

STATE OF WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
INDUSTRIAL SITING DIVISION

IN THE MATTER OF THE INDUSTRIAL) OAH DOCKET NO. 12-103-020
SITING PERMIT APPLICATION OF) DOCKET NO. DEQ/ISC 11-04
BLACK HILLS CORPORATION)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
GRANTING PERMIT APPLICATION WITH CONDITIONS, AND
ALLOCATING IMPACT ASSISTANCE FUNDS

THIS MATTER came before the Industrial Siting Council (Council) on July 10, 2012, for an evidentiary hearing on whether the Council should issue a permit for the construction of a gas-fired power plant, and the record was closed on that date. Council members present for the proceedings included Chairman Shawn Warner, Sandy Shuptrine, Gregg Bierei, Jim Miller and Peter Brandjord. Justin A. Daraie, Assistant Attorney General, was also present on the Council's behalf. Deborah A. Baumer from the Office of Administrative Hearings served as the Hearing Examiner in the proceedings. The Applicant, Black Hills Corporation (Black Hills), appeared by and through its counsel, John A. Sundahl. The Industrial Siting Division (Division) appeared by and through its counsel, Assistant Attorney General Luke J. Esch. Five other parties participated in the evidentiary hearing including Hereford Ranch, LLC, represented by Brent Kunz and Marianne Shanor; T Cross T Ranch represented by Kara Brighton; the Board of Laramie County Commissioners represented by Mark Voss; the City of Cheyenne represented by Daniel E. White; and the Wyoming Building and Construction Trades Council, represented by Dennis Hemenover and Douglas C. Thomas. Black Hills' Exhibits 1 (Application) through 16 and Addenda #1 and #2, the Division's Exhibits 1 and 2, T Cross T Ranch's Exhibits 1 through 8, and the City of Cheyenne's Exhibits 1 through 3 were admitted for purposes of the evidentiary hearing. The Council received no limited appearance statements in this case before the close of

the evidentiary hearing. The Council has considered the evidence and arguments of the Applicant and the parties and makes the following findings:

I. JURISDICTION

Wyoming Statute § 35-12-106(a) (LexisNexis 2011) provides that, “No person shall commence to construct a facility, as defined in this chapter, in this state without first obtaining a permit for that facility from the council.” *Id.*

“Industrial facility” or “facility” means any industrial facility with an estimated construction cost of at least one hundred eighty six million, seven hundred thousand dollars (\$186,700,000.00). Wyo. Stat. Ann. § 35-12-102(a)(vii) (LexisNexis 2011).

Wyoming Statute § 35-12-110(d) (LexisNexis 2011) provides that, “upon receipt of an application for a permit, the director shall conduct a review of the application to determine if it contains all the information required by W.S. § 35-12-109 and the rules and regulations.” *Id.*

Wyoming Statute § 35-12-110(f) (LexisNexis 2011) provides that not more than ninety (90) days after receipt of an application for a permit, the director shall:

- (i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;
- (ii) Notify the applicant and local governments of the hearing;
- (iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and
- (iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-12-111, 35-12-112 and 35-12-114 apply to the hearing.

Id.

Wyoming Statute § 35-12-113(a) (LexisNexis 2011) provides that within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate.

On April 30, 2012, Black Hills submitted an application to the Division for an industrial siting permit to allow construction and operation of the Cheyenne Prairie Generating Station (the Project) to be located in Laramie County, Wyoming, within the Cheyenne city limits. At a previously held jurisdictional meeting on December 8, 2011, Black Hills showed cost estimates for the total construction were in excess of \$186,700,000.00. Therefore, this Council has jurisdiction to hear and decide this matter.

II. STATEMENT OF THE CASE

Black Hills filed its Application for an industrial siting permit pursuant to Wyoming Statute § 35-12-109 (LexisNexis 2011) on April 30, 2012. The proposed Project is the Cheyenne Prairie Generating Station, a natural gas-fired generating power plant providing a total of 132 megawatts. The proposed site of the facility is 250 acres of undeveloped land located on the southeast side of the City of Cheyenne, Wyoming. As originally submitted, the Division's staff found that the Application was lacking some information and asked Black Hills to supply additional information. Upon the submittal of the additional information, the Division's staff determined that Black Hills' Application was complete and in full compliance with Wyoming law, and was ready for the Council's determination as to whether a permit should be issued. Black Hills requested the Council approve the Application as submitted with Addenda and exhibits. The Division and five separate entities filed notices to become a party to these

proceedings and appeared at the evidentiary hearing. All five parties were in favor of issuing the permit.

III. ISSUES AND CONTENTIONS

The sole issue in this case is whether Black Hills has proven, by a preponderance of the evidence, that the industrial siting permit Application regarding the Cheyenne Prairie Generating Station meets the requirements of the Wyoming Industrial Development Information and Siting Act, Wyo. Stat. Ann. § 35-12-113 (LexisNexis 2011), and the Industrial Development Information and Siting Rules and Regulations, Chapter 1, Section 9(a) (Division's Rules) governing the proposed energy generation Project. If the Council decides to issue the industrial siting permit, it must also decide what, if any, conditions to place on the permit.

Black Hills asserted its Application was complete and in compliance with all applicable laws, will not pose a threat of serious injury to the environment, will not substantially impair the health, safety or welfare of the inhabitants in the affected area, and that it has the financial resources to construct, maintain, and operate the facility.

Hereford Ranch, T Cross T Ranch, Laramie County Commissioners, the City of Cheyenne, and the Wyoming Building and Construction Trades Council were all in support of the Project.

IV. FINDINGS OF FACT

A. Documentary Evidence

1. The Applicant, Black Hills, is a diversified energy company based in Rapid City, South Dakota, with corporate offices in Denver, Colorado, and Papillion, Nebraska. The company serves 765,000 natural gas and electric utility customers in Colorado, Iowa, Kansas, Montana, Nebraska, South Dakota, and Wyoming. The company's non-regulated businesses

generate wholesale electricity and produce natural gas, oil, and coal. *Exhibit 1, Application at p. 2-1.*

2. Prior to Black Hills filing its Application in this matter, company representatives and the Division's staff conducted a jurisdictional meeting on December 8, 2011, to discuss the details of the Project. The Division reviewed the financial budget for the Project and determined that the cost exceeded the statutory dollar threshold of \$186,700,000.00. The Division notified the Applicant by mail on December 13, 2011, that the Project was subject to the jurisdiction of the Wyoming Industrial Siting Act and that a permit was required to construct and operate the facility. *State's Exhibit 1, p. 4.*

3. On April 30, 2012, Black Hills filed its Application with the Division requesting a permit to allow construction and operation of the Cheyenne Prairie Generating Station, a natural gas-fired power plant providing a total of 132 megawatts. The proposed site of the Project is approximately five miles east of downtown Cheyenne, but still within the city limits. The facility will sit on 30 acres within a 250-acre parcel adjacent to and south of Interstate 80 (I-80), situated just west of the Dry Creek Wastewater Treatment Plant. The Project site was chosen for a number of reasons, including the availability of land for sale within the City of Cheyenne, close proximity to transmission lines on which to interconnect, low conflicts with surrounding land uses, the absence of environmental sensitivities, and the close proximity to an available water source. *State's Exhibit 1, p. 4; Exhibit 1, Application at p. ES-1, and p. 2-2.*

