



Legislative Research Council

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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James Fry, Director
Doug Decker, Code Counsel

October 19, 2006

Rolayne Wiest
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Dear Ms. Wiest:

The Public Utilities Commission has proposed amendments to ARSD chapter 20:10:01 regarding the procedural rules of the Commission. We have reviewed the proposed rules, scheduled for hearing on November 7, 2006, and approve the rules for legality, with the following exception:

20:10:01:35 – Please provide a time frame for the Commission to issue its declaratory rulings. The Commission could provide an exception from the time frame established in this rule when the circumstances require additional time.

This letter is based on a preliminary review of your rules. Attached are your rules edited for form and style pursuant to SDCL 1-26-6.5 and directions for submitting the final draft of the rules. If you have any questions, please don't hesitate to call me or the staff member who has reviewed your rules.

Sincerely,

A handwritten signature in dark ink that reads "Doug".

Doug Decker
Code Counsel

DIRECTIONS FOR SUBMITTING THE FINAL DRAFT

RULES REVIEW MEETING SCHEDULE: The Interim Rules Review Committee has set the following tentative meeting schedule for the 2006 interim: December 5, and January 8, 2007.

FINAL DRAFT TO LEGISLATIVE RESEARCH COUNCIL: When the final draft of the adopted rules is brought to this office for signature for legality and for form and style, please include the following items:

- 1) The edited copy of the first draft;
- 2) One legible copy of the final draft, to be left here. The final draft should be double spaced, contain only rules being amended, repealed, or adopted, and show changes from current printed rules by means of overstrikes and underscores;
- 3) The original form #11 which contains the signature of the officer empowered to adopt the rules or the signatures of a majority of the members of a board or commission which has the rule-making authority; and
- 4) Copies of the following:
 - a. The minutes of all public hearings, (a summary of the minutes if needed); and
 - b. The affidavit of mailing to Rules Committee members, if already done.

SERVICE ON COMMITTEE: The following information is to be served on the interim Rules Review Committee at least five days before the committee meeting date:

- 1) The final draft of the adopted rules;
- 2) The minutes of the public hearing;
 - a. Include a summary of the hearing if a verbatim transcript is used;
 - b. Include a summary of any subsequent hearing if the public hearing is continued or final action is taken at a later date;
- 3) A summary of the written comments or copies of the written comments;
- 4) The Impact Statement on Small Business;
- 5) The Fiscal Note; and
- 6) Agency financial resource information if the agency proposes a rule to increase a fee.

First class mail should be used. Please three-hole punch all documents served on the committee.

Each agency must complete and sign all documents before filing the certificate of compliance with Chapter 1-26 and the final draft of the rules with the Secretary of State's Office. Although it is not required by statute, the Secretary of State's Office would like to have a copy of the approval signature sheet with the filing of the final draft and the certificate.

CHAPTER 20:10:01
GENERAL RULES OF PRACTICE

Section	
20:10:01:01	Sessions of commission.
20:10:01:01.01	Definitions.
<u>20:10:01:01.02.</u>	<u>Use of rules of civil procedure.</u>
20:10:01:02	Appearances.
20:10:01:02.01	Communications with commissioners.
20:10:01:02.02	Filing documents with the commission.
20:10:01:02.03	Contents <u>and filing</u> of pleadings.
20:10:01:02.04	Withdrawal and dismissal of petition <u>pleading</u> prior to final order.
20:10:01:02.05	Filing originals and copies <u>of documents.</u>
20:10:01:03 to 20:10:01:07	Repealed.
20:10:01:07.01	Contents of <u>consumer</u> complaint.
20:10:01:08	Repealed.
20:10:01:08.01	Commission action on <u>consumer</u> complaints.
<u>20:10:01:08.02</u>	<u>Complaints not in conformity.</u>
20:10:01:09	Service of a <u>consumer</u> complaint – <u>Service of other complaints.</u>
<u>20:10:01:09.01</u>	<u>Service of documents by the commission.</u>
20:10:01:10	Actions which satisfy complaint.
20:10:01:11	Repealed.
20:10:01:11.01	Defenses to complaint.
20:10:01:12	Applications for new rates.
20:10:01:13	Repealed.
20:10:01:14	Adjournment and extensions.
20:10:01:15	Opportunity for hearing.
20:10:01:15.01	Burden in complaint <u>contested case</u> proceeding.

