
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF REVISIONS
AND/OR ADDITIONS TO THE
COMMISSION'S GENERAL RULES OF
PRACTICE CODIFIED IN ARSD 20:10:01

Docket Number RM06-03

COMMENTS

COMES NOW South Dakota Telephone Association ("SDTA") and South Dakota Rural Electric Association ("SDREA") by and through its attorneys of record, Riter, Rogers, Wattier and Brown, LLP and provides comments to the proposed Administrative Rules of the South Dakota Public Utilities Commission ("Commission") as follows:

1. Electronic Filing of Confidential Documents

As stated at the Rules Hearing on November 7, 2006, SDTA and SDREA have concerns about filing confidential documents electronically as outlined in the proposed changes to ARSD 20:10:01:02.05. The current procedure requires that a party file confidential documents with the Commission in a separate envelope stamped confidential. This ensures that there will be no confusion about the confidentiality of the documents enclosed.

It is our understanding that currently, even confidential exhibits are stored on the Commission website. These confidential exhibits often contain sensitive financial and proprietary information of the companies we represent. The parties are uncomfortable filing these confidential exhibits electronically.

The procedure outlined in Standing Order, 2003-1, of the United States District Court, District of South Dakota, allows for hand-delivery of all confidential documents and further does not allow parties to file confidential documents electronically unless specifically authorized by the court. The parties request that this Commission adopt a similar provision.

There appears to be a discrepancy with ARSD 20:10:01:40 in reference to how the confidential documents will be treated by the Commission that needs to be changed to reflect the other changes made to the Rules. It also does not appear that most of the parties practicing in front of the Commission follow the procedure outlined in ARSD 20:10:01:41. The parties suggest that this be revised to reflect the current practice of the parties and that the additional information requested in ARSD 20:10:01:41 only needs to be provided if requested by the Commission.

2. Choice as to method of Service for other Parties

The proposed changes to ARSD 20:10:01:22.03 provide that after the initial pleading, all parties must be served electronically. The parties request that the individual attorneys be able to choose whether or not they serve others, beside the Commission, with a paper copy or an electronic copy. It is the preference of this law firm to receive a paper copy of a document. It does not appear that it would cause inconvenience to the Commission Staff if the parties choose to continue to serve paper copies on other attorneys.

Currently, in the South Dakota Federal courts, the parties are still able to choose whether they serve and receive electronic or paper copies. We request that this Commission adopt a similar position.

3. Commencement of Action

ARSD 20:10:01:02.02 should be changed to clarify that an action is commenced when served, consistent with state law. (SDCL 15-2-30).

4. Timeliness of Electronically Filed Documents

There is some concern with the language that states a document is filed at the time it is received. Often times with e-mail a document is delayed for various reasons. Accordingly, as an example, if we filed a document at 4:30 PM on a Wednesday and it was not received in your office until after 5:00 PM it would not be timely due to no fault of our own. Accordingly, we request that for electronic documents service is completed upon the time the document was sent.

Currently, the rules infer that a document must be filed by 5:00 PM to be considered as timely. The federal rules allow a filing to be served anytime before midnight of the day served to be considered timely. We request that the Commission adopt similar language.

The parties also request an addition to the Rules that provides for the Commission to send an e-mail verification that the items have been filed.

5. Providing Exhibits That have been Compiled by a Computer Program

The changes to ARSD 20:10:01:24.01 provide that parties must provide fully electronic access to all data and formulae for exhibits that have been prepared by a computer program. The parties object to this as a mandatory provision. Often times the spreadsheets and other electronic exhibits used at trial include confidential work product. The consultants spend a considerable amount of time creating these documents. Accordingly, we request that the Commission provide a provision that allows the parties

to petition the Commission to not provide full electronic accessibility if it is deemed appropriate in a particular situation. There may be situations that arise where this information is protected under law.

6. Relief from Commission for Electronic Malfunctions

As the Commission is well aware, technology and computers often fail. There does not appear to be a provision in the rules that allows the Commission to grant relief to a party who is unable to serve a document electronically due to no fault of their own. Accordingly, we request that the Commission adopt a rule similar to the rules in District Court in South Dakota and provide the following language as a suggestion, “An attorney whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Commission”.

Dated this 17th day of November, 2006.

/s/ Margo D. Northrup
Darla Pollman Rogers
Margo D. Northrup
Riter, Rogers, Wattier & Brown, LLP
P. O. Box 280
Pierre, South Dakota 57501
Telephone (605) 224-7889
Fax (605) 224-7102