

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

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

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 9<sup>th</sup> day of July, 2004.

<b>CERTIFICATE OF SERVICE</b>
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: <u><i>Delaine Kalbo</i></u>
Date: <u>7/9/04</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

*Robert K. Sahr*  
ROBERT K. SAHR, Chairman *sk*

*Gary Hanson*  
GARY HANSON, Commissioner

*James A. Burg*  
JAMES A. BURG, Commissioner