4. All of the material constituting the filing of the Application was received by the Division on April 30, 2012. The Application consisted of 60 hard copies of the Application, *Section 109 Permit Application, Cheyenne Prairie Generating Station*, an electronic version of that document, the payment of the application fee in the amount of \$50,091.00, as required by

Wyoming Statute § 35-12-109(b), and a letter of transmittal by Mark Lux, Vice President and General Manager of Power Delivery for Black Hills, asking for the permit and attesting to the truthfulness and accuracy of the Application. Black Hills submitted evidence of its financial capability on May 2, 2012, which is incorporated as Addendum 1 to the Application. *State's Exhibit 1, pp. 4, and 14-16.*

5. The Division staff checked the contents of the Application against the applicable statutes and rules of the Council and determined that additional information was necessary. On June 18, 2012, Black Hills provided a response to the Division's Notice of Deficiency, which the Division's staff incorporated into the Application as Addendum 2. On June 28, 2012, Black Hills was notified by the Division that the Application was complete. *State's Exhibit 1, pp. 4, 25-30, and 98.*

6. Upon review of the Application, the Administrator for the Division determined the area primarily affected is a polygon that includes the Project site, the City of Cheyenne, and the southwest portion of Laramie County. Examination copies of the Application were then filed on April 30, 2012, with the Albany and Laramie County libraries, the Wyoming State Library in Cheyenne, and the Albany and Laramie County Clerks. Also on April 30, 2012, the Division staff distributed copies of the Application to the various state agencies pursuant to Wyoming Statute § 35-12-110(b) (LexisNexis 2011) to obtain information and recommendations relative to the impact of the proposed Project as it applies to each agency's area of expertise. All agencies timely responded to the inquiry and none had any objection to the Project. *State's Exhibit 1, pp. 5, 6, and 31-97.*

7. Pursuant to the Industrial Siting statutes, the Division's staff placed a legal advertisement printed in the *Wyoming Tribune Eagle* on May 4, 2012, and the *Casper Star*

Tribune on May 5, 2012, publishing the location and description of the Project, the locations where the Application was available to review, and notice of the Council's hearing on the Application. *State's Exhibit 1, pp. 5, 6, and 17-22.*

8. From January 2012 until the April 30, 2012, filing of the Application, Black Hills visited the governing bodies of the local governments in the areas primarily affected to discuss the Project. A list of those meetings is found in Table 4-1 on page 4-2 of the Application. Open House meetings for public inquiry were held in Cheyenne on January 25, 2012, and February 18, 2012. A list of all meetings and details of the public and government involvement is found in Section 4, *Public Involvement*, of the Application. *Exhibit 1, Application, Section 4, Public Involvement; Appendix D, Public Involvement; State's Exhibit 1, p. 5.*

9. Workforce and delivery vehicles are expected to primarily use I-80 and Campstool Road to the Project site. HR Ranch Road will be improved west of Campstool Road. All deliveries will be trucked directly to the Project site. A traffic study found no significant impacts to traffic patterns, even during the height of construction. *Exhibit 1, Application at p. ES-2.*

10. The City of Cheyenne will provide all of the Project's operational water needs. More than 80 percent of the Project's operational water needs will be met by the treated wastewater effluent from the neighboring Dry Creek Wastewater Treatment Plant. The remaining 20 percent will be supplied by the municipality's potable water system. The State Engineer's Office is statutorily responsible for the administration of all waters within the state. In order to develop new sources of waters, an entity is required to obtain a permit from the State Engineer's Office. However, since Black Hills is not intending to develop new water supplies for the Project, there are no permitting obligations with the State Engineer's Office. The State

Engineer's Office found that the water supply plan fits within the City of Cheyenne's existing portfolio of water rights and found no reason to recommend denial of the permit. Because the Project proposes to use less than 800 acre feet of waters of the state annually, Black Hills was not required to submit a water yield or water supply analysis to the State Engineer in accordance with Wyoming Statute § 35-12-108 (LexisNexis). *State's Exhibit 1, p. 5, 76 and 77; Exhibit 1, Application, p. ES-2 and 3.*

11. Construction is proposed to begin in April 2013 and to be completed in May 2014. The Project will utilize approximately 400 construction workers during peak construction in the winter of 2013. Black Hills estimates that 97 percent of the workforce will temporarily reside in Cheyenne and has received sufficient housing commitments to accommodate the housing needs. *Exhibit 1, Application at Section 3, Construction and Operations, pp. 3-1 through 3-18; Section 5, Socioeconomic Baseline and Impacts; Appendix E, Housing Commitments.*

12. The Project is anticipated to have no significant impact on fire protection, rescue, law enforcement, health care, and/or municipal services. *Exhibit 1, Application at Section 5, Socioeconomic Baseline and Impacts, pp. 5-87 through 5-102.*

13. Impact assistance money is projected to average \$208,122.00 each month. The Division recommended the distribution of the funds at 70 percent to the City of Cheyenne and 30 percent to Laramie County. *State's Exhibit 1, p. 12; Exhibit 1, Application at Appendix C, Impact Assistance Calculation.*

14. The Industrial Siting Division Report submitted as Exhibit 1 by the Division reflected that after review of the Application and Addenda 1 and 2, the Application was complete and suitable for Council's consideration. The Report also recommended the Council place 15

conditions on the permit, including 14 standard conditions. *State's Exhibit 1, p. 11; State's Exhibit 2.*

B. Testimonial Evidence

i. Applicant's Witnesses

15. Mark Stege (Stege) is the Vice President of Operations for Cheyenne Light Fuel and Power. According to Stege, Cheyenne Light Fuel and Power and Black Hills Power are sister utilities for the first tier of Black Hills Corporation. Black Hills Corporation is headquartered in Rapid City and traded on the New York Stock Exchange. Black Hills serves 762,000 customers in Wyoming, Colorado, South Dakota, Montana, Nebraska, Iowa, and Kansas. *Transcript of Proceedings (hereinafter Tr. of Proc.), pp. 24-25.*

16. Stege further confirmed that the facility at issue has 132 megawatts; Cheyenne Light Fuel and Power has 77 megawatts; and Black Hills Power has 55 megawatts. Stege also confirmed that two Open Houses were involved in the application process, one on January 25, 2012, and one on February 18, 2012. The Open Houses were well-attended as reflected in *Appendix D – Application*. Black Hills also received a letter of support from the Wyoming Business Council. *Tr. of Proc., p. 25-29; Exhibit 1, Application, Appendix D; Exhibit 3.*

17. Stege also confirmed that the Project site is on 30 acres of a 250 acre parcel. HR Ranch Road will provide the access into the facility. The Project consists of two 6,000 combined cycle turbines and one 6,000 simple cycle turbine. Using a map of the looped infrastructure around the I-80/I-25 corridor reflecting new projects requiring power demands, Stege explained the need for the current Project. Stege explained a typical power-load curve showed most utilities peak between 3:00 p.m. and 7:00 p.m. When the base load has been met and purchases

from Black Hills have peaked for the day, the simple cycle turbine can produce the required energy demand for the day. *Tr. of Proc.*, pp. 32-35; *Applicant's Exhibit 4*.

18. Finally, Stege testified that the Project complied with all state and local laws, and the rules of the Council. Stege also stated that, in his opinion, the Project will not substantially impair the health, safety, or welfare of the inhabitants or the expected inhabitants, and would not pose a serious injury to the environment or the social and economic condition of the inhabitants. *Tr. of Proc.*, pp. 38 through 39.

