IN THE OFFICE OF ADMINISTRATIVE HEARINGS

UPON REFERRAL FROM THE
WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
INDUSTRIAL SITING DIVISION

STATE OF WYOMING

IN THE MATTER OF THE INDUSTRIAL	)	
SITING PERMIT APPLICATION OF	)	DOCKET NO. DEQ/ISC 07-02
BLACK HILLS CORPORATION	)	
WYGEN III PROJECT	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THIS MATTER came before the Industrial Siting Council (Council) on January 15, 2008 and reconvened on January 16, 2008, for evidentiary hearing and the record was closed on that date. Council members present at the hearing included Dave Dunham, Chairman, Darrell Offe, Peter Brandjord, Jim Miller and Gregg Bierei. Due to inclement weather, Council members Sandy Shuptrine and Shawn Warner were unable to attend the evidentiary hearing. Bridget Hill, Senior 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 proceeding. The Applicant, Black Hills Corporation appeared by and through its counsel, John A. Sundahl. The Industrial Siting Division (Division) appeared by and through its counsel, Senior Assistant Attorney General, John S. Burbridge. Seven other parties participated in the evidentiary hearing including Doug Thomas on behalf of the Wyoming Building and Construction Trades Council, Joe Baron on behalf of Crook County and the Towns of Moorcroft and Pine Haven, Ralph Palmer on behalf of Campbell County, Charlie Anderson on behalf of the City of Gillette and Ruth Benson on behalf of the Campbell County Economic Development Corporation. Wygen III's Exhibits 1, 4 through 12 and 14 through 20, the Division's Exhibits 1 and 2, Crook

County's Exhibits 1 and 2, Campbell County's Exhibits 1, 2 and 3 and the City of Gillette's Exhibit 1 were admitted for purposes of the evidentiary hearing. The Council has considered the evidence and argument of the parties, and makes the following findings:

I. JURISDICTION

Wyo. Stat. Ann. § 35-12-106(a) (LEXIS 2007) 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."

"Industrial facility" or "facility" means any industrial facility with an estimated construction cost of at least one hundred sixty three million dollars ($163,000,000.00). Wyo. Stat. Ann. § 35-12-102(a)(vii) (LEXIS 2007).

Wyo. Stat. Ann. § 35-12-110(d) (LEXIS 2007) 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.

Wyo. Stat. Ann. § 35-12-110(f) (LEXIS 2007) 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.

Wyo. Stat. Ann. § 35-12-113(a) (LEXIS 2007) 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 October 22, 2007, Black Hills Corporation filed an application with the Division for a permit to allow construction and operation of the Wygen III power plant project to be located in Campbell County, Wyoming, near the town of Gillette. The total construction cost is estimated at approximately $255 million. Therefore, this Council has jurisdiction to hear and decide this matter.

II. STATEMENT OF THE CASE

Black Hills Corporation filed its application for an industrial siting permit on October 22, 2007 requesting a permit to allow construction and operation of Wygen III, a coal-fired generating facility with a 100 megawatt net capacity near Gillette, Wyoming. The Division's staff thereafter determined that Black Hills Corporation's application was complete and in full compliance with Wyoming law and is ready to issue a permit. Seven separate entities filed notices to become a party to these proceedings and all seven parties appeared at the January 15 and 16, 2008 evidentiary hearing. Although all parties expressed various concerns about the impact of the project, all parties were in favor of issuing the permit.

III. ISSUES AND CONTENTIONS

The sole issue in this case is whether Black Hills Corporation has proven, by a preponderance of the evidence, that the industrial siting permit application regarding the Wygen III project meets the requirements of the Wyoming Industrial Development Information and Siting Act, Wyo. Stat. Ann. § 35-12-113 (LEXIS 2007) and the Industrial Development Information and Siting Rules and Regulations, Chapter 1, Section 9(a) (Division's Rules) governing the proposed coal-fired electric facility. If so, the Council must decide what, if any, conditions to place on the industrial siting permit.

IV. FINDINGS OF FACT

1. On October 22, 2007, Black Hills Corporation filed an application with the Division requesting a permit to allow construction and operation of a coal-fired electrical generating facility with a 100 megawatt net capacity referred to as Wygen III. The proposed project would be constructed at the existing Neil Simpson Energy Complex approximately eight miles east of Gillette, in Campbell County, Wyoming.

