EL04-017

RW/DJ

EL 04-017

DOCKET NO.

In the Matter of IN THE MATTER OF THE FILING BY HOMESTAKE MINING COMPANY OF CALIFORNIA REGARDING A REQUEST FOR MEDIATION BETWEEN HOMESTAKE MINING COMPANY OF CALIFORNIA AND BLACK HILLS CORPORATION

Public Utilities Commission of the State of South Dakota

DATE		MEMORANDA
5/6	04	Received;
5/14	04	Docketed;
5/20	04	Weekly Filing;
6/8	04	Response of Homestake;
6/9	04	Response of Black Hills Corporation;
7/9	04	Order for and Notice of Hearing;
7/12	04	Supplemental Response of Homestake;
~~7/12~~	~~04~~	~~Affidavit of Publication~~;
7/15	04	Amended Order for and Notice of Hearing;
8/2	04	Homestake's Motion for Order Compelling Discovery;
8/10	04	Order Cancelling Hearing;
8/11	04	Letter Agreement;
9/7	04	Order Closing Docket;
9/7	04	Docket Closed.

STATE PUBLISHING CO., PIERRE, SOUTH DAKOTA—SMEAD 62 SP14130

EL 04-017

HOMESTAKE

HOMESTAKE MINING COMPANY
630 E. Summit Street
Lead, South Dakota 57754-1700
605-584-GOLD (4653)
fax 605-722-4624

April 28, 2004

RECEIVED
MAY 06 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Pam Bonrud, Executive Director
South Dakota Public Utilities Commission
Capital Building, 1st floor
400 East Capital Avenue
Pierre, SD 75701-5070

Re: Request for Mediation

Dear Ms. Bonrud:

On or about January 9, 2000, Black Hills Corporation ("Black Hills") and Homestake Mining Company of California ("Homestake") entered into an electric service agreement identified as Contract No. 12951. The purpose of the contract was to provide electric service for the Homestake property and its mine, located in Lawrence County, South Dakota. The mine is now in closure.

Paragraph 5.5 of the contract provides in pertinent part that if there should be a substantial decrease in load, the parties will renegotiate a new contract capacity, subject to the PUC to resolve disputes, for every 12 month period during which the measured demand remains below 8,000 kVa.

Homestake and Black Hills have negotiated for several months to establish a new level of power contract capacity but have been unable to agree. Homestake now requests resolution of the dispute by the PUC.

A copy of the complete contract is attached to this letter as Appendix A. Paragraph 5.5 of the contract provides:

> 5.5 Substantial Decrease in Load. If Homestake's System Demand ("Measured Demand") is 8,000 kVA or less during any 12 consecutive months, the Contract Capacity shall be 8,000 kVA thereafter; and the Industrial Contract Service tariff shall no longer be applicable to Homestake thereafter; and the Billing Capacity under the Industrial Contract Service (Transmission Service) tariff shall no longer be applicable; and Homestake shall become subject to a tariff then in effect which is applicable to that smaller size load. After the initial 12 month period that the 8,000 kVA Contract Capacity is applicable, the parties shall renegotiate a new Contract Capacity, subject to the PUC to resolve disputes, for every subsequent 12 month period during which the Measured Demand remains below 8,000 kVA. If, however, at any time after the Homestake service is not under the Industrial

> Contract Service (Transmission Service) tariff and Homestake's Measured Demand for any three (3) consecutive months (or a period agreed to by the parties) is higher than 8,000 kVA, the Contract Capacity shall again be 12,500 kVA and Homestake shall again be subject to the Industrial Contract Service (Transmission Service) tariff then in effect. This provision shall continue to be applicable to any subsequent 12-month consecutive periods of 8,000 kVA or less. Exhibit D to this Agreement consists of five graphs and accompanying narrative which is intended to demonstrate the applicability of this Section 5.5.

In February 2002, Homestake's demand dropped below 8,000 kVa. Homestake was served under the industrial contract service ("ICGS Tariff") until February of 2003. In February 2003 Homestake was placed on the general service-large ("GS-L Tariff") with a contract capacity established at 8,000 kVa. Service since that time has been billed at the GS-L Tariff rate.

Homestake's load has continued to decline and Homestake expects its total load over the next 12 months to average less than 1,500 kVa, with a range of between 1,000-2,000 kVa.

Pursuant to the terms of the contract, Homestake has repeatedly requested a new contract capacity from Black Hills at a level reflecting its level of actual usage. Black Hills has declined and insisted on a contract capacity tied to Homestake's historic usage.

Homestake respectfully requests the Commission intervene and call a mediation to attempt to establish a new contract capacity under the contract.

The present contract is unreasonably complicated and burdensome for a project that is in closure with a very low load. Homestake has proposed to Black Hills that the existing contract be terminated and replaced with an agreement that reflects the mine's current status. We would appreciate the Commission's assistance to that end.

Would you please advise us of dates that the Commission or the Commission's staff may be available for mediation so that we might arrange our schedules to meet.

Very truly yours,

K D Burke

Karl D. Burke
General Manager – Closure
Homestake Mine

Enclosure
cc w/o Enclosure: Jim Keck

CONFIDENTIAL

#1

EL04-017

Bob Sahr, Chair
Gary Hanson, Vice-Chair
Jim Burg, Commissioner

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
www.state.sd.us/puc

Capitol Office
(605) 773-3201
(605) 773-3809 fax

Transportation/Warehouse
(605) 773-5280
(605) 773-3225 fax

Consumer Hotline
1-800-332-1782

May 13, 2004

Karl D. Burke
General Manager - Closure
Homestake Mine
630 E. Summit Street
Lead, South Dakota 57754-1700

Dear Mr. Burke:

The South Dakota Public Utilities Commission has received your request for mediation dated April 28, 2004 and Docket EL04-017 has been opened. As discussed with Max Main, representing Homestake and Jim Keck, representing Black Hills Power, Commission Staff would propose that each party submit to the Commission, and to the other party, a filing which would include; 1. A detailed explanation of the issues to be decided by the Commission, and 2. Any evidence and/or testimony supporting that position. I would propose that this information be submitted by May 28, 2004. Following receipt of that information, the parties could submit data requests and answers would be due June 11. Given a short period of time to review responses to data requests, the parties could then come before the Commission in a hearing type setting and present their arguments, followed by a Commission decision. Please understand that the above schedule is only a suggestion and the Commission and Staff would be open to any other mutually agreed to procedure Black Hills and Homestake would prefer.

If you have any questions regarding the above, please contact me at the Commission.

Sincerely,

Dave Jacobson

Dave Jacobson

cc: Max Main
Jim Keck
Rolayne Wiest

South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of May 13, 2004 through May 19, 2004

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this report. Phone: 605-773-3201

ELECTRIC

EL04-017 In the Matter of the Filing by Homestake Mining Company of California Regarding a Request for Mediation between Homestake Mining Company of California and Black Hills Corporation.

Filing by Homestake Mining Company of a request for mediation regarding determination of the appropriate capacity of Homestake's load for billing purposes.

Staff Analyst: Dave Jacobson
Staff Attorney: Rolayne Wiest
Date Filed: 05/06/04
Intervention Deadline: 05/28/04

EL04-018 In the Matter of the Filing by Basin Electric Power Cooperative, Inc. Regarding its Notification of Intent to Apply for a Permit for an Energy Conversion Facility.

The Commission has received a notification of intent to submit an application for a Permit for an Energy Conversion Facility from Basin Electric Power Cooperative. The Notice of Intent describes the proposed facility, the projected costs, a list of the chairpersons in the affected area, and the timeline of the project.

Staff Analyst: Michele Farris
Staff Attorney: Karen Cremer
Date Filed: 05/13/04
Intervention Deadline: 06/04/04

EL04-019 In the Matter of the Filing by Otter Tail Power Company for Approval of Tariff Revisions.

On May 19, 2004, Otter Tail Power Company filed for Commission approval Otter Tail Power Company's Summary List of Contracts with Deviations Sheet No. 3. Otter Tail Power is proposing to remove the City of South Shore from the Summary List of Contracts with Deviations. In support of the removal, Otter Tail has submitted a copy of the Municipal Service Agreement for the City of South Shore, SD. The agreement was updated because the old contract will expire on July 1, 2004. The new agreement does not contain any rates, terms, or conditions that would be considered a deviation from Otter Tail Power Company's tariff.

Staff Analyst: Michele Farris
Staff Attorney: Karen Cremer
Date Filed: 05/19/04
Intervention Deadline: 06/04/04

TELECOMMUNICATIONS

TC04-096 In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and DIECA Communications, Inc. d/b/a Covad Communications Company.

On May 17, 2004, the Commission received a filing for approval of a Commercial Line-Sharing Amendment to the Interconnection Agreement between Qwest Corporation and DIECA Communications, Inc. d/b/a Covad Communications Company. According to the parties, the Amendment "is made in order to add to the Agreement the terms, conditions and rates for Commercial Line-Sharing." Any party wishing to comment on the Amendment may do so by filing written comments with the Commission and the parties to the Amendment no later than June 7, 2004. Parties to the Amendment may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Rolayne Ailts Wiest
Date Filed: 05/17/04
Initial Comments Due: 06/07/04

Black Hills Corporation
Steven J. Helmers
General Counsel &
Corporate Secretary
E-mail: shelmers@bh-corp.com

625 Ninth Street • P.O. Box 1400
Rapid City, SD 57709-1400
Telephone: (605) 721-2303
FAX: (605) 721-2550

May 26, 2004

RECEIVED
MAY 27 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Max S. Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche, SD 57717

David Jacobson
Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

Re: ***Black Hills Power, Inc. / Homestake Mining Company***
Request for Mediation
File No: EL04-017

Dear Max and Dave:

This will confirm our agreement yesterday for an extension of time set for the filing of Black Hills Power's response in this matter. We have agreed that Black Hills Power may file its response before the close of business hours on June 7, 2004.

Thank you for your courtesy in response to this request.

Sincerely,

BLACK HILLS CORPORATION

Steven J. Helmers

Steven J. Helmers

SJH:las
Via Facsimile and First Class Mail

LAW OFFICES OF
BENNETT, MAIN & GUBBRUD
A PROFESSIONAL CORPORATION
618 STATE STREET
BELLE FOURCHE, SOUTH DAKOTA 57717-1489
TEL 605.892.2011
FAX 605. 892.4084
EMAIL: bellelaw@bellelaw.com

MAX S. MAIN
DWIGHT A. GUBBRUD

DONN BENNETT (RETIRED)

FAX TRANSMITTAL SHEET

DATE: May 27, 2004 **TIME:**

TO: Steve Helmers **FAX:** 721.2550

Dave Jacobson 605.773.3809

FROM: [X] Max Main [ ] Dwight A. Gubbrud

[ ] Gerry Heinbaugh [ ] René Anderson [ ] Nikki O'Brien

RE: **OUR FILE NO. HMC 2365.099004**

NUMBER OF PAGES TRANSMITTED (INCLUDING TRANSMITTAL SHEET): 2

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL **(605) 892-2011** IMMEDIATELY.
TELECOPY OPERATOR:

MESSAGE:

LAW OFFICES OF
BENNETT, MAIN & GUBBRUD
A PROFESSIONAL CORPORATION
618 STATE STREET
BELLE FOURCHE, SOUTH DAKOTA 57717-1489
TEL (605) 892-2011
FAX (605) 892-4084
EMAIL: bellelaw@bellelaw.com

MAX B. MAIN*
DWIGHT A. GUBBRUD
*ALSO LICENSED IN WYOMING

RETIRED
DONN BENNETT

May 27, 2004

Steven J. Helmers
VIA FAX ONLY 721.2550
Black Hills Corporation
P O Box 1400
Rapid City, SD 57709-1400

Dave Jacobson
VIA FAX ONLY 605.773.3809
S. D. Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

RE: Docket EL04-017.

Dear Steve and Dave:

In response to Steve's May 26 letter, and in confirmation of my telephone messages to both of you, Homestake will also be submitting its detailed explanation of the issues to be decided by the Commission, with supporting evidence, by the agreed-upon extension date of June 7, 2004. Based on the proposed schedule in Dave's May 13 letter, it would appear that the parties could thereafter submit data requests, with the answers due by June 21.

