

► [Commission Minutes](#) | [previous page](#)

South Dakota Public Utilities Commission Meeting
July 21, 2015, at 9:30 A.M. CDT
Room 413, Capitol Building
Pierre, South Dakota

MINUTES OF THE COMMISSION MEETING

Chairman Chris Nelson called the meeting to order. Present were: Commissioner: Kristie Fiegen; Commission Counsel: John Smith and Rolayne Wiest; Commission Advisor: Greg Rislov; Staff Attorneys: Karen Cremer, Kristen Edwards, and Adam de Hueck; Staff Analysts: Brittany Mehlhaff, Darren Kearney, Eric Paulson, Patrick Steffensen, and Joseph Rezac; Consumer Affairs Manager: Deb Gregg; and Staff: Katlyn Gustafson.

Also present were:

Cheri Wittler, Court Reporter; Rich Coit, South Dakota Telecommunications Association; James Moore and William Taylor, Woods, Fuller, Shultz and Smith P.C. representing TransCanada Keystone Pipeline, LP; Brett Koenecke and Kara Semmler, May, Adam, Gerdes and Thompson, LLP, representing Dakota Access, LLC and Montana Dakota Utilities Co.; Bob Mercer, reporter; Travis Clark, Fredericks Peebles & Morgan LLP, representing Cheyenne River Sioux Tribe; Kimberly Craven, Attorney, representing Indigenous Environmental Network; and Alafia Wright, USD law student.

Joining the meeting by telephone were:

Commissioner: Gary Hanson; Debra Paulson, Northern States Power Company dba Xcel Energy; Jon Thurber, Black Hills Power, Inc.; Tamie Aberle, Montana-Dakota Utilities Co.; Pat McElroy, Northeast Nebraska Telephone Company; Eric Erickson, Cutler Law Firm LLP, representing Interstate Telecommunications Cooperative, Inc. representing Interstate Telecommunications Cooperative, Inc.; Jim Canaan, Interstate Telecommunications Cooperative, Inc.; Joe Chicoine, Citizens Telecommunications Company of Minnesota, LLC; Wendy Harper, Vantage Point Solutions, representing Sancom, Inc. dba Mitchell Telecom and Interstate Telecommunications Cooperative, Inc.; Bob Gough, Intertribal Council on Utility Policy; Bruce Ellison, Ellison Law Office, representing Dakota Rural Action; Diana Steskal, self; Jennifer Baker, Fredericks Peebles & Morgan LLP, representing Yankton Sioux Tribe; Matt Rappold, Rappold Law Office, representing Rosebud Sioux Tribe; Paul Blackburn, Attorney, representing Bold Nebraska; and Peter Capossela, Attorney, representing Standing Rock Sioux Tribe.

Administration

1. Approval of the minutes of the Commission meetings held on June 11, June 23, and July 7, 2015 (Staff: Joy Lashley)

Commissioner Fiegen moved to approve the minutes of the Commission meetings held on June 11, June 23, and July 7, 2015. Motion carried 3-0.

Consumer Reports

1. Status Report on Consumer Utility Inquiries and Complaints Received by the Commission (Consumer Affairs: Deb Gregg)

The Commission received a total of 57 contacts since the last report was prepared for the July 21, 2015 Commission meeting.

3 contacts involved telecommunication services, 14 contacts involved electrical services, 3 contacts involved natural gas service, 8 contacts were related to wireless service, 11 contacts were related to the Do Not Call Registry, 1 contact was related to the Dakota Access Pipeline, 2 contacts were related to the Keystone XL Pipeline and 15 contacts were related to issues not regulated by the

PUC.

1,914 of the 1,916 complaints received in 2014 have been resolved.

1,047 of the 1,068 complaints received in 2015 have been resolved.

Electric

1. EL14-058 In the Matter of the Application of Northern States Power Company dba Xcel Energy for Authority to Increase its Electric Rates (Staff Analysts: Brittany Mehlhaff, Patrick Steffensen, Eric Paulson; Staff Attorney: Karen Cremer)

Ms. Deb Paulson, Northern States Power Company dba Xcel Energy (Xcel), asked that the Commission grant approval to Xcel's Revised Exhibit G to the Settlement Stipulation detailing the Revised Interim Refund Plan. Ms. Brittany Mehlhaff, staff analyst, recommended that the Commission approve the revised exhibit.