2. Black Hills Corporation and the Division conducted a jurisdictional meeting on May 9, 2007, prior to Black Hills Corporation filing its application. The Division reviewed the financial budget for the Wygen III Project and determined that the cost of the Project exceeded the current statutory dollar threshold of $163,000,000.00. *Wygen III's Exhibit 1.*

3. After receiving the October 22, 2007 application, the Division staff thereafter published notice of the contested case hearing on Black Hills Corporation's application for an industrial siting permit in the Casper Star Tribune on October 27 and 28, 2007 and in the Gillette News Record on October 26 and 29, 2007. *State's Exhibit 1, p. 4.*

4. The Division received nine requests to become parties in this matter. Seven requests were granted and those parties included the Wyoming Building and Construction Trades Council, Crook County, the Town of Moorcroft, the Town of Pine Haven, Campbell County, the City of Gillette and the Campbell County Economic Development Corporation. The Towns of Hulett and Sundance, Wyoming were rejected because they were not located in the primarily affected area.

5. The Council received two written statements, a limited appearance statement from the Powder River Basin Resource Council and a statement from the State Historic Preservation Office pursuant to Wyo. Stat. Ann. § 35-12-111(d) (LEXIS 2007). Both were received at the hearing, considered by this Council and will be discussed in further detail below.

6. Mark Lux (Lux), Vice President/General Manager of power delivery testified regarding Black Hills Corporation's history in Campbell County. According to Lux, Black Hills Corporation began operating in Campbell County in the 1950's with the oldest coal mine operating today in Wyoming, the Wyodak Coal Mine located adjacent to the sister units of the proposed Wygen III project. Over the past 50 years, Black Hills Corporation has been involved in large scale power plants including the Wyodak Power Plant (a 350 megawatt power plant), Neil Simpson Unit I, Neil Simpson Unit II, Wygen I and Wygen II. Lux testified regarding Black Hills Corporation's efforts in meeting evolving environmental challenges including adding pollution control equipment to the power facilities. Lux proudly spoke of an EPA Clean Air Award Black Hills Corporation received for the Wygen I power plant. Black Hills Corporation is committed to reclamation, mercury control technology and a history of safe operations. Black Hills Corporation currently employs 200 workers at the coal mine and power energy complex. *Tr. of Proceedings, pp. 132 through 137.*

7. Ryan Henning (Henning), Project Manager of CH2M Hill, was instrumental in preparing the industrial siting permit application as reflected in *Wygen III's Exhibit 1.* According to Henning, construction of the Wygen III project is scheduled to begin in the first quarter of 2008. It is anticipated that construction will be 90 percent complete in the fourth quarter of 2009, with the initial fire occurring in the first quarter of 2010. The anticipated employment for construction of the Wygen III project consists of a workforce of approximately 145 construction jobs over a 29 month construction period to include skilled laborers, including earth workers, steel workers, pipe fitters, welders, instrumentation controls and high quality, trained construction workers. The workforce needs will peak out at about 320 people. A permanent operations workforce for the project is anticipated at 15 to 18 full-time employees, including Unit and Plant Operators, an Instrument Technician, an Administrator and a Plant Engineer. *Tr. of Proceedings, p. 26; 86; 93.*

8. Henning also testified that a socioeconomic analysis and environmental review were conducted as they pertain to the Industrial Siting Act and Division's Rules. The analysis included water treatment, sanitary waste disposal, solid waste collection, housing, police and fire protection, medical facilities, schools, recreational facilities, transportation systems, mental health facilities and social service facilities. Based upon his analysis, Henning determined that the facility would not pose a threat of serious injury to the social or economic condition of the inhabitants, nor would the project impair the health, safety or welfare of the inhabitants. However, early in the project, a housing impact was identified in the region. *Tr. of Proceedings, pp. 26 through 28.*