With the foregoing schedule, is it possible to estimate when the matter may come before the Commission for hearing? The reason I ask is that I have conflicts with the dates of June 30 and July 20-23.

If there are questions, please advise.

Sincerely,

BENNETT, MAIN & GUBBRUD, P.C.

Max Main

Max Main

MM/ra
cc: Client

HOMESTAKE MINING COMPANY
630 E. Summit Street
Lead, South Dakota 57754-1700
605-584-GOLD (4653)

RECEIVED
JUN 08 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

June 7, 2004

Mr. Dave Jacobson
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501-5070

Re: Docket # EL04-017
Filing Submittal by Homestake Mining Company

Dear Mr. Jacobson:

Pursuant to your letter dated May 13, 2004, Homestake Mining Company ("Homestake") hereby submits its position statement with supporting documents relative to Docket # EL04-017. A copy is also being mailed to Mr. Jim Keck of Black Hills Power ("Black Hills").

BACKGROUND

Black Hills and Homestake entered into an Electric Power Service Agreement ("Agreement"), Contract No. 12951, dated effective January 1, 2000. A copy of the Agreement is submitted herewith as Attachment No. 1. Section 5.5 of the Agreement provides that if Homestake's Measured Demand is 8,000 kVA or less during any 12 consecutive months, the Contract Capacity shall then be 8,000 kVA. Beginning in February 2002, Homestake's Measured Demand did drop below 8,000 kVA, and it remained below that level for 12 consecutive months. Pursuant to the terms of Section 5.5, the Contract Capacity therefore became 8,000 kVA as of February 2003, and it remained at 8,000 kVA through January 2004. Section 5.5 goes on to provide that after the initial 12 month period that the 8,000 kVA Contract Capacity is applicable, "the parties shall renegotiate a new Contract Capacity, subject to the PUC to resolve disputes ...."

Homestake proposes a new Contract Capacity reflective of its forecasted actual demands, which will be in the range of 500 to 1,500 kVA. Homestake's Peak Electrical Demand Forecast is submitted herewith as Attachment No. 2. Black Hills proposes a Contract Capacity of 5,000 kVA, based on the fact that Homestake's highest one-month demand for the time period of February 2003 through January 2004 was 5,300 kVA. For this same time period, Homestake's monthly demand averaged only 1,949 kVA. Homestake will never again come close to a demand level of 5,300 kVA. See Attachment No. 2.

Tying Contract Capacity to historical demand levels as Black Hills proposes has already resulted in Homestake paying Black Hills almost $900,000 in minimum demand charges, **for electricity it did not use.** See Attachment No. 4. For example, the minimum demand charge to Homestake for January 2004 was $35,581, when Homestake's total Measured Demand was only $2,879.50. See Attachment No. 6.

SUMMARY OF ISSUES FOR MEDIATION

Section 5.5 of the Agreement states, in part:

> If Homestake's System Demand ("Measured Demand") is 8,000 kVA or less during any 12 consecutive months, the Contract Capacity shall be 8,000 kVA thereafter; and the Industrial Contract Service tariff shall no longer be applicable to Homestake thereafter; and the Billing Capacity under the Industrial Contract Service (Transmission Service) tariff shall no longer be applicable; and Homestake shall become subject to a tariff then in effect which is applicable to that smaller size load. After the initial 12 month period that the 8,000 kVA Contract Capacity is applicable, the parties shall renegotiate a new Contract Capacity, subject to the PUC to resolve disputes, for every subsequent 12 month period during which the Measured Demand remains below 8,000 kVA.

1. **Issue # 1 - New Contract Capacity.**

   Status: The initial 12 month period that the 8,000 kVA Contract Capacity was applicable expired as of February 1, 2004, and pursuant to Section 5.5 of the Agreement, Homestake and Black Hills are now to renegotiate a new Contract Capacity, to be effective as of February 1, 2004, subject to mediation by the PUC if the parties are not able to agree. To date, the parties have been unsuccessful in renegotiating a new Contract Capacity. Black Hills proposes a new Contract Capacity of 5,000 kVA, based on Homestake's past demands. Homestake proposes a new Contract Capacity of 1,500 kVA, based on its forecasted actual demands as set forth in Attachment No. 2.

   Resolution: Homestake requests mediation by the PUC to establish a new Contract Capacity of 1,500 kVA, effective February 1, 2004.

2. **Issue #2 – Substation Ownership Discount.**

   Status: As of February 1, 2003, when Homestake became subject to the GL-13 tariff pursuant to the Agreement, Homestake should have begun receiving a credit for the "Substation Ownership Discount" as provided in the GL-13 tariff. A copy of the GL-13 tariff is submitted herewith as Attachment No. 3. Homestake spent approximately $7.5 MM to construct substations and distribution systems to enable Black Hills to supply all of its power to Homestake at a transmission voltage of 69 kV. Therefore, Homestake believes it qualifies for the discount. Black Hills refuses to honor the Substation Ownership Discount. Homestake does not believe that Black Hills has the unilateral authority to select those portions of the GL-13 tariff that should apply to the Agreement.

   Resolution: Homestake requests mediation by the PUC to enable Homestake to receive the Substation Ownership Discount retroactive to February 1, 2003.

DETAILED EXPLANATION OF ISSUES

A. Load History

1. In September 2000, Homestake announced its decision to close the mine by December 31, 2001. This decision ultimately evoked the "Substantial Decrease in Load" provisions of Section 5.5 of the current Agreement.

2. In 2000 and 2001, the Contract Capacity was 12,500 kVA, and the Measured Demand was approximately 14,000 to 22,000 kVA. The IC-14 rate tariff was in effect during this period of time.

3. In January 2002, production and milling operations largely ceased at the mine and Measured Demand decreased significantly. The highest applicable Billing Capacity was based on 80% of the 12-month Average Billing Capacity pursuant to Paragraph 5.1.2 of the Agreement. The initial 12-consecutive-month period in which the Measured Demand was 8,000 kVA or less was February 2002 through January 2003 (Refer to Section 5.5 of the Agreement for the corresponding contract language).

4. Since Homestake's Measured Demand did not exceed 8,000 kVA from February 2002 through January 2003, the Contract Capacity was reduced from 12,500 kVA to 8,000 kVA in February 2003, pursuant to Section 5.5. The GL-13 rate tariff also took effect starting in February 2003.

5. The 12-month period from February 1, 2003 through January 31, 2004 constitutes the "...initial 12-month period that the 8,000 kVA Contract Capacity is applicable..." and after which "...the parties shall renegotiate a new Contract Capacity, subject to the PUC to resolve disputes...."

B. Status of Homestake-Black Hills Negotiations

After several months of negotiations, Homestake and Black Hills have been unable to resolve Issues #1 and #2.

Issue # 1 – New Contract Capacity. Homestake's Measured Demand averaged approximately 1,949 kVA in the 12-month period beginning February 1, 2003. The peak month was April 2003, when the Measured Demand was 5,300 kVA. The Measured Demand was higher than 3,000 kVA in only two of the twelve months of this period.

In Black Hills' letter to Homestake dated April 19, 2004 (Refer to Attachment No. 5), Black Hills states, "Our offer of a 5000 kVA Contract Capacity between February 1, 2004 and January 31, 2005 is based on the **actual peak demand** measured over the last twelve months." (Emphasis in original). Homestake does not agree that 5,000 kVA is a reasonable Contract Capacity for the following reasons:

1. In 2000 and 2001, the Contract Capacity was 12,500 kVA, which was approximately 70-85% of the average Measured Demand in those two years. Black Hills is now proposing a Contract Capacity that is 157% higher than the average Measured Demand for the 12-month period beginning February 1, 2003 and 742% higher than Homestake's actual/forecasted average Measured Demand of 594 kVA for the current 12-month period beginning February 1, 2004. See Attachment No. 2. Homestake believes the Contract Capacity should be comparable to the ratios that existed in 2000 and 2001 (i.e., approximately 70-85% of the Measured Demand). Homestake has attempted to negotiate a new Contract Capacity that approximates the forecasted Measured Demand for the current 12-month period.

2. Black Hills states in its April 19, 2004, letter "the negotiated contract capacities are to be based on the peak demand measured during the **previous 12-month** period, not based upon Homestake's forecast of requirements for the upcoming 12 month period." (Emphasis in original).

   Homestake disagrees. The language in Section 5.5 states only that "the parties shall renegotiate a new Contract Capacity." There is no requirement that the new Contract Capacity "be based on the peak demand measured during the **previous 12-month** period."

Issue # 2 – Substation Ownership Discount. At the negotiations meeting on January 29, 2004, Homestake indicated to Black Hills that Homestake believed it should have been receiving a credit for the "Substation Ownership Discount" as provided for in the GL-13 tariff. Homestake spent approximately $7.5 MM of its own money to construct substations and distribution systems to enable Black Hills to supply all of its power to Homestake at a transmission voltage of 69 kV. Based on the expenditure Homestake has made, Homestake believes it is eligible for the Substation Ownership Discount under the GL-13 tariff retroactive to February 1, 2003. The amount of Substation Ownership credit due Homestake for the period February 1, 2003 through January 31, 2004 is estimated by Homestake to be $30,712, excluding the sales tax credit. In addition, Homestake should continue to receive this Substation Ownership credit from and after January 31, 2004.

REQUEST for RELIEF

Based on the foregoing, Homestake requests that:

1. The new Contract Capacity under the Agreement be 1,500 kVA, effective February 1, 2004, and that such new Contract Capacity be the determining factor for the new Billing Capacity under the Agreement;

2. Homestake be awarded its Substation Ownership Discount as set forth above; and

3. It be awarded such other and further relief as may be just and equitable.

Respectfully submitted,

KDBurke

Karl D. Burke
General Manager – Closure
Homestake Mine

cc: Max Main
Jim Keck

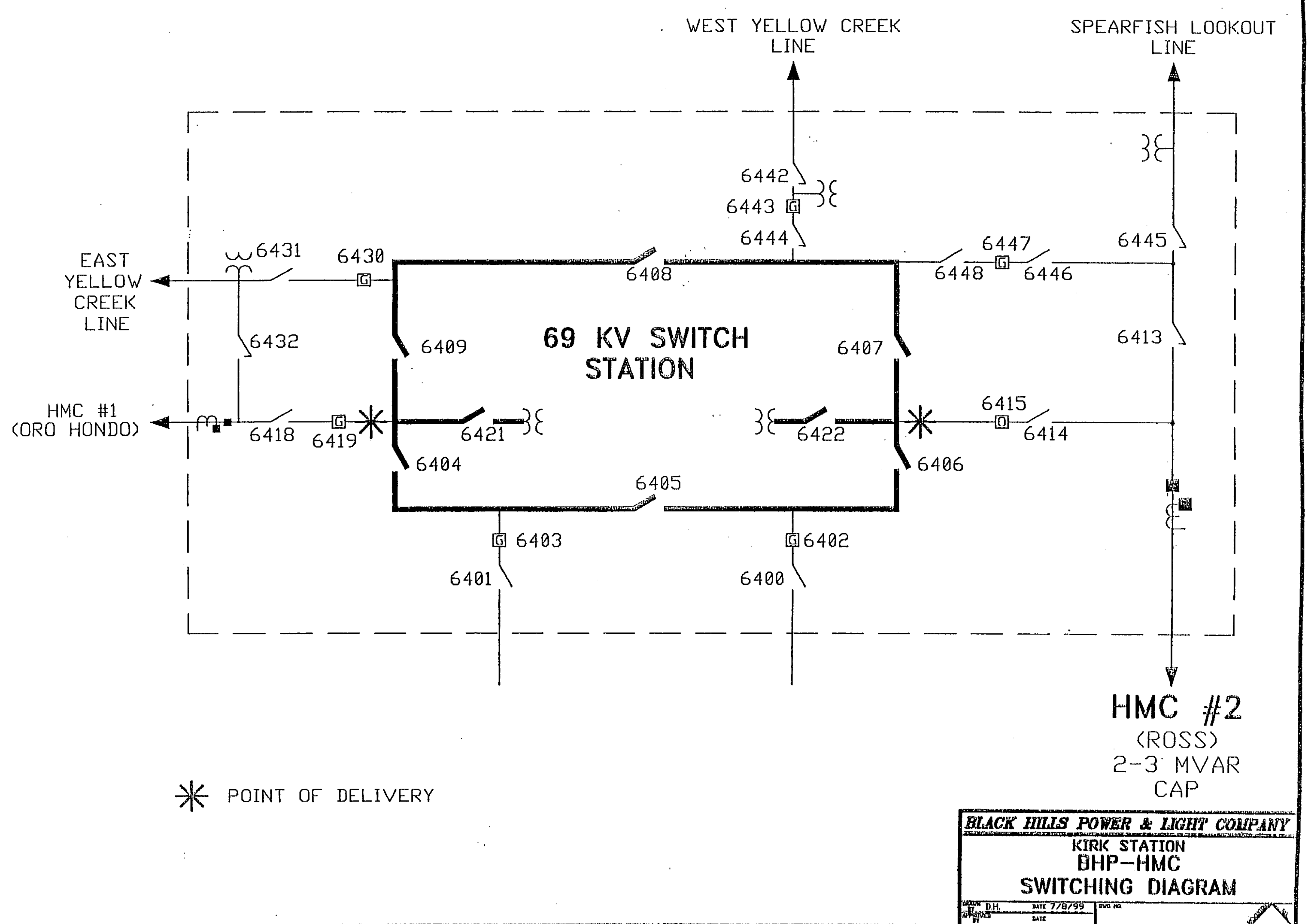
LIST OF ATTACHMENTS

Attachment No.	Description
1	Current Agreement dated effective January 2, 2000
2	Homestake Mine – Peak Electrical Demand Forecast
3	General Service – Large Rate Tariff GL-13
4	Homestake Mine – BHP Billing Charges
5	BHP Letter from Jim Keck to Karl Burke dated April 19, 2004
6	BHP's January 2004 Billing to Homestake