19. Mark Lux (Lux) is the Vice President and General Manager of Power Delivery for Black Hills. Lux was previously part of the WYGEN Projects, coal-fired power plants located in the region. According to Lux, the industry has changed, and coal plants cannot regulate the loads quickly enough for the demands. Black Hills has constructed units similar to the proposed Project in Pueblo, Colorado, for Black Hills Colorado Electric. The natural gas-fired power stations can generate 20 megawatts per minute, while the coal-fired power plants can only generate a maximum of 3 megawatts per minute. Lux testified that the Project was needed to ensure reliable electric supply for the customers of Black Hills Power and Cheyenne Light Fuel and Power. *Tr. of Proc.*, pp. 43-44.

20. Lux also testified that Black Hills is currently decommissioning three coal-fired power plants that would require substantial upgrades to the air quality equipment such that the retrofits and life extensions of those plants is not economical, compared to building newer, more efficient, natural gas-fired combined cycle units. *Tr. of Proc.*, p. 45; p. 49.

21. Lux confirmed that he has been authorized by the Board of Directors of Black Hills Corporation to agree to the conditions for the permit, as set forth in the Division's Exhibits 1 and 2. Lux agreed with Stege that the Project complied with all state and local laws and the

rules of the Council. Lux also stated that, in his opinion, the Project will not substantially impair the health, safety or welfare of the inhabitants or the expected inhabitants, and would not pose a serious injury to the environment or the social and economic condition of the inhabitants. *Tr. of Proc., pp. 46-48.*

22. Finally, in response to concerns regarding view shed and aesthetic issues expressed by the Hereford Ranch, Lux agreed to minimize the visual impacts of the facility through the use of appropriate vegetation. Black Hills has hired a certified landscape designer and is working in conjunction with the City of Cheyenne to appropriately landscape the area with trees and other vegetation. *Tr. of Proc., pp. 87-90.*

23. George Tatar (Tatar) is the Director of Operations for Black Hills. Tatar testified that Black Hills recently completed construction of a very similar project in Pueblo, Colorado, which began commercial operation on January 1, 2012. According to Tatar, the project has been very successful. *Tr. of Proc., pp. 53-54.*

24. Tatar testified regarding the water requirements for the Project. Zachery Engineering was contracted to prepare the water balance document, which is reflected in *Applicant's Exhibit 11*. The water balance shows the flows not only into and out of the facility as a whole, but also the internal flows within the facility. The figures were obtained by using the hottest part of a summer day, which is most likely when the facility would be operating, showing 510 gallons per minute of recycled waste water from the Board of Public Utilities waste water plant adjacent to the power plant, as well 100 gallons per minute of potable water would be needed. The facility would return the waste water to the water treatment plant for processing and discharge. Once the pipeline is built, the Board of Public Utilities will enter into a contract for the water requirements. Black Hills anticipates using, on an annual basis, 786 acre feet of water

per year, based on the facility running 24/7, 365 days per year at a full load, for worst case scenario. *Tr. of Proc.*, pp. 54-57.

25. Tatar also testified that the cost to construct the Project is estimated at \$214 million. Construction is scheduled to begin April 2013. There will be 12 permanent, full-time employees operating the facility. Tatar testified that based upon his experience with a similar facility recently constructed in Colorado, he believes the Project can be efficiently and safely constructed and that the facility would not impair the health, safety or welfare of the workers or citizens of Cheyenne. Tatar also testified as to his opinion that the Project will not pose a threat to the social and economic conditions of the inhabitants of Cheyenne and Laramie County. *Tr. of Proc.*, pp. 59-61.

26. Joe Hammond (Hammond) is a Principal Project Manager for CH2M Hill and prepared the Application in this matter. Hammond explained that the Application contained seven major areas, including the purpose and description of the Project, socioeconomic analysis of impacts, construction and operations of the Project, public involvement, and a transportation analysis. *Tr. of Proc.*, pp. 68-70.

27. According to Hammond, the primary transportation corridor for the Project is I- 80, Campstool Road, and HR Ranch Road. Black Hills has agreed to pave HR Ranch Road. During the construction phase of the Project, all deliveries will be made by truck, and no rail delivery to the site is anticipated. There are anticipated roughly 1,800 truck trips during the 14-month construction period, or an average of 16 truck trips per day. Hammond testified that the Wyoming Department of Transportation agreed with his analysis of the impacts from transportation and did not object to the Project's impacts. *Tr. of Proc.*, pp. 70-73.

28. Hammond also testified that Black & Veatch Engineers conducted a noise study, which is reflected in Section 6 of the Application. Based upon their analysis, the noise level at the property line is 51 to 58 decibel range, well within the City of Cheyenne's ordinance regarding a maximum decibel range of 80 decibels. The impact on the nearest residence, which is 0.6 miles from the property line, is a decibel range of 43 to 45 decibels. *Tr. of Proc.*, pp. 73-75.

29. Hammond testified regarding the visual impact study performed by CH2M Hill, also referenced in Section 6 of the Application. The combustion turbine stacks are the tallest structure, at approximately 75 feet tall. Other structures that may be visible include the cooling tower and turbine generators, water tanks, and an administrative building. The plant will be visible from I-80, but the study concluded it would have fairly low visual impact to the surrounding area. *Tr. of Proc.*, p. 75.

30. Finally, a socioeconomic analysis was performed to analyze the direct and indirect impacts of the Project. After analysis, Black Hills determined that approximately 35 percent of the 400 peak construction workforce would be local workers. Table 5-4 of the Application depicts a graph showing the estimated workforce over a 14-month period of time from April 2013 through May 2014. The graph represents that approximately 140 workers are local and 260 are non-local. Housing for the anticipated workforce is depicted in Appendix E, Table E-1. Various hotels and motels in the area submitted letters of commitment. The study also showed that approximately 4,800 motel rooms are available within a 60 mile radius of the Project. *Tr. of Proc.*, pp. 76-79.

31. Black Hills also provided estimates of the solid waste materials from the construction workforce and deliveries of materials and estimated the construction waste to be

approximately 6,000 cubic yards over a 14-month period of time. The City of Cheyenne confirmed that solid waste was not an issue for the local landfill or the transfer facilities. Additionally, much of the waste would be recycled. Furthermore, as part of the socioeconomic analysis, Black Hills determined there would be no adverse effect on law enforcement, schools, emergency, or medical services. *Tr. of Proc., pp. 79-81.*

32. In Hammond's professional opinion, the Application complied with all state and local laws, and the rules and regulations of the Industrial Siting Council. Additionally, based upon the results of the environmental and socioeconomic analyses performed in this matter, the Project would not substantially impair the health, safety or welfare of the inhabitants. *Tr. of Proc., pp. 83-84.*

33. Jerome Nichols (Nichols) is the Director of Investor Relations for Black Hills. Nichols was called to establish the financial assurance capabilities to construct, maintain, operate, and decommission the Project. Black Hills is a publicly traded company with the Securities and Exchange Commission. Black Hills submitted Addendum 1 in this case, which is a 10-K that had been filed with the Securities and Exchange Commission. Black Hills also submitted Exhibit 8, which is a financial summary showing assets, liquidity, and capital structure. Black Hills' primary business is in regulated utilities. According to Nichols, cash flows that come from regulated utilities are typically less risky and more dependable. At the end of March 2012, Black Hills' total assets were \$3.8 billion. Since the Projects costs are estimated at \$237 million, only 6 percent of Black Hills' assets are at stake. *Tr. of Proc., pp. 92-95; Applicant's Exhibit 8.*

34. Nichols further testified that 54 percent of Black Hills' capital structure is debt, which is typical for regulated utilities companies. Therefore, if Black Hills wanted to fund the

entire project with debt, the debt capital structure increases to 57 percent, which is still within a reasonable ratio for regulated utilities companies. Additionally, Black Hills has a revolving line of credit to \$750 million. Nichols testified that if Black Hills desired, it could write a check today to pay for the entire Project. *Tr. of Proc.*, pp. 96-100.