Commissioner Nelson moved to approve the Revised Exhibit G to the Settlement Stipulation detailing the Revised Interim Refund Plan. Motion carried 3-0.

2. EL15-013 In the Matter of the Application of Black Hills Power, Inc. for Approval of Tariff Revisions (Staff Analysts: Brian Rounds, Joseph Rezac; Staff Attorney: Karen Cremer)

Mr. Jon Thurber, Black Hills Power, Inc. (BHP), stated that BHP requests approval of tariff revisions that create a new Meter Data and Privacy Policy. Mr. Thurber explained that the policy filed was adopted by Black Hills Corporation on June 6, 2014, and that BHP requested it be inserted in Section 5, Rules and Regulations, of its South Dakota Electric Rate Book. Mr. Thurber requested an effective date of July 1, 2015. Mr. Joseph Rezac, staff analyst, recommended that the Commission grant approval to BHP's request.

Commissioner Nelson moved to grant approval of the tariff revisions consistent with Black Hills Power, Inc.'s July 16, 2015 letter in response to Commissioner Nelson's suggestions. Motion carried 3-0.

3. EL15-024 In the Matter of the Application of Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. for Authority to Increase its Electric Rates (Staff Analysts: Brittany Mehlhaff, Patrick Steffensen, Eric Paulson, Joseph Rezac; Staff Attorney: Adam de Hueck)

Mr. Adam de Hueck, staff attorney, recommended that the Commission suspend the imposition of the tariff for 180 days beyond June 30, 2015, assess a filing fee for actual expenses related to the general rate case not to exceed \$250,000, assess a filing fee for actual expenses related to the Transmission Cost Recovery Rider not to exceed \$50,000, assess a filing fee for actual expenses related to the Environmental Cost Recovery Rider not to exceed \$50,000, and also give the Executive Director authority to enter into necessary consulting contracts. Mr. Brett Koenecke, May, Adam, Gerdes and Thompson, LLP, representing Montana-Dakota Utilities Co. (MDU), stated MDU had no objections to staff's requests.

Commissioner Hanson moved to suspend the imposition of the tariff for 180 days beyond June 30, 2015, assess a filing fee for actual expenses related to the general rate case not to exceed \$250,000, assess a filing fee for actual expenses related to the Transmission Cost Recovery Rider not to exceed \$50,000, assess a filing fee for actual expenses related to the Environmental Cost Recovery Rider not to exceed \$50,000, and give the Executive Director authority to enter into necessary consulting contracts. Motion carried 3-0.

Natural Gas

1. NG15-005 In the Matter of the Application of Montana-Dakota Utilities Co., a Division

of MDU Resources Group, Inc. for Authority to Increase its Natural Gas Rates (Staff Analysts: Brittany Mehlhaff, Patrick Steffensen, Eric Paulson, Joseph Rezac; Staff Attorney: Adam de Hueck)

Mr. Adam de Hueck, staff attorney, recommended that the Commission suspend the imposition of the tariff for 180 days beyond June 30, 2015, assess a filing fee for actual expenses not to exceed \$250,000, and give the executive director authority to enter into necessary consulting contracts. Mr. Brett Koenecke, May, Adam, Gerdes and Thompson, LLP, representing Montana-Dakota Utilities Co. (MDU), stated MDU had no objections to staff's requests.

Commissioner Fiegen moved to suspend the imposition of the tariff for 180 days beyond June 30, 2015, assess a filing fee for actual expenses not to exceed \$250,000, and give the Executive Director authority to enter into necessary consulting contracts. Motion carried 3-0.

Telecommunications

1. TC15-013 In the Matter of the Request of Northeast Nebraska Telephone Company for Certification Regarding its Use of Federal Universal Service Support (Staff Analyst: Joseph Rezac; Staff Attorney: Kristen Edwards)

Mr. Pat McElroy, Northeast Nebraska Telephone Company, requested that the Commission grant the waiver and certify Northeast Nebraska Telephone Company. Mr. Joseph Rezac, staff analyst, recommended that the Commission approve the Company's requests.