CONFIDENTIAL

#2

EXHIBIT A



WEST YELLOW CREEK LINE
SPEARFISH LOOKOUT LINE
EAST YELLOW CREEK LINE
HMC #1 (ORO HONDO)
69 KV SWITCH STATION
6400
6401
6402
6403
6404
6405
6406
6407
6408
6409
6413
6414
6415
6418
6419
6421
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6444
6445
6446
6447
6448
HMC #2 (ROSS) 2-3 MVAR CAP
POINT OF DELIVERY
BLACK HILLS POWER & LIGHT COMPANY
KIRK STATION
BHP-HMC
SWITCHING DIAGRAM
D.H.
7/8/99

EXHIBIT B

PUBLIC UTILITIES COMMISSION OF SOUTH DAKOTA

BLACK HILLS POWER AND LIGHT COMPANY
RAPID CITY, SOUTH DAKOTA
BILLING CODE 31

SECTION NO. 3
NINTH REVISED SHEET NO. 14
REPLACES EIGHTH REVISED SHEET NO. 14

INDUSTRIAL CONTRACT SERVICE

RATE NO. IC-14 (T)

AVAILABLE

At points on the Company's existing interconnected transmission system within Butte, Custer, Fall River, Lawrence, Meade, and Pennington Counties of South Dakota.

APPLICABLE

To large industrial power users receiving transmission service or distribution service supplied at one point of delivery. Service is by Industrial Contract Service Agreement only, and is not applicable for temporary, standby, supplementary, emergency, resale, shared or incidental purposes.

CHARACTER OF SERVICE

Alternating current, 60 hertz, three phase at the Company's transmission voltage (69,000 volts and above) or distribution voltage (less than 69,000 volts) stated in the Industrial Service Agreement.

NET MONTHLY BILL

Rate

Capacity Charge - On-Peak

Transmission Service @ $5.10 per kVA of Billing Capacity
Distribution Service @ $5.36 per kVA of Billing Capacity (N)

Capacity Charge - Off-Peak

Customer may elect to receive Off-Peak Service of up to 1.5 times their Billing Capacity at no additional capacity charge above their On-Peak Capacity Charge. Off-Peak Service greater than 1.5 times Billing Capacity will be charged at regular rates and applied in determination of Billing Capacity.

Energy Charge

Transmission Service @ 3.450 ¢ per kWh (N)
Distribution Service @ 3.622 ¢ per kWh

Minimum

The charge for the Billing Capacity

DETERMINATION OF BILLING CAPACITY

The Billing Capacity in any month shall be the highest of the following:

a. The kilovolt-ampere (kVA) load during the fifteen-minute period of maximum On-Peak use during the billing period; or the maximum Off-Peak use less fifty percent of the maximum On-Peak use, whichever is higher; or

DATE FILED: June 20, 1995

EFFECTIVE DATE: For service on and after August 1, 1995

ISSUED BY: Kyle D. White

Kyle D. White
Director, Rates and Demand-Side Management

INDUSTRIAL CONTRACT SERVICE

RATE NO. IC-14 (T)

b. Eighty percent of the highest Billing Capacity in any of the preceding eleven months; or
c. Eighty percent of the Contract Capacity as defined in the following paragraph; or
d. Transmission Service 10,000kVA or Distribution Service 6,000kVA (D)

PAYMENT

Net monthly bills are due and payable twenty days from the date of the bill, and after that date the account becomes delinquent. A late payment charge of 1.5% on the current unpaid balance shall apply to (T) delinquent accounts. A non-sufficient funds check charge of $15.00 (I) shall apply to delinquent accounts. If a bill is not paid, the Company shall have the right to suspend service, providing ten days written notice of such suspension has been given. When service is suspended for nonpayment of a bill, a Customer Service Charge will apply.

CONTRACT PERIOD

As a condition to be eligible for this tariff, the customer is (N) required to enter into an Industrial Contract Service Agreement for an initial term of at least five years with the right of the customer to be exercised from time to time as of a date two years prior to the end of any term or extended term to extend the contract for one additional year. Failure of the customer to extend the contract so as to allow the remaining term to be less than three years shall allow the Company to charge a System Planning Surcharge equal to $.50/kVA of measured demand per month for the first two years of a new contract or extended contract less any remaining unexpired existing contract term at the time of the extension. The Company and customer by agreement may modify the provision concerning the extension of the term and the amount of the System Planning Surcharge.

TERMS AND CONDITIONS

1. Service will be rendered under the Company's General Rules and Regulations.
2. Notice will be provided defining On-Peak hours and thirty (30) days written notice will be provided of any change in On-Peak hours.

TAX ADJUSTMENT

Bills computed under the above rate shall be adjusted by the (C) applicable proportionate part of any impost, assessment, or charge imposed or levied by any governmental authority as a result of laws or ordinances enacted which is assessed or levied on the basis of revenue for electric energy or service sold, and/or the volume of energy generated and sold.

DATE FILED: June 20, 1995

EFFECTIVE DATE: For service on and after August 1, 1995

ISSUED BY: Kyle D. White

Kyle D. White

EXHIBIT C

RECEIVED

JUN 11 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING OF THE ELECTRIC POWER SERVICE AGREEMENT BETWEEN BLACK HILLS POWER AND LIGHT COMPANY AND THE SOUTH DAKOTA STATE CEMENT PLANT COMMISSION	))))))	EL99-005

SETTLEMENT STIPULATION

On April 26, 1999, Black Hills Power and Light Company ("BHPL") filed with the South Dakota Public Utilities Commission ("Commission") a confidential electric power service contract with deviation between itself and the South Dakota State Cement Plant Commission ("Dacotah Cement"). That contract with deviation was intended to replace and supersede the Electric Power Service Agreement between the parties dated May 1, 1987, as amended by Amendment No. 1 to the Industrial Contract Service Agreement dated June 23, 1995.

The Staff of the Commission ("Staff") and BHPL, collectively referred to as "Parties," upon the execution of this Stipulation, agree that this Stipulation resolves all issues in this docket and otherwise as addressed herein. The Parties stipulate and agree that the Commission may enter an Order consistent with the terms and conditions of this Stipulation, as set forth below:

1. Confidentiality. The terms and conditions of the contract with deviation between BHPL and Dacotah Cement shall receive "confidential treatment," consistent with the provisions of ARSD 20:10:13:09, *et seq.*, and consistent with the terms and conditions of the filing made by BHPL on April 26, 1999, except that as it concerns the Stipulation relative to the extension of the rate freeze identified herein, which may be made public by BHPL, the Staff, or the Commission, as any of them deem it appropriate.

2. Safety Net. In Docket EL99-001, BHPL sought the approval of a new general service large optional combined account billing rate schedule. In that docket, the Staff made significant inquiry relative to BHPL's plan to offer benefits to some of its general service large account customers and the potential impact that these reductions to its general service large customers may potentially have on BHPL's "captive customers" and the resulting need for a safety net for such captive customers; namely BHPL's residential and small business customers. As a part of Docket No. EL99-001, the Order entered by the Commission specifically acknowledged the recommended "cautioned approval" of the Commission Staff relative to providing benefits to large customers and the potential impact on captive customers. In this docket, BHPL has proposed rate changes, this time for a large industrial customer, and the Staff has raised additional questions relative to the potential impact on BHPL's captive customers and

the concern that cost shifting could occur as a result of the changes in rates for industrial customers.

3. Request for Waiver of Class Cost of Service Study Requirement. The Parties acknowledge that the Order approved in EL99-001 provided that BHPL shall, in its next general rate proceeding, provide comparison class cost of service studies for general service large customers, reflecting revenues before and after the implementation of the tariff changes under EL99-001, which study was intended to assure that BHPL was not shifting costs between its respective classes of service for the benefit of general service large class customers. The Parties agree that this may be construed as a general rate proceeding and, therefore, request that the Commission waive the requirement for a comparison class cost of service study.

4. Extension of Rate Freeze and Abeyance of Fuel and Purchased Power Adjustment Tariff. The rate freeze entered by an Order of the Commission in EL95-003 on July 19, 1995, shall be extended from December 31, 1999, subject to the terms and conditions set forth below.

(a) BHPL shall not file any additional applications with the Commission if this Stipulation is approved, which, if granted, would result in an increase in revenues for the period between January 1, 2000 through December 31, 2004 ("Rate Freeze Period"); provided, however, that this Rate Freeze Period does not prevent BHPL from filing for a rate increase to take effect subsequent to January 1, 2005, or from filing for a rate increase if BHPL's cost of service is expected to increase as a result of an "Extraordinary Event" as defined in paragraph 4(f) below; nor is this Rate Freeze Period intended to prohibit BHPL from filing rate applications that request changes in rates for reasons other than to obtain a general rate increase.

(b) Staff enters into this Stipulation in the public interest and in the interest of BHPL's South Dakota electric customers in order to provide for the continued protection of rate stability during the Rate Freeze Period, and Staff agrees that BHPL should continue to pursue and realize the benefits of those opportunities available to BHPL and its unregulated affiliates and subsidiaries, to make BHPL more efficient and competitive over the long term, to the benefit of BHPL's South Dakota customers.

(c) BHPL shall not include a fuel and purchased power adjustment tariff, nor shall BHPL make any application to reinstate a fuel and purchased power adjustment tariff to take effect prior to January 1, 2005; however, in the event an Extraordinary Event arises, this restriction shall not apply, subject to the terms and conditions of the Extraordinary Event.

(d) In consideration for the commitment to forgo the fuel and purchased power adjustment tariff, except as otherwise provided herein, and consistent with the Order Approving Settlement Agreement and that certain Settlement Stipulation in

EL95-003, BHPL shall continue to retain without adjustment to rates charged to its South Dakota customers all revenues and benefits realized by it from the sale of wholesale capacity and energy, including, without limitation, sales to MDU for its Sheridan, Wyoming load and any and all other sales of wholesale capacity or energy by BHPL. BHPL may effect a transfer and/or assignment of any right which BHPL has in any sale of wholesale capacity and energy, including, without limitation, sales to MDU for its Sheridan, Wyoming load, sales to the City of Gillette, Wyoming, or any other sale of wholesale capacity or energy without a review of the consideration, if any, between BHPL and any affiliate or subsidiary of Black Hills Corporation, subject to the Staff and Commission reviewing the reasonableness and prudency of such actions in any subsequent general rate proceeding which is initiated with the intent to raise or reduce rates when compared to those in effect as a result of this Stipulation. This provision shall continue to apply to BHPL's tariffs until modified by a lawful Order of the Commission.