20:10:01:15.02 Intervention.

20:10:01:15.03 Contents of petition to intervene.

20:10:01:15.04 Answer to petition to intervene.

20:10:01:15.05 Commission action on petition to intervene.

20:10:01:15.06 Individual's right to appear.

20:10:01:16 Amendments.

20:10:01:16.01 Response to amended pleadings.

20:10:01:17 Subpoenas.

20:10:01:17.01 Commission action on subpoena request.

20:10:01:17.02 Service of subpoena.

20:10:01:18 Repealed.

20:10:01:19 Stipulation.

20:10:01:20 to 20:10:01:22 Repealed.

20:10:01:22.01 Discovery -- Order to compel.

20:10:01:22.02 Notice of hearing.

20:10:01:22.03 Manner of service.

20:10:01:22.04 Change in time and place of hearing.

20:10:01:22.05 Hearing -- Opening statement.

20:10:01:22.06 Written testimony.

20:10:01:22.07 Exhibits at hearing.

20:10:01:23 Documentary evidence.

20:10:01:24 Procedure for filing documentary evidence.

20:10:01:24.01 Technical matter must be in exhibits.

20:10:01:24.02 Receipt of evidence.

20:10:01:24.03 Documentary exhibits furnished after close of hearing.

20:10:01:25 Briefs.

20:10:01:26 and 20:10:01:27 Repealed.

20:10:01:27.01	Reopening of the record.
20:10:01:28	Compliance with orders.
20:10:01:29	Rehearing or reconsideration.
20:10:01:30	Repealed.
20:10:01:30.01	Application for rehearing or reconsideration.
20:10:01:30.02	Answer to application for rehearing or reconsideration.
20:10:01:31	Repealed.
20:10:01:32	Information provided by commission.
20:10:01:33	Repealed.
20:10:01:34	Petition for declaratory ruling.
20:10:01:35	Commission action on petition.
20:10:01:36 and 20:10:01:37	Superseded.
20:10:01:38	Repealed.
20:10:01:39	Confidential information defined.
20:10:01:40	Confidential treatment of information — Posted notice.
20:10:01:41	Requests for confidential treatment of information.
20:10:01:42	Requirements for proving confidentiality.
20:10:01:43	Requests for access to confidential information.
20:10:01:44	Use of confidential information in commission orders.
20:10:01:45	Order to show cause -- Service, notice, contents.

20:10:01:01.01. Definitions. Terms used in this chapter mean:

- (1) "Commission," the Public Utilities Commission of the state of South Dakota;
- (2) "Applicant" or "petitioner," a party seeking approval, authority, or other relief;

or any person who notifies the commission of a proposed change in gas, electric, or common carrier rates;

- (3) "Complainant," a party who files a complaint;

(4) "Consumer complaint," any complaint other than a complaint filed by a telecommunications company, utility company, or a person involved in the generation, transmission, or distribution of energy;

(4) (5) "Party," a person by or against whom a proceeding is commenced or a person admitted by the commission or properly seeking and entitled as of right to be admitted as a party;

(5) (6) "Respondent," a party who is complained against, or a party investigated or ordered to show cause.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:01, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: ~~SDCL 49-1-11~~ 49-1-11(2), (4).

Law Implemented: ~~SDCL 1-26-1(5), 49-34A-4~~ 49-1-11(2), (4).

20:10:01:01.02. Use of rules of civil procedure. Except to the extent a provision is not appropriately applied to an agency proceeding or is in conflict with SDCL chapter 1-26, another statute governing the proceeding, or the commission's rules, the rules of civil procedure as used in the circuit courts of this state ^{shall} ~~will~~ apply.