Commissioner Nelson moved to grant the waiver and certify Northeast Nebraska Telephone Company. Motion carried 3-0.

2. TC15-014 In the Matter of the Application of Interstate Telecommunications Cooperative, Inc. for an Amended Certificate of Authority (Staff Analyst: Patrick Steffensen; Staff Attorney: Adam de Hueck)

Mr. Eric Erickson, Cutler Law Firm LLP, representing Interstate Telecommunications Cooperative, Inc. (ITC), asked that the Commission approve the request for waiver and approve the request for an Amended Certificate of Authority. Mr. Patrick Steffensen, staff analyst, recommended that the Commission grant approval to ITC's requests.

Commissioner Hanson moved to approve the request for waiver and approve the request for an Amended Certificate of Authority. Motion carried 3-0.

3. TC15-016 In the Matter of the Request of Citizens Telecommunications Company of Minnesota, LLC for Certification Regarding its Use of Federal Universal Service Support (Staff Analyst: Joseph Rezac; Staff Attorney: Adam de Hueck)

Commission deferred docket.

4. TC15-018 In the Matter of the Filing by Sancom, Inc. dba Mitchell Telecom for Approval of Revisions to its Access Services Tariff No. 1 (Staff Analyst: Joseph Rezac; Staff Attorney: Adam de Hueck)

Ms. Wendy Harper, Vantage Point Solutions, representing Sancom, Inc. dba Mitchell Telecom (Sancom), asked that the Commission grant approval to Sancom's tariff revisions effective July 1, 2015. Mr. Joseph Rezac, staff analyst, recommended that the Commission grant approval to Sancom's request.

Commissioner Fiegen moved to approve the proposed tariff revisions effective July 1, 2015. Motion carried 3-0.

5. TC15-019 In the Matter of the Filing by Interstate Telecommunications Cooperative,

Inc. (operating in Milbank, South Dakota) for Approval of Revisions to its Access Services Tariff No. 1 (Staff Analyst: Eric Paulson; Staff Attorney: Adam de Hueck)

Ms. Wendy Harper, Vantage Point Solutions, representing Interstate Telecommunications Cooperative, Inc. (ITC), asked that the Commission approve ITC's tariff revisions effective July 1, 2015. Mr. Eric Paulson, staff analyst, recommended that the Commission approve ITC's request.

Commissioner Hanson moved to approve Interstate Telecommunications Cooperative, Inc.'s tariff revisions. Motion carried 3-0.

6. TC15-020 In the Matter of the Filing by Midcontinent Communications for Approval of Revisions to its Access Services Tariff (Staff Analyst: Joseph Rezac; Staff Attorney: Adam de Hueck)

Mr. Joseph Rezac, staff analyst, recommended that the Commission approve Midcontinent Communications access tariff revisions effective July 16, 2015.

Commissioner Nelson moved to approve Midcontinent Communications' revisions to its Access Services Tariff effective July 16, 2015. Motion carried 3-0.

Hydrocarbon Pipeline

1. HP14-001 In the Matter of the Petition of TransCanada Keystone Pipeline, LP for Order Accepting Certification of Permit Issued in Docket HP09-001 to Construct the Keystone XL Pipeline (Staff Analysts: Brian Rounds, Darren Kearney; Staff Attorney: Kristen Edwards)

A lengthy discussion took place regarding docket HP14-001. An audio of the discussion can be found on the PUC website under Commission Actions, Commission Meeting Archives, 2015, July 21, 2015, recording located at: <http://puc.sd.gov/commission/media/2015/Puc07212015.mp3>.

Commissioner Hanson moved to take judicial notice of the evidentiary record in Docket HP09-001, the Department of State's Final Environmental Impact Statement in the original Department of State Presidential Permit proceeding, the Final Supplemental Environmental Impact Statement in the follow-up Department of State's Presidential Permit proceeding, and SDCL Chapter 49-41B in its entirety by the Commission. Motion carried 3-0.

Commissioner Fiegen moved to deny Rosebud Sioux Tribe's Motion *in Limine* to Exclude Testimony. Motion carried 3-0.