(e) BHPL has indicated that during the Rate Freeze Period, it may enter into power purchase transactions or power resource transfers with its affiliated exempt wholesale generator ("EWG"), as defined and regulated in Section 32(k) of the Public Utility Holding Company Act ("Act"), and for the purposes of the Act, Staff and BHPL agree that the Commission has sufficient regulatory authority, resources, and access to the books and records of BHPL and its associates, affiliates, and subsidiaries to exercise its duties under the referenced provisions of the Act. Staff and BHPL agree that Staff and Commission may review the reasonableness and prudency of such purchases between BHPL and its affiliated EWG in any general rate proceeding which is initiated with the intent to raise or reduce rates when compared to those in effect as a result of this Stipulation.

(f) An Extraordinary Event is the occurrence of one of those items enumerated below:

(1) New federal, state or local governmental requirements or governmental charges, including, but not limited to, income taxes, taxes or charges imposed on energy, emissions, environmental extranalities or reclamation obligations, imposed after January 1, 2000, upon BHPL or Wyodak Resources Development Corp. that project to cause BHPL's cost of service to its South Dakota customers to increase in a material amount. Increases in the cost of service of less than $2,000,000 will be presumed not to be material for the purposes of this paragraph.

(2) Forced outages, caused by an act of nature or criminal activity or resulting from fire or explosion from any cause, occurring to both

the Wyodak Plant and Neil Simpson Unit #2 which are projected to continue simultaneously over a period exceeding 60 days.

(3) Forced outage occurring to either the Wyodak Plant or NS #2 which has continued for a period of three months and is projected to be nine months or more.

(4) The Consumers Price Index, All Urban, as compiled by the United States Department of Labor increases to a monthly rate for six consecutive months which if continuing for the following six months would result in a 10 percent or more annual inflation rate.

(5) The loss of a South Dakota customer or revenue from an existing South Dakota customer that, if projected, would result in a loss of revenue to BHPL of $2,000,000 or more during any 12-month period.

(6) If BHPL's cost of coal to its South Dakota customers increases and is projected to increase by more than $2,000,000 over the cost for the most recent calendar year.

(7) Electric deregulation as a result of either federal or state mandate which allows any customer of BHPL to choose its provider of electricity at any time during the Rate Freeze Period.

(g) BHPL represents that during the Rate Freeze Period it will not purchase fuel and electric power which will be intentionally priced artificially low during the Rate Freeze Period and artificially high following the Rate Freeze Period, with the result that customers following the Rate Freeze Period would be subsidizing power costs of customers during the Rate Freeze Period.

5. Reduction in Taxes During Rate Freeze Period.

If any material reduction in federal, state, or local taxes occurs which is projected to materially reduce BHPL's cost of service for its South Dakota customers, the Commission shall have the right in its discretion to modify the stipulation to adjust the rates to reflect the tax changes. Decreases in the cost of service of less than $1,000,000 would be presumed not to be material for purposes of this paragraph.

6. General Conditions.

(a) Except for ratemaking principles set forth herein, this Stipulation shall not be deemed to constitute any precedential value after the Rate Freeze

Period, including, but not limited to, treatment of off-system energy and capacity sales revenues and transactions.

(b) The approval of this Stipulation by the Commission shall not in any respect constitute a determination by the Commission as to the merits of any allegations or contentions made in this proceeding.

(c) The Stipulation is expressly conditioned upon the Commission's acceptance of all the provisions hereof, without change or a condition which is unacceptable to any Party.

(d) Discussions among BHPL and Staff which produced this Stipulation have been conducted with the customary understanding that all offers of settlement and discussions relating thereto are privileged and shall not be used in any manner in connection with this proceeding or otherwise, except as required by law.

(e) This Stipulation includes all terms of Settlement and is submitted on the condition that in the event the Commission imposes any change in or condition to this Stipulation which is unacceptable to any Party, this Stipulation shall be deemed withdrawn and shall not constitute any part of the record in this proceeding or any other proceeding nor be used for any other purpose.

(f) This Stipulation shall be binding upon the parties hereto and upon their respective successors, assigns, agents and representatives.

(g) It is understood that Staff enters into this Stipulation for the benefit of BHPL's South Dakota customers affected hereby and in the public interest.

7. Statement R. For informational purposes, BHPL shall continue to make annual filings with the Commission of the Statement R computation as presented in Docket EL95-003 to monitor earnings derived from affiliated coal sales to BHPL.

8. Commission Approval. Each of the Parties request the Commission to enter its order approving this Stipulation and grant the waiver requested in paragraph 3. Failure of the Commission to enter such order shall cause this Stipulation to become null and void.

Dated June 1 22, 1999.

BLACK HILLS POWER AND LIGHT COMPANY

By ______________________

John K. Nooney, Attorney

STAFF OF THE PUBLIC UTILITIES COMMISSION

By ______________________

Camron Hoseck, Attorney 6/11/99

RECEIVED
JUL 2 8 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY BLACK HILLS POWER AND LIGHT COMPANY FOR APPROVAL OF A CONTRACT WITH DEVIATIONS WITH THE SOUTH DAKOTA STATE CEMENT PLANT COMMISSION D/B/A DACOTAH CEMENT	ORDER APPROVING CONTRACT WITH DEVIATIONS, WAIVING A CLASS COST OF SERVICE STUDY AND APPROVING A CONDITIONAL RATE FREEZE EL99-005

On April 26, 1999, the Public Utilities Commission (Commission) received a filing by Black Hills Power and Light Company (BHPL) for approval of a contract with deviations with the South Dakota State Cement Plant Commission d/b/a Dacotah Cement (Dacotah). The Contract set rates for electrical service for an approximate five year period subject to several conditions. BHPL filed the following tariff sheets for Commission approval:

Section No. 1, Sixth Revised Sheet No. 3, Replacing Fifth Revised Sheet No. 3
Section No. 4, Eighth Revised Sheet No. 1, Replacing Seventh Revised Sheet No. 1
Section No. 4, Original Sheet No. 5, Replacing Seventh Revised Sheet No. 1
Section No. 4, Original Sheet No. 6

BHPL approached Commission Staff with a proposal subsequent to the filing of the above contract. The proposal was for a conditional rate freeze which was a continuation of the rate freeze ordered in Docket EL95-003 subject to certain conditions.

Because the Commission Order in Docket EL99-001 provided for a comparison class cost of service study for general service large customers reflecting revenues before and after the implementation of the tariff changes under Docket EL99-001 in BHPL's next general rate proceeding, Commission Staff and BHPL entered into a stipulation to request the waiver of that requirement as the stipulation and accompanying rate freeze could be construed as a general rate proceeding.

Secondly, Commission Staff and BHPL stipulated to an extension of the rate freeze ordered in Docket EL95-003 for a period between January 1, 2000, through December 31, 2004, subject to certain conditions.

On June 22, 1999, at its regularly scheduled meeting, the Commission considered the request for approval of the Contract with Deviations, the request for waiver of the requirement for a comparison class cost service study for general service large customers, and for approval of the stipulation extending the conditional rate freeze as described above. Commission Staff filed a Staff recommendation which recommended approval of the Contract with Deviations, the waiver and the stipulation described above. BHPL appeared as a proponent of these items.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL 49-34A, specifically, 49-34A-6, 49-34A-8, 49-34A-10, and 49-34A-11. Further, the Commission finds that BHPL's request for approval of a Contract with Deviations is just and reasonable and shall be approved. The requested waiver of the class cost of service study shall be approved. The Stipulation between Commission Staff and BHPL is just and reasonable and shall be approved. As the Commission's final decision in this matter, it is therefore

ORDERED, that the request seeking approval of a Contract with Deviations is in the public interest and is hereby granted. It is further

ORDERED, that the above-referenced tariff sheets are effective for service rendered on and after the date of this Order. It is further

ORDERED, that the request for waiver of the requirement for a comparison class cost of service study for general service large customers, reflecting revenues before and after the implementation of the tariff changes under Docket EL99-001, which study was intended to assure that BHPL was not shifting costs between its respective classes of service for the benefit of general service large class customers is granted. It is further

ORDERED, that the Stipulation between Commission Staff and BHPL setting forth the conditions of a rate freeze is approved and is incorporated by reference the same as if it was fully recited herein. It is further

ORDERED, that this Order shall be effective on the date of issuance.

Dated at Pierre, South Dakota, this 25th day of June, 1999.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 6/25/99

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg

JAMES A. BURG, Chairman

Pam Nelson

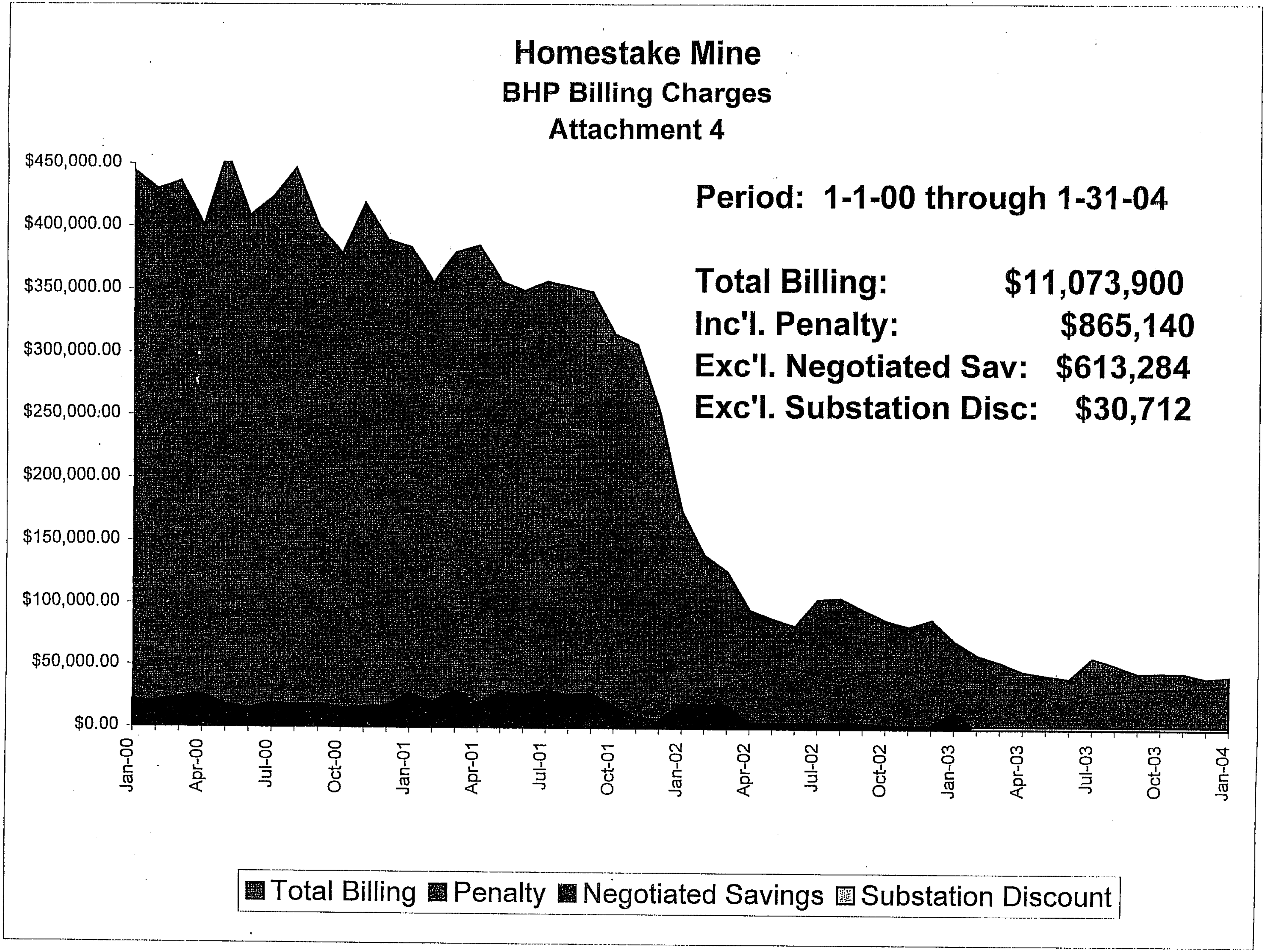
PAM NELSON, Commissioner

Laska Schoenfelder

LASKA SCHOENFELDER, Commissioner

CONFIDENTIAL

#3



Homestake Mine
BHP Billing Charges
Attachment 4
Period: 1-1-00 through 1-31-04
Total Billing: $11,073,900
Inc'l. Penalty: $865,140
Exc'l. Negotiated Sav: $613,284
Exc'l. Substation Disc: $30,712
$450,000.00
$400,000.00
$350,000.00
$300,000.00
$250,000.00
$200,000.00
$150,000.00
$100,000.00
$50,000.00
$0.00
Jan-00
Apr-00
Jul-00
Oct-00
Jan-01
Apr-01
Jul-01
Oct-01
Jan-02
Apr-02
Jul-02
Oct-02
Jan-03
Apr-03
Jul-03
Oct-03
Jan-04
Total Billing
Penalty
Negotiated Savings
Substation Discount

GENERAL SERVICE - LARGE

RATE NO. GL-13 (T)

AVAILABLE

At points on the Company's existing transmission and distribution facilities supplied by its interconnected transmission system within Butte, Custer, Fall River, Lawrence, Meade, and Pennington Counties of South Dakota.