Source:

General Authority: SDCL 49-1-11(2), (4).

Law Implemented: SDCL 49-1-11(2), (4).

20:10:01:02.02. Filing documents with the commission. When a document is required to be filed with the commission by a specific date or within a prescribed period and the document is served upon the commission by mail, three days shall be added to the due date or to the prescribed period. A facsimile or electronically filed document is considered filed on the date the document is received by the commission. In the case of a facsimile, the original document shall be subsequently filed, at which time the facsimile shall be removed from the record. Documents and facsimiles will only be received by the commission during regular business hours from 8:00 a.m. to 5:00 p.m., Central Time. If received at a later time or during a weekend or holiday, the document or facsimile is considered filed with the commission on the next working day.

Source: 16 SDR 148, effective March 22, 1990; 18 SDR 26, effective August 7, 1991.

General Authority: SDCL ~~49-1-11~~ 49-1-11(2), (4).

Law Implemented: SDCL ~~49-1-11~~ 49-1-11(2), (4).

20:10:01:02.03. Contents and filing of pleadings. ~~Each~~ Except for consumer complaints, each pleading shall be filed with the commission at the time the pleading is served and shall include the following:

- (1) The heading and caption, including the names of the parties and the docket number, if known;
- (2) The statements of fact and law set forth in numbered paragraphs;
- (3) The request of the party filing the pleading;

(4) The printed name and signature of the party filing the pleading or, if the party is represented by an attorney, the printed name and signature of the party's attorney; and

(5) The party's or the party's attorney's address, telephone number, and the email address at which the party will receive electronic service; and

(5) (6) The proof of service.

Source: 16 SDR 148, effective March 22, 1990.

General Authority: SDCL ~~49-1-11~~ 49-1-11(2), (4).

Law Implemented: SDCL ~~49-1-11~~ 49-1-11(2), (4).

20:10:01:02.04. Withdrawal and dismissal of petition pleading prior to final order. A petition pleading may be dismissed or withdrawn prior to entry of a final order by the commission if a ~~stipulation agreed to by all parties of record~~ stipulated agreement is filed and the commission does not find that the public interest requires the proceeding to be continued. The commission may also dismiss a petition pleading at the request of an interested party or on its own motion, stating the reasons in its order.

Source: 16 SDR 148, effective March 22, 1990.

General Authority: SDCL ~~49-1-11~~ 49-1-11(2), (4).

Law Implemented: SDCL ~~49-1-11~~ 49-1-11(2), (4).

20:10:01:02.05. Filing originals and copies of documents. If a document is required to be filed with the commission in a docketed proceeding, except for consumer complaints, the party filing the document shall file the original and ten copies, unless

otherwise specified in this article. Unless otherwise allowed, any document filed with the commission shall be filed electronically as a .pdf file by accessing the commission's website. If the document is unable to be filed as a .pdf file, the document shall be filed using a widely used file format. ~~Exhibits~~ ^{Documents} larger than eight and one half by fourteen inches or that otherwise may not be practicably filed by email attachment shall be filed by mail or hand delivery. If a person is requesting confidential treatment of any information, that information shall be filed electronically as a separate document. If a person is unable to file the document electronically due to technical reasons or lack of electronic filing capabilities, the person shall file the original document with the commission by mail or hand delivery and is not required to file electronically. If a person has the computer capability and it is technically feasible, any document that is not filed electronically shall be filed with the commission on a recordable compact disc. These filing requirements apply to all documents unless otherwise specified in this article or required by the commission.

Source: 18 SDR 26, effective August 7, 1991.

General Authority: SDCL ~~49-1-11~~ 49-1-11(2), (4).

Law Implemented: SDCL ~~49-1-11~~ 49-1-11(2), (4).

Cross-Reference:

Contents of consumer complaint, § 20:10:01:07.01.

