disputed this claim and for at least the past six years fought this matter through proceedings with the Department of Interior - Internal Board of Land Appeals (“IBLA”),

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mediation and finally under litigation against the Department of Interior, Jicarilla Apache Nation and the Department of Justice as filed in the United States District Court for the District of Columbia in Washington D.C. On behalf of itself, Mallon and other working interest owners, Bayless vigorously pursued this lawsuit. Bayless was forced to take extreme action because the Jicarilla Apache Nation had made claims in their earlier efforts to settle the matter that additional royalties from Bayless could amount to as much as \$5,000,000 to \$13,000,000 for the time period in question.

Following the merger (March 10, 2003), BHEP/Mallon worked with Jicarilla Apache officials, Bayless personnel, Fulbright & Jaworski lawyers and the MMS. On September 29, 2003, BHEP negotiated a mutually agreeable settlement that was executed by Bayless and the Jicarilla Apache Nation, settling the dispute for \$1,250,000. BHEP's share of this settlement was \$664,725, not including legal fees. The Department of Justice and the Department of Interior ratified this settlement agreement and by Order dated July 29, 2004, the United States District Court for the District of Columbia dismissed the lawsuit with prejudice.

**B. Possessory Interest Tax ("PIT") Lawsuit.**

From 1998 through 2001, substantially all of the gas produced from approximately 130 wells within the East Blanco Field was processed through the Amine Plant. Based on the plain wording contained in Tribal Ordinances in effect at that time, Mallon considered the Amine Plant to be "production equipment", and calculated and paid the resulting Possessory Interest Tax to the Nation. The Nation later assessed Mallon for PIT based on a change in regulations and retroactive application. Prior to the BHEP merger, Mallon paid the revised taxes and interests, under protest, totaling more than \$3.3 million. The Jicarilla Department of Revenue and Taxation denied the protest. Mallon appealed to the Tribal Court of the Jicarilla Apache Nation for relief.

On September 8, 2003, BHEP successfully negotiated and executed a Tax Settlement Agreement and Mutual Release with the Jicarilla Apache Nation. On September 15, 2003, the Jicarilla Apache Tribal Court dismissed the lawsuit with prejudice and the corresponding lien on Mallon's (now BHEP's) properties was removed. The terms of the settlement waived all additional penalties and interest, in the amount of \$260,269, culminating from Mallon's late tax payment of \$1.4 million for the 2002 tax year. To date, all Possessory Interest Tax that has been assessed and billed have been paid.

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**SCHEDULE 5.11**  
**ENVIRONMENTAL MATTERS**

None.

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## SCHEDULE 6.1

### NEW MATERIAL INDEBTEDNESS

As part of the Borrower's acquisition of Cheyenne Light, Fuel and Power, Inc. ("CLF&P") in January, 2005, the outstanding First Mortgage Bonds of CLF&P were assumed. The total amount of debt assumed was \$24.6 million. The assumed debt consisted of three issues:

- 1) \$7.6 million 7.5% First Mortgage Bonds, due January 1, 2024.
- 2) \$10 million Laramie County, Wyoming Industrial Development Revenue Bonds Series 1997A, variable rate bonds due March 1, 2027.
- 3) \$7 million Laramie County, Wyoming Industrial Development Revenue Bonds, Series 1997B, variable rate bonds due September 1, 2021.

Substantially all of the real and personal property of CLF&P is subject to the liens securing the First Mortgage Bonds.