APPLICABLE

To large power users for their entire electric service requirements supplied at one point of delivery and who agree to a Billing Capacity of 125 kilovolt-amperes (kVA) or more. This schedule is not applicable for temporary, standby, supplementary, emergency, resale, or shared service.

CHARACTER OF SERVICE

Alternating current, 60 hertz, three phase, at a single standard utilization voltage most available to the location of the customer.

NET MONTHLY BILL

Rate

Capacity Charge - On Peak

$900.00 for the first 125 kVA or less of Billing Capacity (I)
$ 5.75 for each additional kVA of Billing Capacity

Capacity Charge - Off Peak

Customers having a Contract Capacity of 250 kVA or greater (C) may elect to receive Off-Peak Service of up to 1.5 times their Billing Capacity at no additional capacity charge above the On-Peak Capacity Charge. Off-Peak Service greater than 1.5 times Billing Capacity will be charged at regular rates and applied in determination of Billing Capacity.

Energy Charge

4.37¢ per kWh for the first 50,000 kWh (R)
4.27¢ per kWh for the next 450,000 kWh
3.99¢ per kWh for each additional kWh

Minimum

The Capacity Charge but not less than $2.00 per kVA times the highest Billing Capacity applicable in the twelve months ending with and including the current month, plus any tax adjustment.

DATE FILED: June 20, 1995

EFFECTIVE DATE: For service on and after August 1, 1995

ISSUED BY: Kyle D. White
Kyle D. White
Director, Rates and Demand-Side Management

GENERAL SERVICE - LARGE

BILLING CAPACITY

The Billing Capacity in any month shall be the highest of the following:

a. The kilovolt-ampere (kVA) load during the fifteen-minute period of maximum use during the month determined by dividing the maximum capacity in kilowatts (kW) by the power factor. (T)
b. Eighty percent of the highest Billing Capacity in any of the preceding eleven months.
c. Eighty percent of the Contract Capacity as stated in the Electric Service Agreement.

The power factor will be determined at the Company's option by a test of not less than fifteen-minute duration under conditions which the Company determines to be normal or by permanent measurement. The power factor is defined to be the quotient obtained by dividing the kilowatt-hours used during the test period by the square root of the sum of the squares of the kilowatt-hours used and the lagging reactive kilovolt-ampere-hours supplied during the same period. Any leading kilovolt-ampere-hours supplied during the period will not be considered.

Should the customer's measured Billing Capacity exceed the current Contract Capacity during three (3) or more billing months in any calendar year, a new Contract Capacity equal to the average of the three (3) highest measured Billing Capacities during the year will be established and the customer will be notified in writing prior to implementation. C

SUBSTATION OWNERSHIP DISCOUNT

Customers who furnish and maintain a transformer substation with controlling and protective equipment, with the exception of metering equipment, for the purpose of transforming service from the Company's most available transmission voltage (47,000 volts and above) or primary distribution voltage (2,400 volts to 24,900 volts) to the customer's utilization voltages, shall receive a monthly credit of $0.25 per kVA of Billing Capacity for transmission service and $0.15 per kVA of Billing Capacity for primary distribution service.

(D)

GENERAL SERVICE - LARGE

RATE NO. GL-13 (T)

PAYMENT

Net monthly bills are due and payable twenty days from the date of the bill, and after that date the account becomes delinquent. A late payment charge of 1.5% on the current unpaid balance shall apply to delinquent accounts. A nonsufficient funds (T) check charge of $15.00 shall apply for returned checks. If (I) a bill is not paid, the Company shall have the right to suspend service, providing ten days written notice of such suspension has been given. When service is suspended for nonpayment of a bill, a Customer Service Charge will apply. (T)

CONTRACT PERIOD

A period of not less than three years and if not then (C) terminated by at least two years prior written notice by either party, shall continue until so terminated. Where service is being initiated or enlarged and requires special investment on the part of the Company, a longer period may be required and shall be as stated in the Electric Service Agreement.

TERMS AND CONDITIONS

1. Service provided hereunder shall be on a continuous basis. If service is discontinued and then resumed within twelve months after service was first discontinued, the customer shall pay all charges that would have been billed if service had not been discontinued.

2. Service will be rendered under the Company's General Rules and Regulations.

3. Notice will be provided defining On-Peak hours and a thirty days written notice will be provided of any change in On-Peak hours.

TAX ADJUSTMENT

Bills computed under the above rate shall be adjusted by the (C) applicable proportionate part of any impost, assessment or charge imposed or levied by any governmental authority as a result of laws or ordinances enacted, which is assessed or levied on the basis of revenue for electric energy or service sold, and/or the volume of energy generated and sold.

DATE FILED: June 20, 1995

EFFECTIVE DATE: For service on and after August 1, 1995

ISSUED BY: Kyle D. White

Kyle D. White
Director, Rates and Demand-Side Management

Black Hills Power
Energy...for a lifetime.

Jim Keck
Energy Services Engineer
jvkeck@blackhillspower.com

P (605) 721-2612
F (605) 721-2577

April 19, 2004

Karl Burke
General Manager
Homestake Mining Company
630 E. Summit Street
Lead, SD 57754

Subject: Contract Capacity Revision - Contract #12951

Dear Karl,

This letter is in response to the conversation I had with Steve Mitchell, where Steve indicated that Homestake is not willing to pay any additional minimum demand charges going forward. Black Hills Power stands firm on our offer to Homestake for a 5,000 kVA contract capacity for the upcoming year (Feb. 1, 2004 – Jan. 31, 2005) and here are the reasons why:

- Our offer of a 5000 kVA contract capacity between February 1, 2004 and January 31, 2005 is based on the **actual peak demand** measured over the last 12 months. The minimum billed demand for this contract year will be 80% of the contract capacity or 4,000 kVA.

- Homestake used 5,300 kVA during its peak month last year. Black Hills Power has and is providing, in effect, standby service for the Homestake Hydros (another 3 to 5 MW). In addition, the Contract provides for **significant relief** to Homestake, in not ratcheting off of **this actual demand**, beyond the 12-month billing period in which it occurred. If the actual demand was allowed to ratchet down at a rate of 20% per year, Homestake would end up paying an **additional $450,000** in minimum demand charges, based on a 5000 kVA contract capacity in 2004 and a 1000 kVA contract capacity from 2005-2009.

- The graphs and associated explanations in the contract demonstrate that the negotiated contract capacities are to be based on the peak demand measured during the **previous 12-month** period, not based upon Homestake's forecast of requirements for the upcoming 12 month period.

- Steve had indicated that he believed this year's negotiation would be the final contract capacity for the remainder of the Contract. This is not true. The contract capacity will be negotiated for each remaining 12-month period, based on the preceding 12-month billing period, for the term of the Contract. Therefore, if Homestake's actual peak demand during the current year is 1000 kVA, for example, then next year's contract capacity will drop from 5000 kVA to 1000 kVA and the minimum billed demand would be 800 kVA.

- The billed demand will not ratchet off of minimum billed demands that occurred before the effective date of a new contract capacity. This allows Homestake to avoid minimum billed demands of 5120 kVA for the new 12 month billing period.

- In addition to the major concessions made by Black Hills Power in the event of a mine closure, Homestake received a special rate discount of over $600,000 as a result of the terms of the current contract. The discount was negotiated to assist Homestake in keeping the mine open. The announcement of the mine closure came only 9 months after the 10-year contract became effective.

As a result of the failure to negotiate a replacement contract capacity, the contract capacity for this year remains at 8,000 kVA as specified in Section 5.5 of our agreement and will be billed at this level until a replacement contract capacity has been put into effect.

Karl, I trust Homestake will reconsider Black Hills Power's offer. If not, I suggest Homestake submit its dispute to the South Dakota Public Utilities Commission for resolution.

Sincerely,

Jim Keck

Jim Keck

xc: Kyle White – BHP

BLACK HILLS POWER, INC.
ELECTRIC BILLING

Black Hills Power
Energy...for a lifetime

Customer Account Number
20-04-056911-02

HOMESTAKE MINING CO.
c/o Wynne Cockrum
630 E Summit
Lead, SD 57754
Fax Number: 1-605-584-4625

Please remit payment to:
BLACK HILLS POWER, INC.
PO Box 1440
Rapid City, SD 57709-1440

Date of Bill	*Due Date*	*Service from:*
2/2/2004	2/22/2004	01/01/04 to 02/01/04
Rate Schedule	*Meter #*	*Contract #*
GL-13	99893	12951

Energy Use

	Total
Total kWh Sales	87,965

Peak Capacity

	On-Peak
Indicated kW (14:30, 1/23/04)	340.0
Power Factor	1.000
Metered Capacity-kVA	340.0
	Off-Peak
Indicated kW (1:45, 1/4/04)	620.0
Power Factor	1.000
Metered Capacity-kVA	620.0
Less: 150% of On-Peak	510.0
Additional Capacity	110.0

Billing Capacity-highest of:

1) Metered Capacity - kVA =	450.0
2) Contract Capacity @ 80% 8,000 x 80% =	6,400.0
3) Past 11 months peak kVA 6,400.0 x 80% = (Beginning February 2003)	5,120.0
Billing Capacity (kVA):	6,400.0

Reactive Energy (kVARh):

Billing

Capacity Charge:	125.0	kVA @	$	900.00	=	$	900.00
	6,275.0	kVA @	$	5.75	per kVA=	$	36,081.25
Energy Charge:	50,000	kWh @	$	0.0437	per kWh =	$	2,185.00
	37,965	kWh @	$	0.0427	per kWh =	$	1,621.11
	-	kWh @	$	0.0399	per kWh =	$	-
Energy Purchase Credit:	750	kWh @	$	(0.02)	per kWh =	$	(15.00)

Billing Capacity	Metered Capacity	Additional Min. Demand
6,400.0	450.0	5,960.0
x Cap Charges	x Cap Charges	
$ 36,981.25	$ 2,768.75	
x 4% tax	x 4% tax	
$ 1,479.25	$ 110.75	
Total Billed	*Total Metered*	*Additional Min. Demand*
$ 38,460.50	*$ 2,879.50*	*$ 35,581.00*

Sub Total	$	40,772.36
Sales Tax @ 4%	$	1,630.89
Total Billing	$	42,403.25
Balance Forward:	$	-
Total Due:	$	42,403.25

Please pay total due before due date to avoid late payment charges

Thank you

Black Hills Corporation
Kyle D. White
Vice President
Corporate Affairs
E-mail: kwhite@bh-corp.com

625 Ninth Street • P.O. Box 1400
Rapid City, SD 57709-1400
P (605) 721-2313
F (605) 721-2599

June 7, 2004

RECEIVED
JUN 09 2004
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BY FACSIMILE 605-773-3809
Pam Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Re: Docket No. EL04-017

Dear Ms. Bonrud:

Thank you for the opportunity to respond to Homestake Mining Company's ("Homestake") request for mediation by the South Dakota Public Utilities Commission (the "Commission"). Before I address the issue that is before the Commission, I would like to clarify Homestake's request to the Commission for mediation. The Electric Power Service Agreement (the "Agreement") actually provides that the parties shall renegotiate a new Contract Capacity, "subject to the PUC to resolve disputes." In as much, we are proceeding in accordance with the Commissions' complaint resolution processes. I also think it is important to provide a brief history of the negotiations of the Agreement.

