

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE COMPLAINT FILED</b>	)	
<b>BY GARY LOUDNER, BLACK HAWK, SOUTH</b>	)	<b>Docket No.</b>
<b>DAKOTA, AGAINST BLACK HILLS</b>	)	<b>CE08-001</b>
<b>CORPORATION REGARDING ELECTRICAL</b>	)	
<b>OUTAGES</b>	)	

**ANSWER AND MOTION TO DISMISS  
OF BLACK HILLS CORPORATION**

Black Hills Corporation ("Black Hills") respectfully submits its Answer and Motion to Dismiss to the South Dakota Public Utilities Commission ("Commission") in response to the Complaint filed by Mr. Gary Loudner of Black Hawk, SD, dated June 9, 2008.

**BACKGROUND INFORMATION**

In his Complaint, Mr. Loudner alleges that on or about May 20, 2008, a loss of electrical service to his residence resulted in his loss of access to telephone service.

**BLACK HILLS CORPORATION'S ANSWER TO COMPLAINT**

1. Black Hills does not have sufficient information or belief to answer, and therefore denies, each and every allegation, matter, and claim contained in the Complaint, except for those matters which are herein specifically admitted.
2. Black Hills Power, Inc. is the provider of electric service to the Black Hawk, SD area. Therefore Black Hills Power, Inc., not Black Hills Corporation, is the real-party-in-interest that should have been named in Mr. Loudner's complaint. Accordingly, pursuant to SDCL 15-6-17(a), Black Hills objects to the improper naming of Black Hills Corporation in the Complaint.

3. Black Hills admits that portion of paragraph (c) that an electrical outage occurred on or about May 20, 2008. The remainder of the paragraph is specifically denied.

### **BLACK HILLS' MOTION TO DISMISS**

1. Pursuant to Section 5, Revised Sheet 11, Article 302 of the South Dakota Electric Rate Book, Black Hills is not required to, and does not, guarantee the continuity of electrical service to its customers. Accordingly, as a matter of law, Black Hills did not violate its obligations to its customer, Mr. Loudner, and he is not entitled to relief.

2. The Complaint fails to state a claim for which relief can be granted.

3. The Complaint does not state any genuine issue of material fact.

Stated otherwise, all facts material to the relief sought, even if proved, would not entitle Mr. Loudner to the relief sought, as a matter of law.

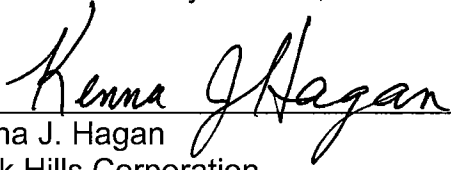
4. SDCL § 1-26-18(1) provides that an agency such as the Commission may dispose of any claim, upon the motion of a party, if the pleadings show there is no genuine issue as to any material fact. In such cases a party is entitled to a judgment as a matter of law.

5. In addition, ARSD 20:10:01:11.01 allows for the filing of a motion to dismiss if the complainant lacks good or sufficient reason for making the complaint.

Therefore, Black Hills respectfully requests, pursuant to the authority granted, that the Commission:

1. Find that there are no genuine issues of material fact contained in the Complaint;
2. Find that the Complaint fails to state a claim for which relief can be granted; and
3. Grant the Motion to Dismiss the Complaint.

Dated this 30<sup>th</sup> day of June, 2008.

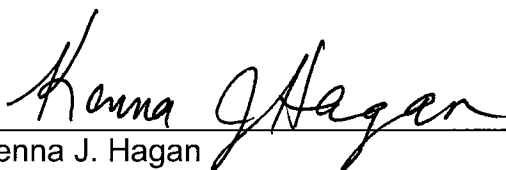
By   
Kenna J. Hagan  
Black Hills Corporation  
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Rapid City, SD 57709  
(605) 716-3961  
*Attorney for Respondents*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of June, 2008, I served a copy of **BLACK HILLS CORPORATION'S ANSWER AND MOTION TO DISMISS** upon:

Mr. Gary Loudner  
P.O. Box 204  
Black Hawk, SD 57718-0204

by depositing the same in the U.S. mail, postage prepaid, at Rapid City, South Dakota.

  
Kenna J. Hagan