

BLACK HILLS CORP /SD/

Form S-8

June 10, 2005

As filed with the Securities and Exchange Commission on June 10, 2005

Registration No. 333-_____

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

**FORM S-8
REGISTRATION STATEMENT**
under
The Securities Act of 1933

BLACK HILLS CORPORATION
(Exact Name of Registrant as Specified in its Charter)

South Dakota
(State or Other Jurisdiction of Incorporation or Organization)

46-0458824
(IRS Employer Identification No.)

625 Ninth Street, P.O. Box 1400
Rapid City, South Dakota
(Address of Principal Executive Offices)

57709
(Zip Code)

**BLACK HILLS CORPORATION
2005 OMNIBUS INCENTIVE PLAN**
(Full Title of the Plan)

Steven J. Helmers
General Counsel
Black Hills Corporation
625 Ninth Street, P.O. Box 1400
Rapid City, South Dakota 57709
(Name and Address of Agent for Service)

(605) 721-1700
(Telephone Number, Including Area Code, of Agent for Service)

CALCULATION OF REGISTRATION FEE

**Proposed
Maximum**

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share ((2))	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock (\$1 par Value)	1,150,000 Shares	\$ 37.21	\$ 42,791,500	\$ 5,036.56

(1) In addition, pursuant to Rule 416 under the Securities Act of 1933, this registration statement also covers an indeterminate number of additional shares of Common Stock as may become issuable as a result of any future anti-dilution adjustment in accordance with the terms of the 2005 Omnibus Incentive Plan.

(2) The estimated Proposed Maximum Offering Price Per Share was calculated pursuant to Rules 457(c) and 457(h) under the Securities Act of 1933 on the basis of the average high and low price of the Common Stock, as reported on the New York Stock Exchange for June 8, 2005.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents filed by Black Hills Corporation (the Company) with the Securities and Exchange Commission are incorporated by reference in this Registration Statement:

- (a) The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2004.
- (b) The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2005.
- (c) The Company's Report on Form 8-K dated January 21, 2005.
- (d) The Company's Report on Form 8-K dated February 1, 2005.
- (e) The Company's Report on Form 8-K dated April 20, 2005.
- (f) The Company's Report on Form 8-K dated April 26, 2005.
- (g) The Company's Report on Form 8-K dated May 25, 2005.
- (h) The Company's Report on Form 8-K dated May 26, 2005.
- (i) The description of the Company's Common Stock contained in the Company's Registration Statement on Form 8-A, dated April 19, 2002, including any amendment or report heretofore or hereafter filed for the purpose of updating such description.

All reports and other documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (other than reports on Form 8-K or portions thereof furnished under Items 2.02 or 7.01 of Form 8-K), prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters those securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing such documents.

Item 4. DESCRIPTION OF SECURITIES

Not applicable.

Item 5. INTEREST OF NAMED EXPERTS AND COUNSEL

Steven J. Helmers, Sr. Vice President and General Counsel of the Company, whose opinion with respect to the common stock is filed as Exhibit 5 hereto, is an officer of the Company and owns as of June 10, 2005, 7,040 shares of common stock, 5,418 shares of restricted stock, and 37,382 common stock options.

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Item 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 47-5-27 of the South Dakota Codified Laws provides generally that a corporation may indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative in nature, other than an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with the action, suit or proceeding if that person acted in good faith and in a manner that person reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful.

The Bylaws of the Company provide that, with respect to actions, suits or proceedings other than by or in the right of the Company, the Company shall indemnify an officer or director against liability incurred by such person as authorized under the South Dakota Codified Laws. With respect to actions or suits by or in the right of the Company, the Bylaws of the Company provide that the Company shall indemnify any officer or director for any action or proceeding he is made a party to by reason of the fact that he is or was a director or officer of the Company, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the action or suit, if he acted in good faith and in a manner he reasonably believed to be within the scope of his authority and in, or not opposed to, the best interests of the Company, except for those claims, issues or matters as to which such officer or director shall have been adjudged to be liable to the Company, unless such indemnification is deemed proper by a court. In addition, the Company has entered into specific agreements with the directors and officers of the Company providing for indemnification of such persons under certain circumstances.

The Company's Articles of Incorporation also eliminate the liability of the Company's directors for monetary damages for breach of their fiduciary duty as directors. This provision, however, does not eliminate a director's liability (a) for any breach of the director's duty of loyalty to the Company or its shareholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) for any violation of Sections 47-5-15 to 47-5-19, inclusive, of the South Dakota Codified Laws, which relate in part to certain unlawful dividend payments or stock redemptions or repurchases, or (d) for any transaction from which the director derived an improper personal benefit.

