

RESOLUTION NO. 04-08

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE BY WESTON COUNTY, WYOMING OF POLLUTION CONTROL REFUNDING REVENUE BONDS SERIES 2004 (BLACK HILLS POWER, INC. PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,850,000 (THE "BONDS") ON BEHALF OF BLACK HILLS POWER, INC.; AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS AGREEMENTS RELATED TO THE BONDS; AND RELATED MATTERS.

WHEREAS, Weston County, Wyoming (the "Issuer") is a duly organized and validly existing body corporate and politic under the Constitution and laws of the State of Wyoming and is authorized pursuant to Sections 15-1-701 through 15-1-710, inclusive, Wyoming Statutes (2003), as amended (the "Act"), to issue its limited obligation revenue bonds for the purpose of refunding any bonds issued under the Act and outstanding; and

WHEREAS, Black Hills Power, Inc., a South Dakota corporation (the "Borrower") has previously financed with the proceeds of bonds the cost of pollution control facilities located at the Borrower's Osage Generating Station in Osage, Wyoming (the "Project"), which constitutes a "project" within the meaning of the Act, which bonds were refunded with a loan of the proceeds of the Pollution Control Refunding Revenue Bonds (Black Hills Power and Light Company Project) Series 1992 of the Issuer, issued pursuant to the Act and presently outstanding in the amount of \$2,850,000 (the "Prior Bonds");

WHEREAS, the Borrower has requested that the Issuer issue a series of refunding bonds pursuant to the Act to refund the Prior Bonds; and

WHEREAS, based upon information supplied by the Borrower, the Issuer has now determined that it is necessary and in the public interest for the Issuer to issue the Bonds pursuant to this Resolution and the agreements and other documents approved herein; and

WHEREAS, the Bonds shall not be a general obligation of the Issuer, but shall be payable solely from the proceeds of the Bonds issued to refinance, in whole or in part, the Project, the earnings on such proceeds, and the revenues and receipts derived from payments made by the Borrower, and the Bonds shall not constitute nor give use to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers; and

WHEREAS, it is necessary and desirable that the Issuer and the Borrower enter into a Loan Agreement (the "Loan Agreement"), a proposed form of which is before the Board of Commissioners of the Issuer (the "Board") at this meeting, whereby, among other things, the Issuer will lend the proceeds of the Bonds to the Borrower in order to refund the Prior Bonds and the Borrower, in consideration of the issuance of the Bonds, will covenant and agree to make payments sufficient to provide for the payment of the principal of, premium, if any, and interest on and other amounts payable on the Bonds, as and when the same become due and payable; and

WHEREAS, it is necessary and desirable for the Bonds to be issued under and pursuant to, and to be secured by, an Indenture of Trust (the "Indenture"), a proposed form of which is before

the Board at this meeting, by and between the Issuer and Wells Fargo Bank, N.A., as Trustee (the "Trustee"); and

WHEREAS, it is necessary and desirable that the Issuer enter into a Bond Purchase Agreement (the "Purchase Agreement"), a proposed form of which is before the Board at this meeting, by and among the Issuer, the Borrower and LaSalle Capital Markets, A Division of ABN AMRO Financial Services, Inc. and Wells Fargo Brokerage Securities LLC, as co-managers (collectively, the "Underwriter"), with respect to the offering and sale of the Bonds; and

WHEREAS, it is necessary and desirable for the Issuer, the Borrower and the Trustee to enter into a Tax Exemption Certificate and Agreement, a proposed form of which is before the Board at this meeting, to be dated the date of issuance of the Bonds (the "Tax Agreement"), governing the investment of the gross proceeds of the Bonds and certain other matters relating to the exclusion of interest on the Bonds from federal gross income; and

WHEREAS, it is necessary and desirable that for the Issuer to approve the distribution of a Preliminary Official Statement (the "Preliminary Official Statement"), a proposed form of which is before the Board at this meeting, and a final Official Statement (the "Official Statement"), in substantially the form of the Preliminary Official Statement, in connection with the offering and sale of the Bonds; and

WHEREAS, notice of a public hearing with respect to the proposed issuance of the Bonds was published on September 13, 2004 in the *Rapid City Journal* and the *Casper Tribune*, newspapers of general circulation in Weston County, Wyoming and the City of Osage, Wyoming, on September 16, 2004 in the *Weston County Gazette*, the official legal newspaper of the issuer; and

WHEREAS, on September 28, 2004, said public hearing was conducted by the Issuer and an opportunity was provided for interested persons to present arguments for and against the Project and the issuance of the Bonds; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF WESTON COUNTY, WYOMING, AS FOLLOWS:

*Section 1.* The foregoing recitals are hereby incorporated herein as if fully set forth in this Resolution.

