

**DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

IN THE MATTER OF the Petition of)	REGULATORY DIVISION
BLACK HILLS POWER, INC. for a)	
Short-Term Waiver of the Community)	DOCKET NO. _____
Renewable Energy Project)	
Requirement, and Associated)	
Penalty Provision, under the)	
Montana Renewable Power)	
Production and Rural Economic)	
Development Act.)	

PETITION

Black Hills Power, Inc. ("Black Hills"), in accordance with the provisions of the Montana Renewable Power Production and Rural Economic Development Act, §§ 69-3-2001 MCA, *et seq* ("Renewables Act"), and the Commission's administrative rules implementing that act, ARM 38.5.8301 *et seq*, respectfully petitions the Commission for a short term waiver of the Community Renewable Energy Project ("CREP") requirement in the Renewables Act, and the associated penalty provision. In support of its Petition, Black Hills shows as follows:

I.

Black Hills is a corporation organized under the laws of the State of South Dakota on August 27, 1941, and duly registered to do business in Montana as a foreign corporation on February 23, 1968.

II.

It is a public utility as defined in Section 69-3-101, MCA. Among other things, it is engaged in the generation, transmission, distribution and sale of electric power and energy in western South Dakota, eastern Wyoming, and a very small area in southeastern Montana. It currently serves 36 customers in Montana.

III.

The full name and business address of Black Hills are:

Black Hills Power, Inc.
409 Deadwood Avenue
Rapid City, SD 57702

IV.

The names and addresses of the persons to whom all filings, submissions, or correspondence in this docket should be addressed are as follows:

Chuck Loomis
Vice President Electric Operations
Black Hills Power
P. O. Box 1400
Rapid City, SD 57709

Todd Brink
Corporate Counsel
Black Hills Power
P.O. Box 1400
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V.

Black Hills currently complies with Montana's Renewable Act by purchasing renewable power from the Happy Jack wind farm, a 29.4 Megawatt wind farm located near Cheyenne, Wyoming, and previously certified by the Commission as an eligible renewable resource under the Act. Happy Jack is contracted to an affiliated company, Cheyenne Light Fuel and Power.

VI.

However, the Renewables Act also requires Montana's jurisdictional electric utilities to acquire a certain amount of power (and the associated renewable energy credits) from CREPs

in their service area. The requirement is expressed on a total statewide basis, and is 50 Megawatts of name plate generating capacity during the period 2012 through 2014. § 69-3-2004(3)(b), MCA. Unlike the overall renewable portfolio standard in the Act, which can be satisfied with the purchase of renewable energy credits, the CREP requirement requires a jurisdictional utility to actually obtain power from the CREP. *Id.*

VII.

The CREP requirement is prorated between Montana's jurisdictional electric utilities in accordance with their relative retail sales in Montana during calendar year 2011. *Id.* NorthWestern Energy and Montana-Dakota Utilities will be likely responsible for more than 99% of the total CREP requirement in 2012-2014.

VIII.

Although the annual reports reflecting 2011 retail electric sales by Montana's jurisdictional utilities are not yet available, the 2010 reports establish that the pro rata CREP requirement for Black Hills will be very small, significantly less than one half of a megawatt of generating capacity. A sample calculation using the 2010 annual reports is attached as Appendix 1.

IX.

The diminutive scale of Black Hill's CREP requirement renders the development of a qualifying CREP in its service territory uneconomic, unrealistic, and highly unlikely. Black Hills could not find an entity in its Montana service territory to contract for such a small facility. A facility of this size will not provide cost effective power to its Montana customers.

X.

Although Black Hills has not conducted a request for proposal, the very small and rural nature of the Black Hills Montana service territory renders it highly unlikely that a qualifying third

party would respond to an RFP and agree to build a CREP which would allow Black Hills to meet its CREP requirement during 2012-2014. Black Hills and its Montana customers should not be required to incur the expense of a formal request for proposal to establish the lack of an economic option for meeting its diminutive CREP requirement for 2012-2014.

XI.

Based upon the unique facts of this case, the Commission should determine that Black Hills has undertaken all reasonable steps to procure renewable energy credits for satisfaction of its obligations under the Renewable Act, but that qualifying renewable energy credits are not available to Black Hills for purposes of satisfying its CREP requirement during the period 2012-2014.

XII.

Based upon the unique facts of this case, the Commission should grant Black Hills a waiver of its CREP requirements during the period 2012-2014, and a waiver of the associated penalties for non-compliance with the Renewable Act set forth in § 69-3-2004(10) for the same period.

Wherefore, Black Hills prays for the following relief:

1. For the issuance of a notice of opportunity for public hearing to determine if any person desires a hearing in this matter;
2. If no hearing is requested, for the issuance of a default order, or similar order of the Commission, summarily granting the waivers requested by Black Hills in its Petition;
3. If a hearing is requested, the setting and holding of public hearing, followed by the issuance of a final order of the Commission granting the waivers requested by Black Hills in its Petition;

DATED this 25th day of January 2012.

HUGHES, KELLNER, SULLIVAN & ALKE, PLLP

By John Alke

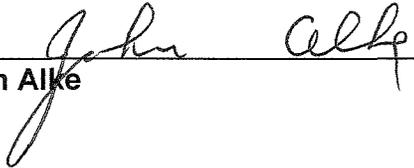
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ATTORNEYS FOR BLACK HILLS POWER, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing PETITION was served upon the following by mailing a true and correct copy thereof on January 25, 2012, addressed as follows:

ROBERT A NELSON
MONTANA CONSUMER COUNSEL
111 NORTH LAST CHANCE GULCH,
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John Alke

Appendix 1
SAMPLE CALCULATION
of
2012-2014 CREP REQUIREMENT
for
BLACK HILLS POWER, INC.¹
(Mwh)

NWE	Retail Sales	5,834,629	88.64%
MDU	Retail Sales	700,314	10.64%
Black Hills	Retail Sales	46,627	.71%
Avista	Retail Sales	550	<u>.008%</u>
		Total	99.998%

50 Mw x .71% = .355 Mw

¹ Using 2010 Retail Sales Data.