Requests for confidential treatment of information, § 20:10:01:41.

~~Note: Documents, except for tariff sheets, should be copied on both sides of the page. The recommended format, except for tariffs, is as follows: 12 cpi (characters per inch), 1 inch margins on the left and right sides of the page and 1/2 inch margins on the top and bottom sides of the page.~~

20:10:01:07.01. Contents of consumer complaint. A consumer complaint shall be in writing and filed with the commission. A consumer complaint shall contain:

(1) The full name, ~~and address, and telephone number~~ of each complainant, *an email address*
including an email address if the complainant has one;

(2) The full name and address of each respondent;

(3) A full, clear, and reasonably certain statement of the facts giving rise to the complaint, with reference where practicable to the law, statute, order, or rules of which a violation is claimed;

(4) The remedy requested by the complainant;

(5) The printed name and signature of the complainant;

(6) The name and address of the complainant's attorney, if any; and

(7) An affirmation that the statement of facts are accurate to the best of the complainant's knowledge.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:11, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-1-11(2), 49-34A-4(6).

Law Implemented: SDCL 49-1-11(2), (4), 49-13-1, ~~49-13-2, 49-34A-59~~.

20:10:01:08.01. Commission action on consumer complaints. Upon the filing of a consumer complaint, the commission shall attempt to settle the complaint without formal action. If the consumer complaint cannot be properly disposed of informally, the commission shall proceed in accordance with the provisions of § 20:10:01:09. ~~If the commission believes the complaint does not conform to this chapter, it shall so notify the complainant or the complainant's attorney, and opportunity shall be given to amend the complaint within a time specified by the commission. If the complaint is not amended within such time, or such extension thereof as the commission for good cause shown may grant, it shall be dismissed.~~

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:12, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL ~~49-1-11~~ 49-1-11(2), (4), ~~49-34A-4~~ 49-34A-6.

Law Implemented: SDCL ~~49-1-11~~ 49-1-11(2), (4), ~~49-34A-4~~ 49-34A-6.

20:10:01:08.02 Complaints not in conformity. If the commission believes a
complaint does not conform to this chapter,^{the commission}it shall notify the complainant or the
complainant's attorney, and opportunity shall be given to amend the complaint within a
time specified by the commission. If the complaint is not amended within such time,^{the}~~it~~^{complaint}
may be dismissed.

Source:

General Authority: SDCL 49-1-11(2), (4), 49-34A-4(6).

Law Implemented: SDCL 49-1-11(2), (4), 49-34A-4(6).

20:10:01:09. Service of a consumer complaint – Service of other complaints.

The For a consumer complaint, the commission shall forward a copy of the complaint to the respondent a statement of the complaint and a notice requiring the respondent to satisfy the complaint or answer it in writing within 20 days from the date of service of the notice or within such further time as may be specified by the commission. For all other complaints, the complainant shall serve the complaint on the respondent. The respondent shall satisfy the complaint or answer it in writing within 20 days from the date of service of the complaint or within such time as may be specified by the commission.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 26 SDR 110, effective March 7, 2000.

General Authority: SDCL 49-1-11(2) 49-1-11(2), (4), 49-34A-4(6).

Law Implemented: SDCL 49-1-11(2) 49-1-11(2), (4), 49-13-1, 49-34A-4(6).

Cross-Reference: Manner of service, § 20:10:01:22.03.

20:10:01:09.01. Service of documents by the commission. The commission shall
will serve all documents electronically unless a person is unable to receive documents electronically, a document may not practicably be transmitted electronically, or the commission does not have the person's email address.

Source:

General Authority: SDCL 49-1-11(2), (4), 49-34A-4.

Law Implemented: SDCL 49-1-11(2), (4), 49-34A-4.