35. Finally, Nichols testified to Exhibits 9 and 10, which reflected resolutions from Cheyenne Light Fuel and Power and Black Hills Corporation, summarizing the approvals from the Board of Directors, approving the amount of the Project. The documents provide approval to senior management officers to move forward and execute permits, contracts, and other documents necessary to carry out the Project. *Tr. of Proc.*, p. 99; *Applicant's Exhibits 9 and 10*.

36. Jeff Fassett (Fassett) is a Professional Engineer specializing in water rights and water resource engineering and testified as an expert in this case. Fassett was requested to conduct an independent analysis to determine whether the State Engineer's analysis was correct and whether sufficient water exists for the Project. Fassett prepared Black Hills' Exhibits 12 through 16. Fassett met with the State Engineer and the Board of Public Utilities. The Project will be entirely within the service area of the Cheyenne Board of Public Utilities. Fassett reviewed the opinion of the State Engineer in this case, as reflected in Applicant's Exhibit 13, that there was more than adequate water supply for the Project and that the water rights that support the Board of Public Utilities' system are fully compliant in allowing the types of use for the power plant. *Tr. of Proc.*, pp. 101-109.

37. According to Fassett's analysis, the Project will use a total of 786 acre-feet of water annually; 103 acre-feet will come from potable water from the Cheyenne municipal water system; and 683 acre-feet will come from the Dry Creek Waste Water Treatment Plant. Approximately 200 acre-feet will be returned to the waste water treatment plant. The additional

demand upon the City of Cheyenne of 100 acre-feet of water annually was not considered to be significant by Fassett. Based upon Fassett's knowledge of the Project and available water sources, it was Fassett's opinion that the facility will comply with all applicable state and local laws and would not pose a threat of serious injury to the environment or health, safety and welfare of the inhabitants. *Tr. of Proc., pp. 109-118.*

38. Additionally, Fassett agreed that the determination with regard to water supply and water rights are not within this Council's jurisdiction; rather, it is within the exclusive jurisdiction of the State Engineer and State Board of Water Control. *Tr. of Proc., pp. 119-120.*

ii. Division's Witness

39. Tia Raamot (Raamot) is the Principal Economist with the Industrial Siting Division, Department of Environmental Quality. Raamot received and processed the Application in this case. Raamot confirmed that as part of the process, a jurisdictional meeting was held with the Applicant on December 8, 2011. A determination was made that the Project cost was in excess of the statutory threshold for obtaining an industrial siting permit. The Application for the Project was subsequently filed on April 30, 2012. *Tr. of Proc., pp. 126 through 128.*

40. According to Raamot, after review of the Application, the Division issued a Notice of Deficiency to Black Hills requesting a description of how the proposed Project would impact agriculture in the area and a clarification as to whether additional phases were contemplated. Black Hills' responses to the request for additional information was provided as Addendum 1 and Addendum 2, and the Application was thereafter deemed complete. *Tr. of Proc., pp. 128-129.*

41. Raamot further testified that the Application contained the statutory requirements pursuant to Wyoming Statute § 35-12-109, including, but not limited to, a description of the nature and location of the Project, an estimated time of construction of the facility, an estimate of the number of workers, copies of the studies of environmental impacts, an inventory of the estimated discharges, emissions, and solid waste disposal, as well as an evaluation of the potential impacts and proposals for alleviating social and economic impacts on the 17 facilities and resources set forth in Wyoming Statute §35-12-109 (xiii) (LexisNexis 2011). *Tr. of Proc.*, pp. 129-132.

42. Raamot further testified that all state agencies responded to a request for comments on the Application. No state agency recommended denial of the Application. Additionally, the Application contained enough information demonstrating Black Hills' financial capability to construct, maintain, operate, decommission, and reclaim the facility. Raamot recommended permit conditions as set forth in State's *Exhibits 1 and 2*, as the Application was complete per the statutory requirements. The permit conditions set forth in 1 through 14 are standard permit conditions. Additionally, due to the Applicant's voluntary commitments in its response letters to various agencies, and testimony at hearing, those commitments are now memorialized and incorporated into the permit through condition 15. *Tr. of Proc.*, pp. 132-136.

43. Finally, Raamot testified that as a result of the City of Cheyenne and Laramie County Commission's inability to agree upon the distribution of impact assistance funds within the time permitted by statute, an updated modeling process that had been approved by the Council was used to establish the recommendation. The recommendation was 70 percent of the impact assistance fund allocated to the City of Cheyenne and 30 percent of the funds allocated to Laramie County. *Tr. of Proc.*, pp. 134-135.

iii. Hereford Ranch's Witness

44. J. Sloan Hales, M.D., is an anesthesiologist, and along with his wife, has owned the Wyoming Hereford Ranch for nearly 35 years. The Hereford Ranch is approximately one mile from the site of the proposed Project. Dr. Hales testified that the Wyoming Hereford Ranch is the oldest continuous registered Hereford livestock operation in the United States and has been in operation for almost 130 years. Dr. Hales testified that over the past 30 years, nearly 2000 social events have been hosted at the ranch. *Exhibits HR 1 through 15; Tr. of Proc., pp. 139-142; 147.*

45. Dr. Hales presented 15 photographs of the Wyoming Hereford Ranch to provide an overview of the property. Dr. Hales testified the ranch consists of 3,000 acres with 20 buildings, including 16 houses making up the headquarters and 4 major barns that are historic properties. Approximately 500 acres of the land is irrigated for hay crops. *Tr. of Proc., pp. 142-147.*

46. Over the years, Dr. Hales has worked with wildlife management companies and government agencies to dedicate a 100-foot corridor two miles long for the enhancement of wetlands on Crow Creek and planted 2,000 to 3,000 trees in this corridor which is located on the south edge of the proposed site of Project. Dr. Hales also planted at least 500 trout every spring for the last 6 years in the Crow Creek stream. *Tr. of Proc., pp. 147-149.*

47. Dr. Hales initially had major reservations about the Project regarding view shed, noise, lighting, traffic, water utilization, and wildlife impacts. After a number of discussions with Black Hills, Dr. Hales and Black Hills came to an accord as to expectations regarding landscaping and mitigating some of the impacts which concerned Dr. Hales. After much

consideration, Dr. Hales and his wife recommended the Council issue the permit in this case. *Tr. of Proc.*, pp. 149-153.