Commissioner Fiegen moved to grant the motion for time certain for Staff's witness testimony and Standing Rock Sioux Tribe's witness testimony of hearing. Motion carried 3-0.

Commissioner Fiegen moved to deny the motion to limit parties with a common interest to one lawyer who may ask questions on cross-examination. Commissioner Fiegen amended her motion to add an express prohibition of repetitive questioning. Motion as amended carried 3-0.

Commissioner Hanson moved to deny the motion requiring opening statements to be in writing. Motion carried 3-0.

Commissioner Nelson moved to deny Keystone's motion to preclude friendly cross examination, but expressly limit cross examination to only new questions seeking new information. Motion carried 3-0.

Commissioner Fiegen moved to deny the motion limiting the conduct of cross-examination by those parties represented by counsel to counsel. Motion failed 1-2, with Commissioners Hanson and Nelson dissenting.

Commissioner Hanson moved to grant the motion limiting the conduct of cross-examination by those parties represented by counsel to counsel. Motion carried 2-1, with Commissioner Fiegen dissenting.

Commissioner Fiegen moved to grant the motion to limit cross-examination to the scope of direct examination and issues affecting credibility. Motion carried 3-0.

Commissioner Hanson moved to grant Keystone's motion to preclude parties from arguing evidentiary objections unless directed by General Counsel for the Commission. Commissioner Fiegen made a substitute motion to deny Keystone's motion. Motion carried 2-1, with Commissioner Hanson dissenting.

Commissioner Hanson moved to grant Keystone's motion to Exclude Testimony of Kevin E. Cahill, Ph.D. Motion carried 3-0.

Commissioner Nelson moved to deny Keystone's motion *in Limine* to Preclude Rebuttal Testimony of Ian Goodman and Brigid Rowan on the grounds that the issue had become moot. Motion carried 3-0.

Commissioner Nelson moved to grant Keystone's Motion *in Limine* to Preclude Rebuttal Testimony of Jennifer Galindo and Wasté Win Young. Motion carried 3-0.

Commissioner Hanson moved to grant Keystone's Motion *in Limine* to Preclude Testimony of Chris Saucosi. Motion carried 3-0.

Commissioner Fiegen moved to grant Keystone's Motion *in Limine* to Preclude Testimony of Dr. Hansen and Dr. Oglesby. Motion carried 3-0.

Commissioner Fiegen moved to grant Keystone's Motion *in Limine* to Restrict Testimony of Leonard Crow Dog. Motion carried 3-0.

Commissioner Nelson moved to grant Keystone's Motion *in Limine* to Restrict Testimony of Yankton Sioux Witnesses Spotted Eagle and Un-Named Member of the B&C Claims Committee. Motion carried 3-0.

Commissioner Nelson moved to grant Keystone's Motion *in Limine* to Strike Paula Antoine's rebuttal testimony. Motion carried 3-0.

Commissioner Fiegen moved to grant Keystone's Motion *in Limine* to Strike Article by Linda Black Elk and Restrict Her Testimony. Motion carried 3-0.

Commissioner Nelson moved to deny the Joint Motion *in Limine* to Exclude Evidence Pertaining to Keystone's Proposed Changes to Findings of Fact. Motion carried 3-0.

ADDENDUM TO THE AGENDA OF COMMISSION MEETING

1. **HP14-001 In the Matter of the Petition of TransCanada Keystone Pipeline, LP for Order Accepting Certification of Permit Issued in Docket (Staff Analysts: Brian Rounds, Darren Kearney; Staff Attorney: Kristen Edwards)**

A lengthy discussion took place regarding docket HP14-001. An audio of the discussion can be found on the PUC website under Commission Actions, Commission Meeting Archives, 2015, July <http://puc.sd.gov/commission/media/2015/Puc07212015.mp3>.

Commissioner Nelson moved to deny Intertribal COUP's Motion for Reconsideration. Motion carried 3-0.

Commissioner Nelson moved to grant Diana Steskal's Motion for Time Certain for Witness Testimony. Motion carried 3-0.

There being no further business, at the hour of 1:33 p.m. the South Dakota Public Utilities Commission meeting adjourned.

/s/Joy Lashley .

Joy Lashley

Administrative Assistant

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July 21, 2015