The Company carries directors' and officers' liability insurance to insure its directors and officers against liability for certain errors and omissions and to defray costs of a suit or proceeding against an officer or director.

Item 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

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Item 8. EXHIBITS

- *4.1 Plan of Exchange Between Black Hills Corporation and Black Hills Holding Corporation (filed as Exhibit 2 to the Company's Registration Statement on Form S-4 (No. 333-52664)).
- *4.2 Restated Articles of Incorporation of the Company (filed as Exhibit 3.1 to the Company's Form 10-K for 2004).
- *4.3 Amended and Restated Bylaws of the Company dated December 20, 2002 (filed as Exhibit 3.3 to the Company's Form 10-K for 2002).
- *4.4 Statement of Designations, Preferences and Relative Rights and Limitations of No Par Preferred Stock, Series 2000-A of the Company (filed as Exhibit 4.4 to the Company's Form 8-K filed on December 26,

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2000).

- *4.5 Indenture dated as of May 21, 2003 between the Company and LaSalle Bank National Association, as Trustee (filed as Exhibit 4.1 to the Company's Form 10-Q for the quarter ended June 30, 2003).
- *4.6 First Supplemental Indenture dated as of May 21, 2003 between the Company and LaSalle Bank National Association, as Trustee (filed as Exhibit 4.2 to the Company's Form 10-Q for the quarter ended June 30, 2003).
- *4.7 Restated and Amended Indenture of Mortgage and Deed of Trust of Black Hills Corporation (now called Black Hills Power, Inc.) dated as of September 1, 1999 (filed as an exhibit to the Company's Registration Statement on Form S-4 (No. 333-52664)). First Supplemental Indenture, dated as of August 13, 2002, between Black Hills Power, Inc. and JPMorgan Chase Bank, as Trustee (filed as Exhibit 10.3 to the Company's Form 10-Q for the quarter ended September 30, 2002).
- *4.8 Black Hills Corporation's 2005 Omnibus Incentive Plan (filed as Appendix A to the Company's 2005 Proxy Statement dated May 25, 2005).
- 5 Opinion of Steven J. Helmers, Esq., General Counsel to the Company.
- 23.1 Consent of Steven J. Helmers, Esq. (included in Exhibit 5).
- 23.2 Consent of Deloitte & Touche LLP.
- 24 Powers of Attorney (included on the signature page to this Registration Statement).

*Previously filed as part of the filing indicated and incorporated by reference herein.

Item 9. UNDERTAKINGS

(a) The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933.

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- (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement.
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Rapid City, State of South Dakota, on the 10th day of June, 2005.

BLACK HILLS CORPORATION

By: /s/ DAVID R. EMERY
David R. Emery
Chairman, President and Chief Executive Officer

Each individual whose signature appears below constitutes and appoints David R. Emery and Mark T. Thies, and each of them severally, as his true and lawful attorneys-in-fact and agents with full power of substitution, to sign in his or her name and behalf, in any and all capacities stated below, and to file with the Securities and Exchange Commission, any and all amendments, to this Registration Statement, and the Registrant hereby also appoints each such agent as its attorney-in-fact with the authority to sign and file any such amendments in its name and behalf.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the date indicated.

<u>/s/ DAVID R. EMERY</u> David R. Emery, Chairman, President and Chief Executive Officer	Director and Principal Executive Officer	June 10, 2005
<u>/s/ MARK T. THIES</u> Mark T. Thies, Executive Vice President and Chief Financial Officer	Principal Financial and Accounting Officer	June 10, 2005
<u>/s/ DAVID C. EBERTZ</u> David C. Ebertz	Director	June 10, 2005
<u>/s/ JACK W. EUGSTER</u> Jack W. Eugster	Director	June 10, 2005
<u>/s/ JOHN R. HOWARD</u> John R. Howard	Director	June 10, 2005

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<u>/s/ KAY S. JORGENSEN</u> Kay S. Jorgensen	Director	June 10, 2005
<u>/s/ RICHARD KORPAN</u> Richard Korpan	Director	June 10, 2005
<u>/s/ STEPHEN D. NEWLIN</u> Stephen D. Newlin	Director	June 10, 2005
<u>/s/ THOMAS J. ZELLER</u> Thomas J. Zeller	Director	June 10, 2005
<u>/s/ WILLIAM G. VAN DYKE</u> William G. Van Dyke	Director	June 10, 2005
<u>/s/ JOHN B. VERING</u> John B. Vering	Director	June 10, 2005

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EXHIBIT INDEX

<u>Exhibit</u> <u>Number</u>	<u>Name</u>
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