iv. T Cross T Ranch's Witnesses

48. Kara Brighton (Brighton) represented T Cross T Ranch, a Wyoming limited liability company whose sole member is Neil McMurry (McMurry). T Cross T Ranch owns an agricultural operation directly downstream from the proposed Project. McMurry reviewed the Project's proposed water source and determined that downstream users are not entitled to guaranteed continued augmentation of Crow Creek from the effluent of the Dry Creek Wastewater Treatment Plant and that McMurry's use of Crow Creek for irrigation purposes would not be affected by the slight diminution of effluent contribution. T Cross T supported the Project and requested the permit be issued in this matter. *Tr. of Proc.*, pp. 22-24.

v. City of Cheyenne's Witness

49. Richard Kaysen (Mayor Kaysen) is the Mayor of the City of Cheyenne. Mayor Kaysen testified that the proposed Project was very important to the City of Cheyenne, especially in light of the impact assistance funds. Mayor Kaysen testified that on behalf of the City of Cheyenne, he found the allocation of impact assistance funds to be reasonable and fair, with the City of Cheyenne receiving 70 percent and Laramie County receiving 30 percent. Mayor Kaysen testified that the proposed construction schedule to begin April 2013 and end in May 2014 was acceptable to the City of Cheyenne. Mayor Kaysen also testified that he anticipated Black Hills would make every effort to effectively landscape the Project in order to protect the integrity and value of the Wyoming Hereford Ranch. *Tr. of Proc.*, pp. 159-164.

vi. Laramie County Commission's Witness

50. Mark Voss (Voss) is the Laramie County Attorney. Voss expressed some concern about the impact to the roads in the area of the Project, but stated the County Commissioners are in support of the Project. Voss also testified that the Laramie County Commissioners came to an agreement with the City of Cheyenne and supported the Division's recommendation that impact assistance funds be divided, with 70 percent going to the City of Cheyenne and 30 percent to Laramie County. *Tr. of Proc., pp. 165-166.*

vii. Wyoming Building and Construction Trades Council

51. Dennis Hemenover (Hemenover) testified on behalf of the Wyoming Building and Trades Council (WBCTC). According to Hemenover, the WBCTC supports the Project and believes it will add value to the power and gas industries. *Tr. of Proc., p. 169.*

52. All findings of fact set forth in the following conclusions of law section shall be considered a finding of fact and are fully incorporated into this paragraph.

V. CONCLUSIONS OF LAW

A. Principles of Law

53. Black Hills bears the burden of proof in the proceedings herein. "The general rule in administrative law is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof." *JM v. Dep't of Family Servs.*, 922 P.2d 219, 221 (Wyo. 1996) (citation omitted); *Penny v. State ex rel. Wyo. Mental Health Prof. Licensing Bd.*, 120 P.3d 152, (Wyo. 2005).

54. Wyoming Statute § 35-12-109(a) (LexisNexis 2011) provides that an application for a permit shall be filed with the Division and contain the following information:

- (i) The name and address of the applicant, and, if the applicant is a partnership, association or corporation, the names and addresses of the managers designated by the applicant responsible for permitting, construction or operation of the facility;
- (ii) The applicant shall state that to its best knowledge and belief the application is complete when filed and includes all the information required by W.S. 35-12-109 and the rules and regulations, except for any requirements specifically waived by the council pursuant to W.S. 35-12-107;
- (iii) A description of the nature and location of the facility;
- (iv) Estimated time of commencement of construction and construction time;
- (v) Estimated number and job classifications, by calendar quarter, of employees of the applicant, or contractor or subcontractor of the applicant, during the construction phase and during the operating life of the facility. Estimates shall include the number of employees who will be utilized but who do not currently reside within the area to be affected by the facility;
- (vi) Future additions and modifications to the facility which the applicant may wish to be approved in the permit;
- (vii) A statement of why the proposed location was selected;
- (viii) A copy of any studies which may have been made of the environmental impact of the facility;
- (ix) Inventory of estimated discharges including physical, chemical, biological and radiological characteristics;
- (x) Inventory of estimated emissions and proposed methods of control;
- (xi) Inventory of estimated solid wastes and proposed disposal program;
- (xii) The procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the estimated emissions or discharges;
- (xiii) An evaluation of potential impacts together with any plans and proposals for alleviating social and economic impacts upon local governments or special districts and alleviating environmental impacts which may result from the proposed facility. The evaluations, plans and proposals shall cover the following:

- (A) Scenic resources;
- (B) Recreational resources;
- (C) Archaeological and historical resources;
- (D) Land use patterns;
- (E) Economic base;
- (F) Housing;
- (G) Transportation;
- (H) Sewer and water facilities;
- (J) Solid waste facilities;
- (K) Police and fire facilities;
- (M) Educational facilities;
- (N) Health and hospital facilities;
- (O) Water supply;
- (P) Other relevant areas
- (Q) Agricultural;
- (R) Terrestrial and aquatic wildlife;
- (S) Threatened, endangered and rare species and other species of concern identified in the state wildlife action plan as prepared by the Wyoming game and fish department.

- (xiv) Estimated construction cost of the facility;
- (xv) What other local, state or federal permits and approvals are required;
- (xvi) Compatibility of the facility with state or local land use plans, if any;
- (xvii) Any other information the applicant considers relevant or required by council rule or regulation;

(xviii) A description of the methods and strategies the applicant will use to maximize employment and utilization of the existing local or in-state contractors and labor force during the construction and operation of the facility;

(xix) Certification that the governing bodies of all local governments which will be primarily affected by the proposed facility were provided notification, a description of the proposed project and an opportunity to ask the applicant questions at least thirty (30) days prior to submission of the application;

(xx) For facilities permitted pursuant to W.S. 35-12-102(a)(vii)(E) or (F), a site reclamation and decommissioning plan, which shall be updated every five (5) years, and a description of a financial assurance plan which will assure that all facilities will be properly reclaimed and decommissioned. All such plans, unless otherwise exempt, shall demonstrate compliance with any rules or regulations adopted by the council pursuant to W.S. 35-12-105(d) and (e);

(xxi) Information demonstrating the applicant's financial capability to construct, maintain, operate, decommission and reclaim the facility.

55. Wyoming Statute § 35-12-110(b) (LexisNexis 2011) requires that the division shall obtain information and recommendations from the following state agencies relative to the impact of the proposed facility as it applies to each agency's area of expertise:

(i) Wyoming department of transportation;

(ii) Public service commission;

* * *

(iv) Game and fish department;

(v) Department of health;

(vi) Department of education;

(vii) Office of state engineer;

* * *

(ix) Wyoming state geologist;

(x) Wyoming department of agriculture;

(xi) Department of environmental quality;

* * *

* * *

(xiv) The University of Wyoming;

(xv) Department of revenue;

(xvi) The Wyoming business council

(xvii) Department of workforce services;

(xviii) Office of state lands and investments;

(xix) Department of employment;

(xx) Department of state parks and cultural resources;

(xxi) Department of fire prevention and electrical safety;

(xxii) Department of family services;

(xxiii) Oil and gas conservation commission.

Id.

56. Wyoming Statute § 35-12-110(c) (LexisNexis 2011) provides the information required by subsection (b) of this section shall be provided by the agency from which it is requested not more than sixty (60) days from the date the request is made and shall include opinions as to the advisability of granting or denying the permit, together with reasons therefore, and recommendations regarding appropriate conditions to include in a permit, but only as to the areas within the expertise of the agency. Each agency which has regulatory authority over the proposed facility shall provide to the council a statement defining the extent of that agency's jurisdiction to regulate impacts from the facility, including a statement of the agency's capability

to address cumulative impacts of the facility in conjunction with other facilities. The statement of jurisdiction from each agency is binding on the council.