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## SCHEDULE 7.9

### EXISTING LIENS

1. Enserco Energy Inc. has granted a security interest in favor of Fortis Capital Corp., as agent, with respect to Enserco Energy Inc.'s personal property assets to secure the credit facility referred to on Schedule 7.15.
2. Black Hills Energy Resources, Inc. has granted a security interest in favor of Fortis Capital Corp., as agent, with respect to Black Hills Energy Resources, Inc.'s personal property assets to secure the credit facility referred to on Schedule 7.15.
3. Black Hills Power, Inc. has granted a first mortgage lien in favor of the Trustee on substantially all of the properties used in the electric utility business under the Indenture of Mortgage and Deed of Trust related to the First Mortgage Bonds referred to on Schedule 7.15, excluding certain "Excepted Property" as identified in the Indenture.
4. Black Hills Exploration and Production has granted security interests in various certificates of deposits for oil and gas leases and operations totaling less than \$150,000 in aggregate.
5. Wyodak Resources Development Corp. has granted a security interest in (i) a certificate of deposit in the amount of \$398,000 to securitize its self-insurance permit for black lung liability, and (ii) a U.S. Treasury Note in the amount of \$1,295,000 to secure a Federal Coal Lease.
6. Black Hills Generation, Inc. has granted a security interest in a spare turbine currently housed at its Arapahoe facility in Denver County, Colorado and certain related contracts, chattel paper and general intangibles in the amount of \$4.5 million to securitize the loan from General Electric Capital Corporation referred to on Schedule 7.15.
7. Black Hills Wyoming, Inc. has granted a security interest in its Gillette CT II facility and the associated real property located in Campbell County, Wyoming and certain related inventory, fixtures, contracts, chattel paper and general intangibles in the amount of \$27.5 million to securitize the loan from General Electric Capital Corporation referred to on Schedule 7.15.
8. Black Hills Corporation's indirect, wholly owned Subsidiaries Las Vegas Cogeneration II, L.L.C. ("LVCII"), Las Vegas Cogeneration Energy Financing Company, L.L.C., Black Hills Nevada, LLC and Black Hills Nevada Real Estate Holdings, LLC have granted security interests in favor of Nevada Power Company ("NPC") in their respective personal property (comprising the personal property of LVCII facility and the sole membership interest in LVCII) as security for LVCII's performance of its obligations under its power purchase agreement with NPC, dated December 19, 2003.
9. Black Hills Colorado, LLC has granted a security interest in its Arapahoe and Valmont facilities (located in Denver and Boulder counties, respectively) in favor of Public

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Service Company of Colorado as security for its obligations under the power purchase agreements for both facilities, each dated January 26, 2001.

10. Cheyenne Light, Fuel and Power Company has granted a first mortgage lien on substantially all of its real and personal property in favor of the Trustee under its Indenture of Mortgage and Deed of Trust related to the First Mortgage Bonds referred to on Schedule 7.15, excluding certain "Excepted Property" as identified in the Indenture.

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**SCHEDULE 7.14**

**EXISTING INVESTMENTS**

1. Black Hills Corporation holds a \$450,000 equity investment in Phase Technology, LLC.
2. Black Hills Corporation holds a \$50,000 equity investment in Genesis Equity Fund, LLC.
3. Black Hills Corporation holds investments in life insurance policies and nonqualified deferred compensation plan accounts in the amount of \$3,126,301.
4. Black Hills Corporation holds a \$6,693,155 investment in various development projects.
5. Black Hills Power, Inc. holds investments in life insurance policies and nonqualified deferred compensation plan accounts in the amount of \$3,411,385.
6. **C.** Black Hills Power, Inc. holds long-term notes receivable in the amount of \$251,404.
7. Wyodak Resources Development Corp. holds investments in life insurance policies in the amount of \$572,655.
8. Wyodak Resources Development Corp. holds investments in US Treasury Notes in the amount of \$1,693,000.
9. Black Hills Exploration and Production, Inc. holds investments in an affiliate in the amount of \$2,096,663.
10. Black Hills FiberCom, LLC holds investments in life insurance policies in the amount of \$153,870.
11. Black Hills Generation, Inc. holds equity interests in Energy Investors Funds, Project Finance Funds, Caribbean Basin Funds and other energy funds in the amount of \$5,839,092.
12. Black Hills Generation, Inc. has an equity investment in Black Hills Idaho Management, Inc. in the amount of \$3,239,855.
13. Black Hills Energy, Inc. holds investments in life insurance policies and nonqualified compensation plans in the amount of \$301,423.
14. Black Hills Fiber Systems, Inc. holds a convertible debenture note in the amount of \$40,000,000 due from Black Hills FiberCom, LLC.
15. Black Hills Energy, Inc. has a \$19,636,104 equity investment in Black Hills Energy Resources, Inc., as of December 31, 2004.
16. Black Hills Energy, Inc. has a \$113,732,776 equity investment in Enserco Energy Inc., as of December 31, 2004.