History

In late 1999 and early 2000, Black Hills Power, Inc. ("Black Hills") and Homestake negotiated a long term ten year agreement. The Agreement had many deviations from the standard terms of Black Hills' Industrial Contract Service tariff approved by the Commission. Consequently, the Agreement was filed as a contract with deviations and approved by the Commission in docket no. EL00-008.

During the negotiations, Homestake's main focus was to obtain significant rate concessions from Black Hills that were supportive of keeping the mine open. Homestake also requested the inclusion of provisions that would address a substantial decrease in its electricity requirements due to changing operations at the gold mine. An important part of this request was the ability to estimate the costs associated with the lower electricity purchases thereby allowing a comparison of the phase-out charges with the significant discounts agreed to by Black Hills. After lengthy negotiations and considerable allowances on the part of Black Hills, the Agreement provided this balance. In return for the substantial rate concessions that would allow the mine to continue to operate, Black Hills requested a long term agreement so that it would have a stable revenue source to make up for the significant rate reductions given Homestake.

Surprisingly, less than nine months after the Agreement was executed by the parties, and less than four months after it was approved by the Commission, Homestake gave notice of the closure of the mine. To Black Hills' detriment, this has resulted in significantly lower electricity purchases than had been expected based upon the parties' negotiations. As noted herein, Black Hills has made a good faith effort to negotiate a fair and reasonable solution. In fact, our offer was significantly better than the strict requirements of the Agreement. Homestake's approach, on the other hand, has been to ignore the terms of the Agreement, as well as the manner in which Black Hills, and the public utility industry as a whole, does business.

Issue

The issue is whether Homestake should be allowed to forecast its "expected" electricity use and make payments based upon this "expected" use. Homestake believes that it should be allowed to consider only "expected" capacity requirements in the near term and ignore previous capacity requirements. However, this approach is inconsistent with (1) the Agreement; (2) the parties' past practices, (3) billing capacity principles of all Black Hills' service tariffs applicable to industrial loads of this size; and (4) customs in the utility industry.

The Agreement

Parties' Intent

I was involved in the parties' negotiations of the Agreement, including the terms of paragraph 5.5. The parties' intent in drafting paragraph 5.5 was to:

(i) limit the charges that could result from the use of a Billing Capacity ratchet in the Industrial Contract Service and General Service – Large tariffs;
(ii) address reductions in measured demand;
(iii) specify new conditions for determining capacity charges by reviewing the previous twelve (12) months usage ("Ratchet"); and
(iv) require the parties to negotiate a new Contract Capacity annually.

Due to the unusual conditions associated with the mine's operations, the Ratchet was modified from the provisions included in the tariffs to allow Homestake to avoid ratchets based upon previous Billing Capacities. Please note that the Agreement does not, however, except the use of ratchets altogether. Also, Contract Capacity was substituted for the Billing Capacity ratchet that is provided for in the tariff. Therefore, in negotiating the new Contract Capacity, the actual measured monthly demands during the prior twelve months are one of the primary considerations for establishing the minimum Billing Capacity for the next Contract Capacity year.

With that said, a strict reading of the Agreement supports an outcome that neither party contemplated as it would substantially increase the charges that Black Hills can include in its billings to Homestake.

<u>Application of the Paragraph 5.5 to the Current Situation</u>

Homestake's System Demand ("Measured Demand") has been less than 8,000 kVA during any 12 consecutive months. Accordingly, paragraph 5.5 required that:

1. the Contract Capacity be changed to 8,000 kVA;
2. the Industrial Contract Service tariff, and the Billing Capacity under the Industrial Service tariff, no longer applies; and
3. Homestake is now subject to the "tariff then in effect" that was applicable to the smaller size load, which is the General Service Large tariff.

Once paragraph 5.5 was implemented, the Agreement does not further invalidate or modify the tariff charges or conditions. Accordingly, the provisions of the General Service Large tariff, including the Billing Capacity provisions, must be followed. The relevant part of General Service Large tariff provides:

> <u>BILLING CAPACITY</u>
>
> The Billing Capacity in any month shall be the highest of the following:
>
> a. The kilovolt-ampere (kVA) load during the fifteen-minute period of maximum use during the month determined by dividing the maximum capacity in kilowatts (kW) by the power factor.
> b. Eighty percent of the highest Billing Capacity in any of the preceding eleven months.
> c. Eighty percent of the Contract Capacity as stated in the Electric Service Agreement.
>
> Should the customer's measured Billing Capacity exceed the current Contract Capacity during three (3) or more billing months in any calendar year, a new Contract Capacity equal to the average of the three (3) highest measured Billing Capacities during the year will be established and the customer will be notified in writing prior to implementation.

Based upon a strict reading of the Agreement and the General Service Large tariff, the Billing Capacity should now be 5,120kVA, which is eighty percent of the highest Billing Capacity (6,400kVA) in any of the preceding eleven months. Homestake's position has been that the Agreement acted to remove both subsections a. and b. from the determination of Billing Capacity provisions under the General Service Large tariff. If we were to follow this illogical interpretation, after the first year of using an 8,000 kVA Contract Capacity only the "expected" demands should be used for purposes of determining the appropriate rate. Not only was this not the parties' intent, it is something that no other Industrial Contract Service or General Service Large customer has the benefit of. It is a practice that has never been used in Homestake's previous billings. And it is contrary to utility industry customs.

Hypothetical Graphs Do Not Accurately Reflect the Actual Shutdown

The five graphs and accompanying narratives were included to demonstrate the applicability of Section 5.5 of the Agreement. As noted very clearly in the Agreement and the narratives, the graphs were hypothetical. Further, the graphs do not accurately match the actual shutdown of the operations and related reductions in electricity requirements that have occurred. The graphs assume that the reduced demand dropped instantaneously and remained flat at the lower level; however, this has not occurred. The challenge at the time we were negotiating the Agreement was that only the periods prior to Homestake qualifying for a new "most applicable tariff" and reduced Contract Capacity and Billing Capacities could be accurately represented. Because the 2,000 kVA was a hypothetical only and not an actual "negotiated" usage, no tariff was or could have been assumed for the "after" period. In fact, at one point, a draft of the Agreement and the graphs included a specific reference to the applicability of Black Hills' General Service Large tariff; however, the references were removed at Homestake's specific request as they wanted to be able to avail themselves of a better tariff should one be approved at a later time.

Conclusion

Annual renegotiation of the Contract Capacity was a compromise designed to recognize the interests of both parties. One of the chief goals of the negotiations was to derive a method that allowed a compromise with regard to Contract Capacity and Billing Capacity minimums. Due to the uncertainty of future mining operations and electric power service tariffs, the parties determined that an annual Contract Capacity renegotiation would provide greater flexibility and more equitable results.

The Billing Capacity provisions of the tariffs applicable to large customers include minimums in order to ensure at least partial recovery of the significant fixed costs that can be incurred to meet large customer's needs for electricity (generation, purchased power, transmission and distribution costs). Without these provisions, these costs will become the responsibility of our other customers when large customers significantly (and unexpectedly) reduce their loads.

If the intent of the parties was to accept the provisions of the General Service Large tariff as the most applicable tariff, then the reduction of the Contract Capacity is critical to allow the Billing Capacity to trend downward toward the lower measured demands. Without a reduction in Contract Capacity, the minimum Billing Capacity for the remainder of the agreement would be 6,400 kVA, which is most consistent with the language of the Agreement, as well as being the most appropriate for a customer that was purchasing nearly six million dollars ($6,000,000.00) in electricity at the time the contract was signed.

To put this matter into perspective, five years ago when we were negotiating the agreement it had a contracted value of $35,000,000 in electricity sales over ten years. Instead, we now hope that the contract will reach $12,000,000 in value. Homestake demanded two things from the new agreement; near term rate discounts, and savings in the long-term if loads significantly decreased. In the near term, they received rate discounts of over $610,000 while paying capacity minimums of $775,000, which were offset by the sale to Black Hills of Homestake's hydroelectric generation in the amount of $53,000. In addition, for nearly ten years Homestake has enjoyed the benefits of a rate freeze that kept its price of electricity constant when prices were fluctuating wildly. Not that long ago, Homestake was our largest customer at thirty-two megawatts. At the time the Agreement was signed, Homestake was still our largest customer at twenty megawatts. Today, its load will range from zero to possibly two megawatts. For this substantial decrease in load they have paid a little more than $100,000 in phase-out capacity charges.

Our proposal to Homestake was to set the Contract Capacity at a level that would pay Black Hills approximately $200,000 this year and the subsequent year's contract capacities would be based on this year's loads. This was significantly lower than the amount Black Hills was entitled to demand under the Agreement and was made in good faith. However, even this reasonable suggestion was rejected by Homestake.

We appreciate the opportunity to respond and look forward to meeting with you. In the meantime, please feel free to contact me should you have any questions regarding our position.

Sincerely,

Kyle D. White

Kyle D. White

cc: Steve Helmers
Jim Keck
Max Main

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY HOMESTAKE MINING COMPANY OF CALIFORNIA REGARDING A REQUEST FOR MEDIATION BETWEEN HOMESTAKE MINING COMPANY OF CALIFORNIA AND BLACK HILLS CORPORATION	))))))	**ORDER FOR AND NOTICE OF HEARING** **EL04-017**

On May 6, 2004, the Public Utilities Commission (Commission) received a filing by Homestake Mining Company of California (Homestake) of a Request for Mediation between Homestake and Black Hills Corporation d/b/a Black Hills Power and Light Company (Black Hills). The filing requests "resolution" by the Commission of the dispute which has arisen in the course of the parties' efforts to renegotiate the Contract Capacity under Paragraph 5.5, "Substantial Decrease in Load," of the Electric Power Service Agreement between Homestake and Black Hills. By stipulation of the parties, the date for Black Hills to file a response to Homestake's Request for Mediation was June 7, 2004, and on June 7, 2004, Black Hills filed its response in this matter. On June 7, 2004, Homestake also filed a submittal which included an additional claim that it was entitled to the Substation Ownership Discount under Black Hills's filed Rate No. GL-13.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-8.3, 49-34A-10, 49-34A-11, 49-34A-26 and 49-34A-27 and ARSD Chapter 20:10:01 and 20:10:13, particularly 20:10:13:09 and 20:10:13:10.

A hearing shall be held on July 19, 2004, beginning at 10:30 A.M., in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. All persons testifying will be subject to cross examination by the parties.

The issues at the hearing will be: (i) what is the appropriate "Contract Capacity" under Paragraph 5.5, "Substantial Decrease in Load," of the Electric Power Service Agreement between Homestake and Black Hills filed and approved by the Commission as a tariffed contract with deviations on May 23, 2000, in Docket EL00-008 (Contract); (ii) what is the relationship between such determined Contract Capacity under the Contract and the Billing Capacity under Black Hills's filed Rate No. GL-13; (iii) whether Homestake is entitled to the Substation Ownership Discount under Black Hills's filed Rate No. GL-13; and (iv) what relief should be granted based upon the Commission's findings and conclusions on the issues.

Although Homestake has characterized its request as a request for "mediation," Paragraph 5.5 of the Contract provides for the Commission "to resolve disputes" and the relief requested by Homestake is a definitive decision on the two issues it raises. The Commission accordingly deems this proceeding to be in the nature of a complaint or petition for a dispositive order under the contested case procedures of SDCL 1-26 and ARSD 20:10:01.

The hearing will therefore be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Commission will determine the issues as set forth above. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a hearing will be held at the time and place specified above on the above-stated issues and the determination of what relief is appropriate.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800 332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 9th day of July, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 7/9/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

Smith, John (PUC)

From: MTruhe@blackhillscorp.com
Sent: Friday, July 09, 2004 5:59 PM
To: rolayne.wiest@state.sd.us; john.j.smith@state.sd.us
Cc: max@bellelaw.com
Subject: EL04-017

This will confirm that Black Hills Power is requesting a continuance of the hearing in the above referenced mediation matter between Black Hills Power and Homestake Mining Company. We have a potential conflict with that date and just sent out some discovery to Homestake this week. We'll visit with Max Main next week about a proposed later date and then get back to you. Thanks. Marv

HOMESTAKE

HOMESTAKE MINING COMPANY
630 E. Summit Street
Lead, South Dakota 57754-1700
605-584-GOLD (4653)

July 8, 2004

Mr. Dave Jacobson
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501-5070

RE: Docket No. EL04-017.