57. Wyoming Statute § 35-12-110(d) (LexisNexis 2011) provides that upon receipt of an application, the director shall conduct a review of the application to determine if it contains all the information required by Wyoming Statute 35-12-109 and the rules and regulations. If the director determines that the application is incomplete, he shall within thirty (30) days of receipt of the application notify the applicant of the specific deficiencies in the application. The applicant shall provide the additional information necessary within thirty (30) days of a receipt of a request for additional information from the director.

58. Wyoming Statute § 35-12-110(f) (LexisNexis 2011) provides that not more than ninety (90) days after receipt of an application for a permit, the director shall:

(i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;

(ii) Notify the applicant and local governments of the hearing;

(iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and

(iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-12-111, 35-12-112 and 35-12-114 apply to the hearing.

59. Pursuant to Wyoming Statute § 35-12-111 (a) (LexisNexis 2011), the parties to a permit proceeding include:

(i) The applicant;

(ii) Each local government entitled to receive service of a copy of the application under W.S. 35-12-110(a)(i);

(iii) Any person residing in a local government entitled to receive service of a copy of the application under W.S. 35-12-110(a)(i) and any nonprofit organization with a Wyoming chapter, concerned in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located. In order to be a party the person or organization must file with the office a notice of intent to be a party not less than twenty (20) days before the date set for the hearing.

(b) Any party identified in paragraph (a)(iii) of this section waives his right to be a party if he does not participate orally at the hearing. Any party identified in paragraph (a)(ii) of this section waives its right to be a party unless the local government files a notice of intent to be a party with the office not less than twenty (20) days before the date set for the hearing.

(c) Any person may make a limited appearance in the proceeding by filing a statement in writing with the council prior to adjournment of the hearing. A statement filed by a person making a limited appearance shall become part of the record and shall be made available to the public. No person making a limited appearance under this subsection is a party to the proceeding.

(d) No state agency other than the industrial siting division shall act as a party at the hearing. Members and employees of all other state agencies and departments may file written comments prior to adjournment of the hearing but may testify at the hearing only at the request of the council, the industrial siting division or any party.

(e) Any person described in W.S. 35-12-111(a)(ii) or (iii) who participated in the public hearing under W.S. 35-12-107 may obtain judicial review of a council decision waiving all or part of the application requirements of this chapter.

60. Pursuant to Wyoming Statute § 35-12-113 (LexisNexis 2011), the council shall:

(a) Within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate. The council shall not consider the imposition of conditions which address impacts within the area of jurisdiction of any other regulatory agency in this state as described in the information provided in W.S. 35-12-110(b),

unless the other regulatory agency requests that conditions be imposed. The council may consider direct or cumulative impacts not within the area of jurisdiction of another regulatory agency in this state. The council shall grant a permit either as proposed or as modified by the council if it finds and determines that:

(i) The proposed facility complies with all applicable law;

(ii) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants or expected inhabitants in the affected area;

(iii) The facility will not substantially impair the health, safety or welfare of the inhabitants

(iv) The applicant has the financial resources to construct, maintain, operate, decommission and reclaim the facility.

(b) No permit shall be granted if the application is incomplete.

(c) If the council determines that the location of all or part of the proposed facility should be modified, it may condition its permit upon that modification, provided that the local governments, and persons residing therein, affected by the modification, have been given reasonable notice of the modification.

(d) The council shall issue with its decision, an opinion stating in detail its reasons for the decision. If the council decides to grant a permit for the facility, it shall issue the permit embodying the terms and conditions in detail, including the time specified to commence construction, which time shall be determined by the council's decision as to the reasonable capability of the local government, most substantially affected by the proposed facility, to implement the necessary procedures to alleviate the impact. A copy of the decision shall be served upon each party.

(e) A permit may be issued conditioned upon the applicant furnishing a bond to the division in an amount determined by the director from which local governments may recover expenditures in preparation for impact to be caused by a facility if the permit holder does not complete the facility proposed. The permit holder is not liable under the bond if the holder is prevented from

completing the facility proposed by circumstances beyond his control.

(f) Within ten (10) days from the date of the council's decision, a copy of the findings and the council's decision shall be served upon the applicant, parties to the hearing and local governments to be substantially affected by the proposed facility and filed with the county clerk of the county or counties to be primarily affected by the proposed facility. Notice of the decision shall be published in one (1) or more newspapers of general circulation within the area to be affected by the proposed facility.

Id.

61. The Industrial Development Information and Siting Rules and Regulations,

Chapter I provide:

Section 9. Application Information to be Submitted.

In accordance with W.S. 35-12-109, the application shall contain the information required by the act with respect to both the construction period and online life of the proposed industrial facility and the following information the Council determines necessary:

(a) The application shall state the name, title, telephone number, mailing address, and physical address of the person to whom communication in regards to the application shall be made.

(b) A description of the specific, geographic location of the proposed industrial facility. The description shall include the following:

(i) Preliminary site plans at an appropriate scale indicating the anticipated location for all major structures, roads, parking areas, on-site temporary housing, staging areas, construction material sources, material storage piles and other dependent components; and

(ii) The area of land required by the industrial facility and a land ownership map covering all the components of the proposed industrial facility.

(c) A general description of the major components of the proposed industrial facility such as boilers, steam generators, turbine generators, cooling facilities, production equipment, and dependent components.

(d) A description of the operating nature of the proposed industrial facility, the expected source and quantity of its raw materials, and energy requirements. The description shall include, but is not limited to, the following:

(i) The proposed on-line life of the industrial facility and its projected operating capacity during its on-line life; and, for transmission lines exceeding one hundred fifteen thousand (115,000) volts included as part of the proposed industrial facility, a projection indicating when such lines will become insufficient to meet the future demand and at what time a need will exist to construct additional transmission lines to meet such demands; and

(ii) Products needed by facility operations and their source.

(e) A statement that shall be a reasonable estimate of the calendar quarter in which construction of the industrial facility will commence, contingent upon the issuance of a permit by the council.

(f) A statement that shall be a reasonable estimate of the maximum time period required for construction of the industrial facility and an estimate of when the physical components of the industrial facility will be ninety (90) percent complete, and the basis for that estimate.

(g) The applicant shall identify what it deems to be the area of site influence and recommends the local governments primarily affected by the proposed industrial facility as defined in sections 2(b) and (c), respectively, of these regulations. The immediately adjoining area(s) and local governments shall also be identified with a statement of the reasons for their exclusion from the list of area(s) or local governments primarily affected by the proposed industrial facility.

(h) Using tables, provide a detailed tally of the estimated work force to construct and to operate the facility showing the following information:

(i) All workers providing direct labor and direct support; (safety, supervision, inspection) at the work site;

(ii) Information by calendar quarter and year from the commencement of construction through the first year of operation;

(iii) Identify and provide totals of those which are construction and those which are permanent;

(iv) Identify and provide quarterly totals of the number, job classification and recurrence; of those which are estimated to be in-migrating (from outside the study area at the time of hire for the facility) and of those pre-existing employees of the applicant engaged in construction;

(v) Provide estimates of wages; and

(vi) Provide estimates of paid benefits including per diem and paid fees.