9. According to Henning, Rick Kaysen (Siting Coordinator) and Norm Davies (Project Director), of Black Hills Corporation, in order to deal with the housing issue, a multi-

tiered housing plan was developed. The housing plan includes an agreement with Iseman Homes, which has a local office in Campbell County, to purchase up to 50 manufactured homes, and also an agreement with the Cozy Motel, which is located in Moorcroft, Wyoming. Additionally, a Memorandum of Understanding between Black Hills Corporation and the Public Land Board provides for the two parties to work out an agreement about the design, construction and operation of a site already at the Cam-Plex property, located approximately three miles from the Neil Simpson Energy Complex, that can be used by Black Hills Corporation for housing during construction. *Tr. of Proceedings, pp. 30; 40; 49 - 56; 114, 115; 122; 131; Wygen III's Exhibits 14 and 20.*

10. The impact on water and sewer facilities for the Wygen III project was addressed by Corky Stetson (Stetson), President and owner of Stetson Engineering and Mark Lux. Stetson's unchallenged testimony showed that the City of Gillette's existing facilities have adequate capacity to handle the projected usage and will not impact the city's utilities. Lux' unchallenged testimony reflected a well permit has been issued by the State Engineer's Office for Black Hills Corporation to drill a well to support the Wygen III project. Additionally, solid waste disposal was addressed by Lux, who received a letter from the Campbell County Public Works Director regarding the capacity of the landfill. *Tr. of Proceedings, pp. 124; 142; Wygen III's Exhibits 7and 9.*

11. According to Norm Davies, because health and safety are a big priority for Black Hills Corporation, there will also be emergency response teams at the facility. Black Hills Corporation's accident rate, compared to the national average in the United States is currently half the average. Drug testing will also be utilized to provide a safer work environment. *Tr. of Proceedings, p. 85 through 86.*

12. Black Hills Corporation, in collaboration with the Wyoming Game and Fish Department, will provide fish and wildlife orientation training, a presentation on hunting and fishing licensing requirements, appropriate behavior regarding living near wildlife, and hunter safety training to all people assigned to work at the construction site. *Wygen III's Exhibits 14 and 15; Tr. of Proceedings, p. 101, 102.*

13. Black Hills Corporation also received a letter of support from the local weed and pest district. The letter expressed no concerns over noxious weeds as a result of construction of the proposed Wygen III project and commended Black Hills Corporation for having been very proactive in managing this problem in the past. *Exhibit 18.*

14. Environmental concerns from the proposed project were addressed by Mark Lux. According to Lux' unchallenged testimony, an air quality permit was issued by the Department of Environmental Equality. No environmental organizations challenged the permit or appealed the issuance of the permit. Lux further testified in detail as to the environmental technology proposed to be used on the Wygen III project, which he described as "best available control technology" or BACT analysis. *Tr. of Proceedings, pp. 143-150.*

15. This Council received a written statement from the Powder River Basin Resource Council (PRBRC) requesting the industrial siting permit be denied because Wygen III will "result in a significant detriment to, or significant impairment of, the environment or the social and economic conditions of the present or expected inhabitants." PRBRC made no attempt to become a party to these proceedings. PRBRC's bald statements of environmental impacts and the availability of more efficient coal technology, without supporting evidence or testimony, falls far short in showing the alleged social, economic and environmental impacts it asserted in its

letter, or overcoming the sworn testimony of Black Hills Corporations' witnesses regarding this issue.

16. The Council also received a written statement from the State Historic Preservation Office, requesting a condition be added to the permit that requires Black Hills Corporation to immediately cease construction if cultural resources are discovered. This Council declined adding the requested condition to the permit because Black Hills Corporation stated in its application (which is taken as binding) that it would take action if artifacts were discovered during construction and also because the Industrial Siting Division has no way to enforce the condition. *See Tr. of proceedings, testimony of Tom Schroeder, pp. 222-223.*

17. The recommendation for the distribution of impact assistance funds is 80 percent to Campbell County and 20 percent to Crook County. Additionally, each county possesses the authority to distribute, from the approved portion of funding, to their respective municipalities as follows: Campbell County - 40%; City of Gillette - 40%; Crook County - 4%; Town of Moorcroft – 6%; Town of Pine Haven – 4%; Town of Hulett – 2%; Town of Sundance – 4%. *See State's Exhibit 1, p. 19.*