*Section 2.* Pursuant to the Act, the refinancing, in whole or in part, of the costs of the Project and the refunding of the Prior Bonds through the issuance and sale of the Bonds in accordance with the terms of the Loan Agreement and the Indenture, as approved in substantially final form pursuant to this Resolution, is hereby authorized and approved, subject to the conditions of the Loan Agreement and the Indenture. The Board hereby finds, based solely on information supplied by the Borrower, that the Project and the use of the proceeds of the Bonds are in furtherance of the public purposes set forth in the Act, including facilitating and promoting the local health and general welfare and the sound economic growth of the State of Wyoming,

and to promote employment opportunities for the citizens of Wyoming by encouraging businesses which contribute payrolls and tax base to the State of Wyoming. It is hereby further found and declared that, based solely on information supplied by the Borrower, that the refinancing in whole or in part, of the Project and the refunding of the Prior Bonds are necessary to accomplish the public purposes of the Act.

*Section 3.* The Indenture, in substantially the form presented at this meeting and on file with the County Clerk and containing substantially the terms and provisions set forth therein, is hereby authorized, approved and confirmed, and the form, terms and provisions of the Indenture are hereby approved, all of which is subject to such changes and revisions therein as shall be approved by the officers of the Issuer executing and attesting the same, their signatures thereon to constitute conclusive evidence of such approval, and the Chairman of the Board (the "*Chairman*") and the County Clerk are hereby authorized and directed to execute, attest, seal and deliver the Indenture with such changes and revisions, if any, as aforesaid.

*Section 4.* The Loan Agreement, in substantially the form presented at this meeting and on file with the County Clerk and containing substantially the terms and provisions set forth therein, is hereby authorized, approved and confirmed, and the form, terms and provisions of the Loan Agreement are hereby approved, all of which is subject to such changes and revisions therein as shall be approved by the officers of the Issuer executing and attesting the same, their signatures thereon to constitute conclusive evidence of such approval, and the Chairman and the County Clerk are hereby authorized and directed to execute, attest, seal and deliver the Loan Agreement, as approved pursuant to this Section with such changes and revisions, if any, as aforesaid.

*Section 5.* The Purchase Agreement, in substantially the form presented at this meeting and on file with the County Clerk and containing substantially the terms and provisions set forth therein, is hereby authorized, approved and confirmed, and the form, terms and provisions of the Purchase Agreement are hereby approved, all of which is subject to such changes and revisions therein as shall be approved by the officer of the Issuer executing and attesting the same, his or her signature thereon to constitute conclusive evidence of such approval, and the Chairman is hereby authorized and directed to execute and deliver the Purchase Agreement, as approved pursuant to this Section with such changes and revisions, if any, as aforesaid.

*Section 6.* The Tax Agreement, in substantially the form presented at this meeting and on file with the County Clerk and containing substantially the terms and provisions set forth therein, is hereby authorized, approved and confirmed, and the form, terms and provisions of the Tax Agreement are hereby approved, all of which is subject to such changes and revisions therein as shall be approved by the officer of the Issuer executing the same, his or her signature thereon to constitute conclusive evidence of such approval, and the Chairman is hereby authorized and directed to execute and deliver the Tax Agreement, as approved pursuant to this Section with such changes and revisions, if any, as aforesaid.