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**SCHEDULE 7.15  
PERMITTED INDEBTEDNESS**

**(A) Indebtedness of Marketing Subsidiaries**

1	[	SECTION 1	Enserco Energy Inc. Credit Facility with Fortis Capital Corp., BNP Paribas, US Bank, and Societe Generale.	up to \$200,000,000
		SECTION 2	Black Hills Energy Resources, Inc. Credit Facility with Fortis Capital Corp.	up to \$60,000,000

**(B) Other Indebtedness**

1.	Black Hills Corporation 6.5% senior unsecured notes.	\$224,763,000
2.	Black Hills Power, Inc./Black Hills Wyoming, Inc. Note Payable to Bear Paw Energy, LLC.	\$834,000
3.	Credit Agreement between Black Hills Colorado, LLC, the Bank Nova Scotia, and various other banks.	\$123,028,000
4.	Black Hills Power, Inc. First Mortgage Bonds.	\$137,275,000
5.	Black Hills Power, Inc. Pollution Control Revenue Bonds.	\$18,650,000
6.	Black Hills Power, Inc. Environmental Improvement Revenue Bonds (Floating Rate).	\$2,855,000
7.	Term loan and letter of credit facility between Black Hills Fountain Valley, LLC, Fountain Valley Power, LLC, and E-Next A Equipment Leasing Company, LLC and various banks (including Union Bank of California as agent bank).	\$81,459,000
8.	Black Hills Corporation lease payment obligation on the Wygen 1 facility.	\$128,264,000
9.	Credit Agreement Among Black Hills Wyoming, Inc. and General Electric Capital Corporation.	\$23,776,000
10.	Credit Agreement among Black Hills Generation, Inc. and General Electric Capital Corporation.	\$3,938,000
11.	Note payable from Black Hills Generation, Inc. for Las Vegas Cogeneration II sewer fee.	\$1,656,000
12.	Cheyenne Light, Fuel and Power Company First Mortgage Bonds.	\$26,365,000
13.	Black Hills Corporation guarantee of Wyodak Resources Development Corp. reclamation and lease bond obligations relating to its mining permits.	\$20,713,000
14.	Black Hills Corporation guarantee of miscellaneous surety bonds of subsidiaries, other than reclamation bonds.	\$4,287,000
15.	Black Hills Southwest, LLC guarantee in favor of Sempra Energy Solutions under the Las Vegas Cogen I Power Purchase and Sale Agreement.	\$10,000,000

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16.	Black Hills Corporation guarantee in connection with Enserco Energy Inc.'s obligations to Fortis Capital Corp. under its credit facility.	\$3,000,000
17.	Black Hills Corporation guarantee of payment obligations of Black Hills Power, Inc. to Idaho Power Company.	\$250,000
18.	Black Hills Nevada, LLC guarantee in favor of Nevada Power Company in connection with performance of the LV Cogen II and Western Systems Power Pool Agreement.	\$5,000,000
19.	Black Hills Corporation guarantee in favor of Nevada Power Company in connection with Las Vegas Cogen II interconnection agreement.	\$750,000

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## SCHEDULE 7.19

### RESTRICTIONS ON DISTRIBUTIONS AND EXISTING NEGATIVE PLEDGES

1. Enserco Energy Inc.'s Credit Agreement with Fortis Capital Corp. referred to on Schedule 7.15 prohibits Enserco and any of its subsidiaries from (a) granting certain Liens, and (b) paying certain dividends.
2. Black Hills Energy Resources, Inc.'s Credit Agreement with Fortis Capital Corp. referred to on Schedule 7.15 prohibits Black Hills Energy Resources and any of its subsidiaries from (a) granting certain Liens, and (b) paying certain dividends.
3. Black Hills Power, Inc.'s Indenture of Mortgage and Deed of Trust contains a prohibition on the payment of dividends should the Company's retained earnings amount not meet certain minimal levels. Currently the Company is required to maintain a retained earnings level of greater than \$318,000 for dividend payments to be allowed under the Indenture.
4. Substantially all of Black Hills Generation, Inc.'s project finance subsidiaries' non-recourse debt contains restrictions that prohibit distributions unless certain financial covenants limits are met.
5. Black Hills Corporation is prohibited (with certain exceptions) under its indenture related to its 6.5% Notes due 2013 issued on May 16, 2003 from pledging the capital stock of any of its subsidiaries unless it equally and ratably also secures the notes and all other parity indebtedness.
6. Dividends on Black Hills Corporation's preferred stock must be paid or declared and set apart for payment before any dividends may be paid or declared and set apart for payment on the Company's common stock. The Company's preferred stock is cumulative.

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## 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) 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
  - d) 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, 2005

/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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) 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
  - d) 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, 2005

/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, 2005 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.

Date: May 10, 2005

/s/ David R. Emery  
David R. Emery  
President and  
Chief Executive 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, 2005 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.

Date: May 10, 2005

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