

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

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

**MOTION FOR SUMMARY JUDGMENT
OF BLACK HILLS CORPORATION**

Black Hills Corporation ("Black Hills"), pursuant to SDCL § 1-26-18, respectfully moves the South Dakota Public Utilities Commission ("Commission") for an Order disposing of all claims against Black Hills in the above matter on the grounds that the pleadings fail to show any genuine issues of material fact, entitling Black Hills to judgment as a matter of law.

BACKGROUND INFORMATION

On June 9, 2008, Gary Loudner filed a Complaint against Black Hills alleging 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 Power, Inc., a subsidiary of Black Hills Corporation, is the electrical service provider for the residence at which Mr. Loudner resides.

On June 30, 2008, Black Hills filed its Answer and Motion to Dismiss Mr. Loudner's Complaint asserting that the Complaint failed to state a claim for which relief may be granted. Should Black Hills' Motion to Dismiss be deemed insufficient to dispose of Mr. Loudner's claims pursuant to SDCL § 1-26-18, Black Hills hereby moves the Commission for an Order granting summary judgment to Black Hills and disposing of Mr. Loudner's claims against Black Hills as showing no genuine issues of material fact.

BLACK HILLS' MOTION FOR SUMMARY JUDGMENT

1. 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.

2. 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, Black Hills did not violate any obligations to Mr. Loudner, and, as a matter of law, he is not entitled to any relief from Black Hills. Stated otherwise, all facts material to Mr. Loudner's Complaint, even if proved, would not entitle Mr. Loudner to the relief sought, as a matter of law.

3. Based on the above, no genuine issue of material fact exists as to Mr. Loudner's claim against Black Hills.

WHEREFORE, Black Hills respectfully requests that the Commission enter an Order, pursuant to SDCL § 1-26-18(1) disposing of Mr. Loudner's claims against Black Hills for the reasons that the pleadings show no genuine issue as to any material fact, and that Black Hills is entitled to judgment as a matter of law.

Dated this 7th day of November, 2008.

By Kenna J. Hagan
Kenna J. Hagan
Black Hills Corporation
P.O. Box 1400
Rapid City, SD 57709
(605) 716-3961
Attorney for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of November, 2008, I served a copy of **BLACK HILLS CORPORATION'S MOTION FOR SUMMARY JUDGMENT** 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