*Section 7.* The distribution of the Preliminary Official Statement and the Official Statement by the Underwriter is hereby approved, such Preliminary Official Statement and such Official Statement to be in substantially the same form as the Preliminary Official Statement

presented at this meeting and on file with the County Clerk, or with such changes therein as shall be approved by the officer of the Issuer executing the Indenture, and the Chairman and the County Clerk are each authorized, empowered and directed to certify that those portions of the Official Statement relating to the Issuer are in a form "deemed final" by the Authority pursuant to Rule 15c2-12 promulgated by the Securities and Exchange Commission (the "Rule").

*Section 8.* The Chairman shall be and is hereby authorized, empowered and directed to cause to be prepared an issue of the Bonds in an aggregate principal amount not to exceed \$2,850,000, with the terms and provisions set forth in the Indenture, as executed and approved pursuant to this Resolution. The Bonds shall be executed pursuant to the terms and conditions of the Indenture, in the name of the Issuer with the manual or facsimile signature of the Chairman and attested with the manual or facsimile signature of the County Clerk, and the seal of the Issuer shall be affixed thereto or imprinted thereon. The Bonds shall bear interest at such rate or rates as set forth in the Indenture, in no event however to exceed 7.00% per annum. The Bonds shall mature on such dates and in such amounts as shall be set forth in the Indenture, in no event, however, later than October 1, 2014. The Bonds shall be subject to redemption prior to maturity as provided in the Indenture.

*Section 9.* The form of Bonds included in the Indenture submitted to this meeting, subject to appropriate insertion and revision in order to comply with the provisions of this Resolution and the Indenture, be, and the same hereby are, approved, and when the Bonds in such forms shall be executed on behalf of the Issuer in the manner contemplated by, and pursuant to the terms of the Indenture and this Resolution, they shall represent the approved definitive forms of the Bonds of the Issuer.

*Section 10.* Subject to the Indenture and the Loan Agreement, the Issuer is hereby authorized, empowered and directed to issue and sell to the Underwriter the entire aggregate principal amount of the Bonds, at such price as shall be set forth in the Purchase Agreement, but in no event lower than 98.875% of the principal amount thereof, plus accrued interest, if any.

*Section 11.* Subject to the terms and conditions of the Indenture and the Loan Agreement and this Resolution, the Chairman and the County Clerk are hereby authorized and directed to execute, attest, seal and deliver any and all documents, and do any and all things deemed necessary to effect the issuance and sale of the Bonds, the execution and delivery of the Loan Agreement, the Indenture, the Purchase Agreement and the Tax Agreement, the refunding of the Prior Issuer Bonds and to carry out the intent and purposes of this Resolution, including the preambles to this Resolution.

*Section 12.* The Bonds, if and when issued, may, but need not be, initially issued in book-entry form and registered in the name of The Depository Trust Company, New York, New York ("DTC"), or its nominee, as securities depository for the Bonds. The Chairman is hereby authorized, empowered and directed to execute and deliver an agreement with DTC and any other necessary parties in order to effect such book-entry registration.

*Section 13.* The Issuer hereby acknowledges that a public hearing was conducted on its behalf relating to the issuance of the Bonds pursuant to Section 147(f) of the Code. The publication of the notice of public hearing with respect to the Bonds pursuant to Section 147(f) of

the Code is hereby authorized, ratified and confirmed. This Resolution shall constitute the approval of the Bonds by an "applicable elected representative" of the Issuer pursuant to Section 147(f) of the Code.

*Section 14.* All authorized acts of the officials of the Issuer which are in conformity with the purposes and intent of this Resolution and the terms and conditions of the Indenture and the Loan Agreement, and in furtherance of the issuance and sale of the Bonds and the refinancing of the Projects be, and the same hereby are, in all respects, approved and confirmed.

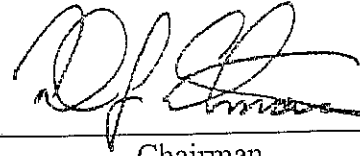
*Section 15.* The provisions of this Resolution are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

*Section 16.* All resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict. This Resolution shall be in full force and effect upon its passage as provided by law.

Adopted: September 28, 2004

Filed: September 29, 2004


WESTON COUNTY, WYOMING



Chairman

[SEAL]

Attest:



Pauline Thompson  
County Clerk and *ex officio*  
Clerk of the Board of Commissioners