(i) An evaluation of the social and economic conditions in the area of site influence. The social and economic conditions shall be inventoried and evaluated as they currently exist, projected as they would exist in the future without the proposed industrial facility and as they will exist with the facility. Prior to submitting its application, each applicant shall confer with the administrator to define the needed projections, the projection period and issues for socioeconomic evaluation. The evaluation may include, but is not limited to:

(i) Land use designation of the site location, including whether or not the use of the land by the industrial facility is consistent with state, intrastate, regional, county and local land use plans, if any. The analysis shall include the area of land required and ultimate use of land by the industrial facility and reclamation plans for all lands affected by the industrial facility or its dependent components;

(ii) A study of the area economy including a description of methodology used. The study may include, but is not limited to, the following factors:

- (A) Employment projections by major sector;
- (B) Economic bases and economic trends of the local economy;
- (C) Estimates of basic versus non-basic employment;
- (D) Unemployment rates;

(iii) A study of the area population including a description of methodology used. The study may include, but is not limited to, an evaluation of demographic characteristics for the current population and projections of the area population without the proposed industrial facility;

(iv) An analysis of housing facilities by type, including a quantitative evaluation of the number of units in the area and a discussion of vacancy rates, costs, and rental rates of the units. The analysis should include geographic location, including a quantitative evaluation of the number of units in the area required by the construction and operation of the proposed industrial facility and a discussion of the effects of the proposed industrial facility on vacancy rates, costs, and rental rates of the units. Specific housing programs proposed by the applicant should be described in detail;

(v) An analysis of transportation facilities containing discussion of roads (surface, type), and railroads (if applicable). An analysis of effects on transportation facilities including effects on service levels of roads, haul routes for materials and supplies, increased rail traffic at grade crossings, and intersection of new access roads with existing roads;

(vi) Public facilities and services availability and needs, which may include, but are not limited to:

(A) Facilities required for the administrative functions of government;

(B) Sewer and water distribution and treatment facilities including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(C) Solid waste collection and disposal services including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(D) Existing police and fire protection facilities including specific new demands or increases in service levels created by the proposed industrial facility;

(E) An analysis of health and hospital care facilities and services;

(F) Human service facilities, programs and personnel, including an analysis of the capacity to meet current demands and a description of problems, needs, and costs of increasing service levels;

(G) An analysis of user-oriented community recreational facilities and programs and urban outdoor recreational opportunities including descriptions of recreational

resources, locations of the recreational resources, and the types of recreational resources and an analysis of outdoor, resource-oriented recreational opportunities including locations and types of the recreational resources;

(H) Educational facilities, including an analysis based upon enrollment per grade, physical facilities and their capacities and other relevant factors with an assessment of the effect that the new population will have on programs and facilities;

(I) Problems due to the transition from temporary, construction employees to operating workforces should be addressed. Changes in levels of services required as a result of the proposed industrial facility should specifically be addressed. Cumulative impacts of the proposed industrial facility and other developments in the area of site influence should be addressed separately. This assessment should examine increased demands associated with the construction and operational phases of the proposed industrial facility, as well as effects on the level of services as the construction or operational workforces decline;

(J) A copy of any studies that may have been made of the social or economic impact of the industrial facility.

(vii) A fiscal analysis over the projection period for all local governments and special districts identified by the applicant as primarily affected by the proposed industrial facility, including revenue

structure, expenditure levels, mill levies, services provided through public financing, and the problems in providing public services. The analysis may include, but is not limited to:

(A) An estimate of the cost of the facility.

(B) An estimate of the cost of facility construction subject to sales and use taxes.

(C) An estimate of sales and use taxes by year for each county if the facility is located in more than one county.

(D) Estimates of impact assistance payments which will result from the project.

(E) An estimate of the cost of components of the industrial facility which will be included in the assessed value of the industrial facility for purposes of ad valorem taxes for both the construction and operations periods. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county.

(j) An evaluation of the environmental impacts. The items shall be noted and evaluated as they would exist if the proposed industrial facility were built. Each evaluation should be followed by a brief explanation of each impact and the permit issued that regulates the impact. If the impact is not regulated by a state regulatory agency or federal land management agency, the application must include plans and proposals for alleviating adverse impacts. Cumulative impacts of the proposed industrial facility and other projects in the area of site influence should be addressed separately.

(k) The applicant shall describe the procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or

recreational facilities which may be adversely affected by the proposed facility, including:

(i) Impact controls and mitigating measures proposed by the applicant to alleviate adverse environmental, social and economic impacts associated with construction and operation of the proposed industrial facility;

(ii) Monitoring programs to assess effects of the proposed industrial facility and the overall effectiveness of impact controls and mitigating actions.

Id.

B. Application of Principles of Law

62. This Council has considered all the evidence and testimony presented at the July 10, 2012, evidentiary hearing. Through the evidence and testimony, this Council finds that Black Hills has shown, by a preponderance of the evidence, that it filed a complete Application with the Division regarding the proposed Cheyenne Prairie Generating Station Project and included the requirements in Wyoming Statute § 35-12-109(a) and Chapter 1, Section 9 of the Rules and Regulations, and that the proposed Project complies with all applicable law.

63. Black Hills has shown, through the testimony of all its witnesses and exhibits, that the proposed Project will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants in the affected area. The testimonies of Stege, Lux, Tatar, Hammond, and Fassett all indicate this is the case.

64. The concerns expressed by the Wyoming Hereford Ranch have been strongly considered by this Council. The Council finds the testimony of Lux was compelling regarding the willingness of Black Hills to appropriately landscape the area around the Project to mitigate

the visual and audio impacts. The Wyoming Supreme Court has addressed the issue and held that, “[a]n examination of the factors included makes manifest the proposition that the Industrial Siting Council is to be concerned with the collective not individual welfare of the present and expected inhabitants.” *Laramie River Conservation Council v. Indus. Siting Council*, 588 P.2d 1241, 1253 (Wyo. 1978). Considering the collective, not individual, welfare of the present and expected inhabitants, the Council concludes that the Project will not result in a substantial impairment of health, safety or welfare of the present or proposed inhabitants of the areas of site influence.

65. Finally, this Council finds that through the testimony of Nichols, as well as Addendum #1, Black Hills established it has the financial resources to construct, maintain, operate, decommission, and reclaim the facility pursuant to the requirement of Wyoming Statute §35-12-113(a)(iv).

66. With regard to the allocation of the impact assistance funds, this Council finds the Division’s recommendation to allocate 70 percent of the impact funds to the City of Cheyenne and 30 percent to Laramie County is reasonable.

DECISION

Pursuant to the authority vested in the Industrial Siting Council by Wyoming Statute § 35-12-113 (LexisNexis 2011), this Council hereby **grants** the Industrial Siting Permit Application filed by Black Hills Corporation to construct and operate a natural gas-fired generating power plant to be located in the City of Cheyenne in Laramie County, Wyoming.

The Council specifically finds, with the imposition of the following conditions, that:

- (1) The proposed facility complies with all applicable law;

(2) The facility will not pose a threat of serious injury to the environment nor to the social or economic condition of inhabitants or expected inhabitants of the affected area;

(3) The facility will not substantially impair the health, safety or welfare of the inhabitants;

(4) The Applicant has the financial resources to construct, maintain, operate, decommission, and reclaim the facility.