18. Tom Schroeder (Schroeder), Program Principal for the Industrial Siting Program, Department of Environmental Quality, receives and processes applications for permits by the Siting Council. Schroeder reviewed and processed Black Hills Corporation's application. According to Schroeder, the proposed facility complied with the applicable law for Industrial Siting. Schroeder believed the facility did not pose a threat of serious injury to the environment or to the social and economic conditions of the area. The proposed facility also would not substantially impair the health, safety or welfare of the local inhabitants. Schroeder also

presented a list of recommended permit conditions as reflected in *State's Exhibit 2. See Transcript of Proceedings, p. 111.*

19. 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

20. Black Hills Corporation 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. Department of Family Services,* 922 P.2d 219, 221 (Wyo. 1996) (citation omitted); *Penny v. State ex rel. Wyoming Mental Health Prof. Licensing Board*, 120 P.3d 152, (Wyo. 2005).

21. Wyo. Stat. Ann. § 35-12-109(a) (LEXIS 2007) 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) Preliminary evaluations of or plans and proposals for alleviating social, economic or environmental impacts upon local government or any special districts which may result from the proposed facility, which 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.

(xiv) Estimated construction cost of the facility;

(xv) What other 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 brief 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.

22. Wyo. Stat. Ann. § 35-12-110(b) (LEXIS 2007) provides 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; and

(xvi) The Wyoming business council.

23. Wyo. Stat. Ann. § 35-12-110(c) (LEXIS 2007) 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.

24. Wyo. Stat. Ann. § 35-12-110(d) (LEXIS 2007) 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 W.S. 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.

25. Wyo. Stat. Ann. § 35-12-110(f) (LEXIS 2007) 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.

26. Pursuant to Wyo. Stat. Ann. § 35-12-111 (a) (LEXIS 2007), 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.

27. Pursuant to Wyo. Stat. Ann. § 35-12-113 (LEXIS 2007), 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; and

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

(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.

28. The Industrial Siting Rules and Regulations, Chapter 1 provide:

Section 7. **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, and post office 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;

(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;

(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 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) The estimated number of employees needed to complete the construction and operation of the facility by the applicant, its contractors and subcontractors to include job classifications by calendar quarter. The estimate should also include:

> (i) Seasonal fluctuations and the peak employment during both construction and operation;
>
> (ii) Annual payroll;
>
> (iii) Expected benefits, if any, to be provided including housing allowances, transportation allowances, and per diem allowances.

(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 industrial facility subject to sales and use taxes and expected payments by quarter for the construction period. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county. The estimate will also include projections of the impact assistance payments available under W.S. 39-6-411(c) and W.S. 39-6-512(d) generated by the proposed industrial facility through the sales and use tax payments;

(B) 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 including 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.

B. Application of Principles of Law

29. Black Hills Corporation has shown, by a preponderance of the evidence, that it filed a completed application with the Division and included the requirements in Wyo. Stat. Ann. § 35-12-109(a) (LEXIS 2007) and Chapter 1, Section 7 of the Rules and Regulations. *See for example testimony of Mark Lux, Ryan Henning, Richard Kaysen, Norm Davies, and Tom Schroeder; Wygen III's Exhibits 1 through 20.*

30. Black Hills Corporation has shown, through testimony and exhibits, that the proposed facility will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants in the affected area.

31. Finally, through the testimony of all its witnesses, as well as the exhibits submitted, Black Hills Corporation has demonstrated the proposed facility will not substantially impair the health, safety or welfare of the inhabitants.

DECISION

Pursuant to the authority vested in the Industrial Siting Council by WYO. STAT. ANN. § 35-12-113 (LEXIS 2007), the Council hereby grants the Industrial Siting Permit Application filed by Black Hills Corporation to construct and operate Wygen III, a coal-fired electrical generating facility with a 100 megawatt net capacity to be located near Gillette, Wyoming in Campbell County, Wyoming.

Further, pursuant to its authority, this Council specifically accepts and adopts the impact assistance funds distribution ratio as set forth in *State's Exhibit 1* and as agreed to by all parties to this proceeding.

Finally, pursuant to its authority, the Council places the following terms and conditions on the facility as modified from *State's Exhibit #2*:

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

Condition #2. Construction must commence within two 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 and economic conditions of the area of site influence and which was not evaluated in the permit process, the Permittee or the Industrial Siting Division (ISD) shall prepare and file an evaluation of such activity with the ISC. 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 W. S. 35-12-106.

