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South Dakota

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October 15, 2019

Patricia Van Gerpen
Executive Director
SD Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

RE: EL19-003

Ms. Van Gerpen,

This letter is to clarify questions of scheduling raised in Intervenors' October 11, 2019 filing. To be clear, Commission Staff has no control over whether an issue ultimately goes on the Commission agenda. After the Commission has issued a final order in a contested case, there are various legal considerations that play into whether further action can be taken in the docket, particularly when that final order has been appealed.

Ignoring the fact that Intervenors' filing was not properly titled as a motion for the purposes of providing adequate notice to all parties, even if the filing were to be viewed as a motion to revoke the permit, it is a substantive pleading over which the Commission does not currently have jurisdiction. The South Dakota Supreme Court has held that "[a]n appeal from a judgment or order strips the trial court of power over the subject matter of the judgment or order, and [the appellate court] has jurisdiction until the appeal is decided." *Zepher v. Catholic Diocese of Sioux Falls*, 2008 SD 56, ¶ 22, 752 N.W.2d 658. However, the Commission retains "authority to act on matters collateral to the subject matter of the appeal." See, *In re Estate of Hoffman*, 2002 S.D. 129, ¶ 17, 653 N.W.2d 129.

While Staff does not have the final say as to what goes on the agenda and what does not, it is Staff's opinion that revocation of the permit is a substantive issue which goes to the subject matter of the Commission's order. The question of extending the time for development of the lek study, on the other hand, is a collateral question which can be properly brought before the Commission.

Sincerely,

Kristen N. Edwards
Staff Attorney