Pursuant to its authority, this Council allocates the impact assistance funds as follows:

City of Cheyenne, Wyoming: 70%

Laramie County, Wyoming: 30%

Finally, pursuant to its authority, this Council places the following terms and conditions on the facility as reflected in *State's Exhibits 1 and 2*:

Condition #1. Black Hills Corporation (Permittee) shall obtain and maintain all required State and local permits and approvals in accordance with Wyoming Statute 35-12-109(a)(xv), 35-12-113(a) (i) and 35-12-115 during the term of this permit.

Condition #2. Permittee shall commence to construct within three years following the date of the award of this permit.

Condition #3. Before engaging in any activity over which the Industrial Siting Council (ISC) has jurisdiction, which could significantly affect the environment external to Permittee's permit area, or the social, or economic, or environmental conditions of the area of site influence and which was not evaluated in the permit process, the Permittee shall prepare and file an evaluation of such activity with the Industrial Siting Division (ISD). When in the opinion of the Director of the Department of Environmental Quality (Director), the evaluation indicates that such activity may result in significant adverse impacts that were not considered in the permit, the Permittee shall file a permit amendment in accordance with Wyoming Statute 35-12-106.

Condition #4. The Permittee shall develop a written compliance plan and program to ensure compliance with voluntary commitments of this Permit, testimony, agreements with local governments, and these permit conditions. A compliance coordinator shall be designated and identified to the ISD prior to the onset of construction. This individual shall present himself/herself and meet with the ISD staff before construction commences and review the permit requirements with the ISD staff. This coordinator shall assume the

responsibility for assuring that contractors and subcontractors are aware of and enable the Permittee to meet all permit requirements.

Condition #5. The ISC may review any adverse social, economic, or environmental impacts either within or outside the area primarily affected that are attributed to the Permittee:

a. Which adversely affect the current level of facilities or services provided by the local community;

b. Which cannot be alleviated by financing through ordinary sources of revenue, given due consideration to bonding history and capacity of the jurisdiction involved;

c. Which were not evaluated or foreseen at the time the permit was granted and can be attributed in whole or in part to the permitted facility; and

d. Which are not or cannot be resolved by voluntary measures by industrial representatives in the community.

Then by order issued in accordance with the Wyoming Administrative Procedures Act, the ISC may require additional mitigation by the Permittee in cooperation with other basic industries [existing and future] provided that:

a. A local government has requested mitigation assistance; and

b. Such adverse impacts were determined to be a result of the activities of the Permittee.

Permittee shall be required to assist in mitigating any impacts that result from construction or operation of the Cheyenne Prairie Generating Station (Facility), including those resulting from direct and indirect employment. For purposes of determining additional mitigation measures by the Permittee, consideration shall be given to previous mitigation efforts. However, in any event, Permittee shall not be required to provide mitigation in excess of the proportion that the Permittee's activities are contributing to the total impacts within the impacted area (as defined by W. S. 35-12-102).

Condition #6. The Permittee shall give written notice to the ISD when construction commences.

Condition #7. The Permittee shall give written notice to the ISD when the physical components of the Facility are 90 percent complete.

Condition #8. As a means of adhering to Wyoming Statute 35-12-109 (a) (xviii) to provide preference for local and resident hiring, the Permittee, contractors and subcontractors shall follow these hiring guidelines:

a. Procedures to foster local hiring shall be incorporated into the compliance plan.

b. Job postings shall be filed with the local Workforce Center.

Condition #9. The Permittee shall submit an annual report to ISC for the years or portion of a year that includes construction and again for the first year of operation of the facility for each phase. The annual report shall include:

a. Efforts to assure compliance with voluntary commitments, mitigation agreements with local governments, and conditions contained in this permit;

b. The extent to which construction has been completed in accordance with the approved schedule;

c. Any revised time schedules or time tables for construction, operations, and reclamation, and a brief summary of the construction, reclamation, and other activities that will occur in the next one-year period; and

d. Demonstration of compliance with permit conditions.

Condition #10. In order that the ISD may monitor Permittee's performance, the Permittee shall institute the following monitoring program that shall be recorded on a monthly basis and reported to the ISD on a quarterly basis through the construction period of each phase. Monthly data will be in a form prescribed by ISD and shall include:

a. The average and peak number of employees for the Permittee, contractors and subcontractors.

b. Employee city and state of residency at the time of hire and the employee city and state while employed and type of residence while employed.

c. The number of new students enrolled by grade level and school district who are related to Permittee employees, identified as either local (no change of residence) and in-migrants.

d. Wyoming resident versus non-resident mix of workforce.

e. An updated construction schedule in the form of Figure 3-1, Figure 3-2 and Table 3-1 as shown on pages 3-3 through 3-6 of the *Section 109 Permit Application: Cheyenne Prairie Generating Station* (Application).

Condition #11. The Permittee shall notify the ISD in advance of proposed changes to the scope, purpose, size or schedule of the Facility. The Director may authorize such changes if he or she finds that:

a. The change should not result in any significant adverse environmental, social, and economic impacts in the area of site influence; and

b. No party nor Council Member has requested that the matter be heard before the Council in accordance with the permit procedures of Wyoming Statute 35-12-106 (c) and (d).

The Director will provide public notice of the proposed change and his intent to approve the request.

Condition #12. The Permittee will notify the ISD in advance and provide updates to the On Site Construction Workforce Schedule, Table 3-1 on page 3-6 of the Application, and all other pages of the Application where changes are expected to occur if:

a. Actual on-site workforce during construction is expected to exceed the peak number estimated in the Application by more than fifteen percent (15%);

b. The Permittee wishes to make changes to the lodging plan as described in the Application.

The Director may authorize such changes or refer the matter to the Siting Council.

Condition #13. As may be subsequently required by the Director, the Permittee shall pay a fee based on the estimated costs to prepare, schedule, and conduct a special hearing or meeting of the Council to remedy any action or inaction by the Permittee. Unused fees shall be refunded to the Permittee.

Condition #14. When the Project is nearing completion, Permittee shall place notice to that effect in the newspapers in the general area of the Facility.

Condition #15. All commitments made in the Application, testimony, exhibits, mitigative agreements with local governments, and correspondence with state agencies are incorporated into this permit and will be included in the compliance plan identified in standard permit condition #4.

ORDER

IT IS THEREFORE ORDERED that the Industrial Siting Permit Application known as Black Hills Corporation: Cheyenne Prairie Generating Station, as submitted by the Applicant and modified by this Council and set forth above in Permit Conditions #1 through #15 is granted.

DONE this 9th day of August, 2012.

***/s/
Signature on file***

Shawn Warner, Chairman
Industrial Siting Council
Herschler Building, Fourth Floor West
122 West 25th Street
Cheyenne, Wyoming 82002
(307) 777-7170

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing document was served upon the Department of Environmental Quality, Industrial Siting Division and a true and correct copy was served upon the parties by mailing same, postage prepaid, on the 10 day of August, 2012, addressed to the following:

Wyoming Department of Environmental Quality - (ORIGINAL)
Industrial Siting Division
Attn: Tia Raamot, Principal Economist
Herschler Building, Fourth Floor West
122 West 25th Street
Cheyenne, Wyoming 82002

Office of Administrative Hearings
State of Wyoming
2020 Carey Ave. 5th Floor
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The Board of Laramie County Commissioners
Attn: Mark Voss
310 West 19th Street, Suite 300
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Kara Brighton
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/s/
Signature on file

Industrial Siting Division