Condition #4. Permittee shall develop a compliance 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 Industrial Siting Division (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 meet all permit requirements.

Condition #5. The ISC may review any adverse social or economic impacts either within or outside the area primarily affected 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 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 proposed Project, 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 contribution to the total impacts within the impacted area (as defined by W. S. 35-12-102).

Condition #6. The Permittee shall notify Industrial Siting Division when construction commences on the project.

Condition #7. The Permittee shall notify Industrial Siting Division when the physical components of the identified project are 90 percent complete.

Condition #8. As a means of adhering to W. S. 35-12-1O9 (a) (xviii) to provide preference for local and resident hiring, Permittee, contractors and subcontractors shall follow these hiring guidelines:

a. Except as provided by (d) and (e) of this paragraph, the Permittee, contractors and subcontractors shall use the local Workforce Centers to screen all job applicants for skilled and unskilled labor. In addition, Permittee

shall make available written descriptions for those skilled and unskilled positions that will be needed at the Project. The Permittee shall not hire by other means unless the Workforce Center is unable to provide qualified workers to fill job orders.

b. Where the Workforce Center is used for hiring the Permittee, contractors, and subcontractors shall be required to include the local and resident hiring procedures in all of their subcontractors. The Permittee shall monitor the hiring practices of contractors and subcontractors to assure compliance with local hiring provisions.

c. To the extent reasonable and allowed by law, qualified Wyoming residents shall receive hiring preference over qualified non-Wyoming workers. A "resident" is defined as a person who has maintained continuous residency in Wyoming for a period of at least one year prior to hiring.

d. In the case of the need for trade labor, a local union hall may be used as the source for hiring skilled and non-skilled labor.

e. The terms, "skilled and unskilled" labor as used in this condition shall not be construed as including administrative, managerial, supervisory or professional personnel. Provided, however, the Permittee, contractors and subcontractors shall maintain an active program for recruiting qualified local and Wyoming residents for these administrative, managerial, supervisory and professional positions.

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. 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 application schedule; and

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 on-year period.

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 and the first year of operation. Monthly data 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.

Condition #11. The Permittee shall notify the ISD of proposed changes to the scope, purpose, size or schedule of the project. 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. The Director has provided public notice of the proposed change and his intent to approve the request; and

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

Condition #12. The Permittee shall notify the ISD and provide updates to the Housing Plan Options section 2.12.5 and Cumulative Housing Chapters if:

a. Actual on-site workforce during construction exceed the peak number estimated in the Application by more than fifteen percent (15%). If the Director determines that there is potential for significant adverse impacts, a permit amendment will be required; or

b. The housing needs change and workforce lodging provided by the Permittee will be different from that described in the Application.

ORDER

IT IS THEREFORE ORDERED that the Industrial Siting Permit Application as submitted by Black Hills Corporation, and as modified by this Council be and is hereby granted.

DONE this 6 day of February, 2008.

Dave Dunham, 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 8 day of February, 2008, addressed to the following:

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

John Burbridge - Attorney for Industrial Siting Division
Assistant Attorney General
123 Capitol Building
Cheyenne, Wyoming 82002

John Sundahl - Attorney for Applicant
1725 Carey Avenue
Cheyenne, Wyoming 82001

Joseph Baron – Attorney for Crook County
P.O. Box 397
Sundance, Wyoming 82729

Robert Sieveke, Mayor
Town of Pine Haven
24 Waters Drive
Pine Haven, Wyoming 82721-9761

Rosalie Brimmer, Mayor
Town of Moorcroft
P.O. Box 70
Moorcroft, Wyoming 82721

Tim Wells, President
Wyoming Building and Construction Trades Council
P.O. Box 1807
Rock Springs, Wyoming 82901-1807

Charles Anderson – Attorney for City of Gillette
P.O. Box 3003
Gillette, Wyoming 82717-3003

Carol Seeger – Attorney for Campbell County
500 South Gillette Avenue, Suite B200
Gillette, Wyoming 82716

Ruth Benson, Executive Director
Campbell County Economic Development Corporation
P.O. Box 3948
Gillette, Wyoming 82717

Terri Schroeder

~~Office of Administrative Hearings~~
DEQ/ISD