Dear Mr. Jacobson:

This letter supplements Homestake Mining Company's ("Homestake") June 7, 2004 filing in this matter.

Black Hills Power ("Black Hills") continues to assert that Homestake's "measured monthly demands during the prior 12 months" must be used to determine a new Contract Capacity and a new minimum Billing Capacity. Specifically, Black Hills argues that the Electric Power Service Agreement ("Agreement") and the General Service Large tariff dictate a new minimum Billing Capacity of 5,120 kVA, which is 80% of Homestake's highest Billing Capacity (6,400 kVA) in the 11 months preceding February 2004. It must be noted here that Homestake's Metered Capacity (for the electricity it actually used) during this same time period **never** was as high as 6,400 kVA, and its average Metered Capacity during the time period was only 1,949 kVA. The 6,400 kVA is the result of multiplying 80% times 8,000 kVA – the "ratchet approach" in the General Service Large tariff. Black Hills argues for the continued application of this ratchet approach.

Black Hills' argument ignores the terms of the Agreement, and the intent of the parties when they entered into the Agreement. Section 5.1.2 of the Agreement eliminates the ratchet approach of using 80% of the highest Billing Capacity in the preceding 11 months, and instead uses the factor of 80% of the twelve month Average Billing Capacity. Three separate factors show that this twelve-month average approach was to continue to be used, rather than reverting back to the ratchet approach of using the highest Billing Capacity in the preceding 11 months, even when Homestake experienced a substantial decrease in load and became subject to a different tariff:

- Section 5.5 of the Agreement sets forth the procedures to be followed in the event of a substantial decrease in load. Section 5.5 refers to Exhibit D to the Agreement, which consists of five graphs and accompanying narratives. The graphs and narratives "indicate how Section 5.5 of the Agreement shall be interpreted." Graph 1 and the narrative for it are attached hereto as Exhibit A. Graph 1 closely parallels the history of Homestake's substantial decrease in load. Year 1 on the graph would approximate 2001, year 2 would approximate 2002, year 3 would approximate 2003, and year 4 would approximate 2004. Year 2 (2002) is the first full year of shutdown of the Mine, and the Measured Demand is 8,000 kVA or less each month. The Billing Capacity is 16,000 kVA, which is 80% of the Average Billing Capacity for 2001. In year 3 (2003), the Contract Capacity becomes 8,000 kVA pursuant to Section 5.5, and the Billing Capacity is 6,400 kVA, which is 80% of the 8,000 kVA Contract Capacity. This is in fact how Black Hills billed Homestake in 2003. The average Metered Capacity in 2003 on Graph 1 is 2,000 kVA. For year 4 (2004), the Contract Capacity is renegotiated to the 2,000 kVA average for 2003, and the "billed demand [Billing Capacity] in year 4 **is equal to the measured demand.**" (Emphasis added). This is exactly the approach Homestake says the parties should take to determine the renegotiated Contract and Billing Capacities. Graph 1 and the narrative for it were prepared by Black Hills. Black Hills should honor the methodology it told Homestake it would follow four years ago.

- While the Agreement was being negotiated, Jim Keck of Black Hills wrote a September 8, 1999 letter to Dave McDowall of Homestake. A copy of the letter (without enclosures) is attached hereto as Exhibit B. In the second paragraph on page 2 of his letter, Mr. Keck proposes the use of "average billing capacity (12 months) when determining the minimum billing capacity." Mr. Keck points out the substantial savings Homestake will realize by using average billing capacity. Mr. Keck states that the savings will continue under the General Service Large rate. However, if Black Hills is allowed to return to the ratchet approach as proposed by Mr. White in his June 7, 2004 letter, Homestake will not realize any savings, and instead will continue to be penalized for electrical power it does not and can not use.

- Steve Mitchell of Homestake was a member of Homestake's negotiating team when the Agreement was being negotiated. He states that Homestake's two principal reasons for negotiating the Agreement were (1) to lower its operating costs by obtaining lower electrical rates, and (2) to avoid being burdened with a high Billing Capacity month for a year or more if its Hydroelectric Plants tripped offline for more than 15 minutes because of a tree falling on the Hydroelectric transmission lines. The 12-month average approach helped tremendously to reduce the burden of one high month.

The above factors demonstrate that it was not the intent of the parties to revert back to a ratchet approach of using the highest Billing Capacity in the preceding 11 months, when renegotiating a new Contract Capacity and a new minimum Billing Capacity.

On another point, the General Service Large tariff Black Hills is now applying to Homestake contains a "SUBSTATION OWNERSHIP DISCOUNT" provision. Homestake has spent approximately $7,500,000 to construct substations and distribution systems to enable Black Hills to supply all power to Homestake at a transmission voltage of 69 kV. Homestake has therefore qualified for the discount from and after the date when the GL-13 tariff was applied, which was February 1, 2003. The accrued amount of the discount through January 31, 2004 is estimated to be $30,712, exclusive of sales tax credit.

As required by the Agreement, Homestake has compensated Black Hills in an amount of almost $900,000 in minimum demand charges for power it did not and could not use. At this time of renegotiation, the new Contract Capacity and the new minimum Billing Capacity should be based on Homestake's actual measured demand, as is expressly stated in the narrative for Graph 1. Homestake should also receive the GL-13 substation owner discount for which it is qualified.

Respectfully submitted,

K D Burke

Karl D. Burke
General Manager-Closure
Homestake Mine

cc: Max Main
Kyle White

CONFIDENTIAL

#4

BLACK HILLS POWER AND LIGHT COMPANY
P.O. BOX 1400 409 DEADWOOD AVENUE
RAPID CITY, SOUTH DAKOTA 57709
http://www.blackhillscorp.com

JIM KECK
ENERGY SERVICES ENGINEER

TELEPHONE
(605) 342-3200
FAX: (605) 342-0945

September 8, 1999

John

CONFIDENTIAL

Mr. Dave McDowall
Homestake Mining Company
630 East Summit
Lead SD 57754

Subject: Contract Proposal

Dear Dave:

Attached is a revised contract proposal for your negotiating team's review. The contract is structured to benefit Homestake when mining below the 4850' level, where the operating costs are the highest. During a period of transition to the upper levels of the mine or when Homestake's hydroelectric plants are off line, the contract allows for a significant reduction in the billing capacity ratchet. The substantial decrease in load benefit is again included in the proposal.

The significant difference in the proposal, compared to our July 16th proposal, is an annual discount for energy use above 6,000,000 kWh per month. We propose to phase in a **$320,000 discount (6.2%)** over two years. The discount is based on current operating levels of 115,000,000 kWh per year. **The first year**, all energy use above 6,000,000 kWh per month will be billed at 3.0¢ per kWh, a $200,000 savings. **In year two**, the off-peak portion of the energy use above 6,000,000 kWh per month will be billed at 2.5¢ per kWh, an additional $120,000 savings.

The 6,000,000 kWh per month threshold, provided to us by Lynn Hardy in early 1998, represents the mine's estimated energy use if all mining activities were moved above the 4850' level. Any energy use above 6,000,000 kWh per month is assumed to be used in the lower levels of the mine. Fifty-eight percent of Homestake's energy use during the past year has been used during off-peak times. When we developed the energy cost tables, the current off-peak percentage was used to determine how much of the 6,000,000 kWh was off-peak. We set 3,500,000 kWh as the base off-peak

EXHIBIT
B

portion of power. Any off-peak energy use above that figure will be billed at 3.0¢ per kWh in year 1 and 2.5¢ per kWh in year 2 and thereafter.

We propose to use the average billing capacity (12 months) when determining the minimum billing capacity. Beginning with the effective date of the contract, the average billing capacity will be calculated every 12 months by averaging Homestake's previous 12 months' billing capacities. When compared to the existing way we determine Homestake's minimum billing demand, the 12-month average billing capacity could potentially save Homestake **$190,000 over a two year period,** should all mining operations be shut down below the 4850' level. A spreadsheet is attached showing how the billing capacity ratchet is affected by several different operating scenarios.

The substantial decrease in load provision is again included in our proposal. Should the mine be forced to shut down and loads drop below 8,000 kVA for 18 consecutive months, the substantial decrease in load provision becomes effective and could save Homestake as much as **$140,000 per year.** The savings are accomplished by moving Homestake off the Industrial Contract Service tariff, which has a 10,000 kVA billing minimum to the most applicable rate, most likely the General Service Large rate. The savings are based on shutdown load levels 4,500 kVA and 2,000,000 kWh per month.

The remaining changes in the contract are listed below:

1. Section 1.1: The definition of Average Billing Capacity was changed from six months to 12 months.

2. Section 2.1: The part of the first sentence that referenced previous contracts was removed.

3. Section 4.1: A sentence dealing with the resale of excess power to the Company at non-firm market prices was added (tenth line down).

4. Section 5.4.1: The contract renegotiations notice deadline, when the specified conditions are met, was changed from May 1 to April 1. Our intent was to allow for a three-month notice before the end of the contract year.

5. Section 5.6: Company was capitalized on the third line down.

6. Section 7: A change was made to show that the Company was responsible for providing, testing and inspecting the meters.

7. Section 8: Resale of power is prohibited. The change allows Homestake to resell power to the Company as noted in Section 4.1.

8. Section 10: The mailing address of Homestake was changed.

All other sections in the proposed contract remain the same as were given to you in our July 16th proposal.

As we discussed previously, BHP will file this contract with the SDPUC as a contract with deviation and it shall be subject to the approval of the PUC. If this proposal is acceptable to you, we will make the contract retroactive to July 1, 1999. We ask that these negotiations and this agreement remain confidential.

Dave, in summary, our contract proposal offers a $320,000 annual discount phased in over two years if energy use remains at current levels. The contract proposal also offers up to $190,000 savings over a two-year period should the hydro plants unexpectedly trip off line or all mining activities are moved above the 4850' level. Finally, should the mine shut down, the substantial decrease in load benefit is worth an additional $140,000 per year to Homestake.

We believe the contract proposal addresses Homestake's needs under several different operating scenarios. We look forward to our meeting on September 13th.

Sincerely,

Jim Keck

Jim Keck

Enclosure

cc: Ev Hoyt
Kyle White
Don Martinez
Jim Jeffery

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY HOMESTAKE MINING COMPANY OF CALIFORNIA REGARDING A REQUEST FOR MEDIATION BETWEEN HOMESTAKE MINING COMPANY OF CALIFORNIA AND BLACK HILLS CORPORATION	))))))	**AMENDED ORDER FOR AND NOTICE OF HEARING** **EL04-017**

On May 6, 2004, the Public Utilities Commission (Commission) received a filing by Homestake Mining Company of California (Homestake) of a Request for Mediation between Homestake and Black Hills Corporation d/b/a Black Hills Power and Light Company (Black Hills). The filing requests "resolution" by the Commission of the dispute which has arisen in the course of the parties' efforts to renegotiate the Contract Capacity under Paragraph 5.5, "Substantial Decrease in Load," of the Electric Power Service Agreement between Homestake and Black Hills. By stipulation of the parties, the date for Black Hills to file a response to Homestake's Request for Mediation was June 7, 2004, and on June 7, 2004, Black Hills filed its response in this matter. On June 7, 2004, Homestake also filed a submittal which included an additional claim that it was entitled to the Substation Ownership Discount under Black Hills's filed Rate No. GL-13.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-8.3, 49-34A-10, 49-34A-11, 49-34A-26 and 49-34A-27 and ARSD Chapter 20:10:01 and 20:10:13, particularly 20:10:13:09 and 20:10:13:10.

A hearing shall be held on ~~July 19~~ August 17, 2004, beginning at ~~10:30~~ 11:00 A.M., in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. All persons testifying will be subject to cross examination by the parties.

The issues at the hearing will be: (i) what is the appropriate "Contract Capacity" under Paragraph 5.5, "Substantial Decrease in Load," of the Electric Power Service Agreement between Homestake and Black Hills filed and approved by the Commission as a tariffed contract with deviations on May 23, 2000, in Docket EL00-008 (Contract); (ii) what is the relationship between such determined Contract Capacity under the Contract and the Billing Capacity under Black Hills's filed Rate No. GL-13; (iii) whether Homestake is entitled to the Substation Ownership Discount under Black Hills's filed Rate No. GL-13; and (iv) what relief should be granted based upon the Commission's findings and conclusions on the issues.

Although Homestake has characterized its request as a request for "mediation," Paragraph 5.5 of the Contract provides for the Commission "to resolve disputes" and the relief requested by Homestake is a definitive decision on the two issues it raises. The Commission accordingly deems this proceeding to be in the nature of a complaint or petition for a dispositive order under the contested case procedures of SDCL 1-26 and ARSD 20:10:01.

The hearing will therefore be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Commission will determine the issues as set forth above. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a hearing will be held at the time and place specified above on the above-stated issues and the determination of what relief is appropriate.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800 332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 15th day of July, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 7/15/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

LAW OFFICES OF
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MAX S. MAIN*
DWIGHT A. GUBBRUD
*ALSO LICENSED IN WYOMING

RETIRED
DONN BENNETT

Via Mail & Fax Only 721-2550
August 2, 2004

RECEIVED
AUG 0 3 2004
SOUTH DAKOTA PUBLIC UTILITIES COMM.

Scott Ahrendt & Marv Truhe
Counsel for Black Hills Power
P.O. Box 1400
Rapid City, SD 57709

FAX Received AUG 0 2 2004

RE: HMC - BHP
PUC ELO4-017

Dear Scott/Marv:

Transmitted herewith is copy of HOMESTAKE'S MOTION FOR ORDER COMPELLING DISCOVERY. This is intended as service upon you.

Sincerely,

BENNETT, MAIN & GUBBRUD, P.C.

Max Main

Max Main

MM/njo
Enc.
cc(mail & fax): John Smith, General Counsel PUC
Karl Burke/Steve Mitchell
Rich Haddock
Bob Reeder

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED
AUG 0 3 2004
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE FILING BY HOMESTAKE MINING COMPANY OF CALIFORNIA REGARDING A REQUEST FOR MEDIATION BETWEEN HOMESTAKE MINING COMPANY OF CALIFORNIA AND BLACK HILLS POWER, INC.	)	EL04-017

FAX Received AUG 0 2 2004

HOMESTAKE'S MOTION FOR ORDER COMPELLING DISCOVERY

COMES NOW, Homestake Mining Company of California ("Homestake") and pursuant to ARSD 20:10:01:22.01 and SDCL 15-6-37(a) hereby moves for an order compelling Black Hills Power, Inc. ("Black Hills Power") to respond to Homestake's discovery requests. This motion is made on the following grounds and for the following reasons:

1. In its responses to Homestake's First Set of Discovery Requests, Black Hills Power has objected to and failed to respond to the following discovery requests: Interrogatory Nos. 4, 5, 7, 8, 9, 10, 11, 12, 15, 16, 18, 19, 20, 21, 22, 23, 27, and 28; and Request for Production No. 2.

2. The foregoing discovery requests seek information which is relevant and material to the pending matter. Black Hills Power seems to be alleging that it suffered some type of "harm" as a result of the closure of the Homestake Mine. It willingly provides discovery responses indicating such "harm," but it selectively refuses to provide responses to discovery requests that would show how that "harm" was offset, mitigated or otherwise alleviated. Black Hills Power's ability to market the power and capacity it did not, and will not, sell to Homestake is directly relevant to the new Contract Capacity to be determined in this matter. Black Hills Power should be compelled to respond to all of Homestake's discovery requests, so that the Public Utilities Commission has *all* the information on the issue, not just information that is favorable to Black Hills Power.

Dated this 2nd day of August, 2004.

BENNETT, MAIN & GUBBRUD, P.C.
Attorneys for Homestake

By: Max Main
Max Main
618 State Street
Belle Fourche, SD 57717
605.892.2011

CERTIFICATE OF SERVICE

I, **MAX MAIN,** do hereby certify that on the 2nd day of August, 2004, I caused a full, true and complete copy of the foregoing to be served upon:

Scott Ahrendt & Marv Truhe (via mail and fax 605.721.2550)
Counsel for Black Hills Power
P.O. Box 1400
Rapid City, South Dakota 57709-1400

John Smith, General Counsel (via mail and fax 605.773.3809)
S.D. Public Utilities Commission
500 East Capitol Ave.
Pierre, SD 57501-5070

by depositing the same in the United States Mail, with first-class postage thereon fully prepaid, in envelopes addressed as above.

Max Main
MAX MAIN

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY HOMESTAKE MINING COMPANY OF CALIFORNIA REGARDING A REQUEST FOR MEDIATION BETWEEN HOMESTAKE MINING COMPANY OF CALIFORNIA AND BLACK HILLS CORPORATION	))))))	**ORDER CANCELLING HEARING** **EL04-017**

On May 6, 2004, the Public Utilities Commission (Commission) received a filing by Homestake Mining Company of California (Homestake) of a Request for Mediation between Homestake and Black Hills Corporation d/b/a Black Hills Power and Light Company (Black Hills). The filing requests "resolution" by the Commission of the dispute which has arisen in the course of the parties' efforts to renegotiate the Contract Capacity under Paragraph 5.5, "Substantial Decrease in Load," of the Electric Power Service Agreement between Homestake and Black Hills. By stipulation of the parties, the date for Black Hills to file a response to Homestake's Request for Mediation was June 7, 2004, and on June 7, 2004, Black Hills filed its response in this matter. On June 7, 2004, Homestake also filed a submittal which included an additional claim that it was entitled to the Substation Ownership Discount under Black Hills's filed Rate No. GL-13.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-8.3, 49-34A-10, 49-34A-11, 49-34A-26 and 49-34A-27 and ARSD Chapter 20:10:01 and 20:10:13, particularly 20:10:13:09 and 20:10:13:10.

By order dated July 15, 2004, a hearing was scheduled for August 17, 2004, beginning at 11:00 A.M., in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. By agreement of the parties to accommodate additional discovery and case preparation, the hearing is cancelled and will be rescheduled at a later date. It is therefore

ORDERED, that the hearing scheduled for August 17, 2004, is cancelled and will be rescheduled at a later date.

Dated at Pierre, South Dakota, this 10th day of August, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 8/10/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

Black Hills Corporation
Energy, communications...and you.

Scott Ahrendt
Associate Counsel

Telephone: (605) 721-2241
Facsimile: (605) 721-2550
Email: sahrendt@bh-corp.com

August 11, 2004

BY FACSIMILE (605) 773-3809 & REGULAR MAIL
Dave Jacobson, Analyst
Public Utilities Commission
Capitol Building, 1st floor
500 East Capitol Avenue
Pierre, SD 57501-5070

Re: Settlement of PUC Complaint EL04-017

Dear Mr. Jacobson:

Thank you for speaking with us yesterday.

Included with this letter is the Letter Agreement between Black Hills Power, Inc. and Homestake Mining Company of California settling the above referenced complaint. Please note that the document includes a chart, which identifies the agreed to Contract Capacity amounts for 2004 through the end of the Electric Power Service Agreement ("Agreement") in 2009. You may recall that paragraph 5.5 of the Agreement, as approved by the Commission in docket no. EL00-008, provides that the parties are to negotiate the Contract Capacity amount on annual basis. Given the closure status of the mine, both Black Hills Power and Homestake felt it would be simpler and more appropriate to negotiate the Contract Capacity amounts through the end of the Agreement.

Please let us know if any further information or action is necessary on the party of either party. Thank you for you assistance.

Sincerely,

Scott Ahrendt

Scott Ahrendt

cc: Max Main – Bennett, Main & Gubbrud
Marv Truhe
Kyle White

Black Hills Corporation

David R. Emery, PE
President and
Chief Executive Officer
E-Mail: dremery@bh-corp.com

625 Ninth Street • P.O. Box 1400
Rapid City, SD 57709-1400
P (605) 721-2511
F (605) 721-2599

August 6, 2004

LETTER AGREEMENT

BY FACSIMILE (605) 722-4624
Karl Burke, General Manager of Closure
Homestake Mining Company of California
630 E. Summit Street
Lead, South Dakota 57754

Re: Settlement of PUC Complaint EL04-017

Dear Karl:

Thank you for speaking with me this past Wednesday. Attached to this Letter Agreement is a chart (Homestake Minimum Billing Charges) that shows the Contract Capacity amounts for 2004 through the end of the Electric Power Service Agreement in 2009, along with certain explanatory notes at the bottom of the chart.

As we discussed, Black Hills Power will bill Homestake for its electrical usage based upon the agreed to Contract Capacity amount with the caveat that if actual usage is greater than the Contract Capacity, Black Hills Power will bill at the actual usage amount, and the parties will reopen discussions to set the following year's Contract Capacity.

Karl, if this Letter Agreement summarizes your understanding of the parties' agreement regarding the contract capacity, please sign below and return one executed copy to my attention, at (605) 721-2599.

Sincerely,

Scott Ahrendt for David Emery

David Emery

Acknowledged and Agreed to:

Mark Tieszen, on behalf of
Karl Burke, Homestake Mine
General Manager - Closure
Homestake Mining Company of
California

August 9, 2004
Date

(Facsimile signatures shall be deemed originals for all purposes.)

Black Hills Power

Homestake Minimum Billing Charges

2004-2009

Year	Contract Capacity (kVA)	80% CC Minimum (kVA)	Minimum Billing Charge
2004	4500	3600	$ 250,575
2005	1000	800	$ 57,375
2006	900	720	$ 51,855
2007	200	160	$ 13,215
2008	200	160	$ 13,215
2009	200	160	$ 13,215
			$ 399,450

Notes:

The contract capacities for each of the contract years are fixed. Should the actual demands for a particular year exceed the contract capacity during that year, discussions will reopen to set the following year's contract capacity.

The contract years shown above begin on February 1 of that year and end on January 31of the following year.

The Contract capacity is revised on February 1 of each year.

Without an agreement on the 2004 contract capacity, BHP continued to bill Homestake at 80% of 2003's 8,000 kVA contract capacity (6,400 kVA) from February 1 - July 31, 2004. As a result of the agreed upon 2004 contract capacity of 4,500 kVA, BHP will credit Homestake for the difference between the billed demands as shown below:

Credit 2,800 kVA per month (6400 kVA - 3600 kVA)

Credit $16,100 per month for 6 months

$96,600 Total (excluding sales tax)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY HOMESTAKE MINING COMPANY OF CALIFORNIA REGARDING A REQUEST FOR MEDIATION BETWEEN HOMESTAKE MINING COMPANY OF CALIFORNIA AND BLACK HILLS CORPORATION	))))))	**ORDER CLOSING DOCKET** **EL04-017**

On May 6, 2004, the Public Utilities Commission (Commission) received a filing by Homestake Mining Company of California (Homestake) of a Request for Mediation between Homestake and Black Hills Corporation d/b/a Black Hills Power and Light Company (Black Hills). The filing requests "resolution" by the Commission of the dispute which has arisen in the course of the parties' efforts to renegotiate the Contract Capacity under Paragraph 5.5, "Substantial Decrease in Load," of the Electric Power Service Agreement between Homestake and Black Hills. By stipulation of the parties, the date for Black Hills to file a response to Homestake's Request for Mediation was June 7, 2004, and on June 7, 2004, Black Hills filed its response in this matter. On June 7, 2004, Homestake also filed a submittal which included an additional claim that it was entitled to the Substation Ownership Discount under Black Hills's filed Rate No. GL-13.

On May 20, 2004, the Commission electronically transmitted notice of the filing and the intervention deadline of May 28, 2004, to interested individuals and entities. No petitions to intervene or comments were filed.

By letter dated August 11, 2004, Black Hills informed Commission Staff that the parties had reached a resolution pursuant to the existing contract and have requested the docket be closed. The parties submitted a letter agreement dated August 6, 2004, explaining the resolution.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-8.3, 49-34A-10, 49-34A-11, 49-34A-26 and 49-34A-27 and ARSD Chapters 20:10:01 and 20:10:13, particularly ARSD 20:10:13:09 and 20:10:13:10.

At a regularly scheduled August 31, 2004, meeting, the Commission considered this matter. The Commission voted unanimously to close the docket. It is therefore

ORDERED, that the docket shall be closed.

Dated at Pierre, South Dakota, this 7th day of September, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 9/7/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

James A. Burg

JAMES A. BURG, Commissioner