20:10:01:10. Actions which satisfy complaint. The respondent shall, within the time fixed by the notice served upon it ~~specified by § 20:10:01:09~~, satisfy the complaint by making reparation for the injury alleged to have been done, correcting the wrong complained of, or answering the complaint by filing ~~the original and one copy of the answer in the office of~~ with the commission and serving a copy on each complainant. If a respondent satisfies a complaint before or after answering, a written acknowledgment showing the character and extent of the satisfaction must be filed by the complainant, and a statement of the facts and manner of satisfaction may be filed as an answer. Upon approval of the commission, ~~no further proceedings may be taken~~ the complaint shall be dismissed.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-1-11(2)~~ 49-1-11(2), (4), 49-34A-4(6).

Law Implemented: SDCL ~~49-1-11(2)~~ 49-1-11(2), (4), 49-13-1, 49-13-3, 49-34A-4(6).

20:10:01:11.01. Defenses to complaint. ~~The defense that the complainant does not have a good or sufficient reason for making a complaint, that the complainant is without standing to make the complaint or otherwise fails to conform to this chapter,~~ defenses set forth in SDCL 15-6-12(b) may be raised by motion to dismiss or answer, at

the option of the respondent. All other defenses to the complaint shall be raised by answer. ~~An original and ten copies of the~~ The motion to dismiss or answer, accompanied by proof of service on the complainant, shall be filed with the commission. The answer shall specifically admit or specifically deny material allegations of the complaint and may also contain a statement of new matters constituting an affirmative defense. If the respondent has no information or belief on the subject sufficient to enable the respondent to answer an allegation of the complaint, the respondent may so state in the answer and deny the allegation on that ground.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:15, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 25 SDR 89, effective December 27, 1998; 26 SDR 110, effective March 7, 2000.

General Authority: SDCL ~~49-1-11(2)~~ 49-1-11(2), (4), 49-34A-4(6).

Law Implemented: SDCL ~~49-1-11(2)~~ 49-1-11(2), (4), 49-13-1, 49-34A-4(6).

Cross-Reference: Service of a consumer complaint—Service of other complaints, § 20:10:01:09.

20:10:01:15. Opportunity for hearing. ~~Upon receipt of the answer of each respondent or at the expiration of the time fixed for the filing of the answer, if each respondent has not satisfied the complaint or corrected the wrong complained of, In any contested case proceeding held before the commission, the commission shall give the parties an opportunity for a hearing conducted in accordance with the provisions of SDCL chapter 1-26 and this chapter.~~

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-1-11(2)~~ 49-1-11(2), (4), 49-34A-4(6).

Law Implemented: SDCL ~~49-1-11(2)~~ 49-1-11(2), (4), 49-13-1, 49-13-4, 49-34A-4(6).

20:10:01:15.01. Burden in ~~complaint~~ contested case proceeding. In a ~~complaint~~ any contested case proceeding, the complainant, counterclaimant, applicant, or petitioner has the burden of going forward with presentation of evidence unless otherwise ordered by the commission. The complainant, counterclaimant, applicant, or petitioner has the burden of proof as to factual allegations which form the basis of the complaint, ~~counterclaim, application, or petition.~~ In a complaint proceeding, the respondent has the burden of proof with respect to affirmative defenses.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:16, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: ~~49-1-11~~ 49-1-11(2), (4), 49-34A-4.

Law Implemented: SDCL 49-1-11(2), (4), 49-34A-61, ~~49-44-16~~.


20:10:01:15.02. Intervention. A person who is not an original party to a proceeding before the commission and who claims an interest in a pending proceeding may petition the commission for leave to intervene. ~~An original and ten copies of a~~ The petition to intervene shall be filed with the commission within the time specified ~~in the~~ commission's order establishing time for intervention in the commission's weekly filings

public notice, or by applicable statute, rule, or order. The petition shall show service upon all parties to the proceeding. A petition to intervene which is not timely filed with the commission may ~~not~~ be granted by the commission ~~unless the~~ if granting the intervention will not unduly prejudice the rights of other parties to the proceeding or if denial of the petition is shown to be detrimental to the public interest or to be likely to result in a miscarriage of justice.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:02, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-1-11(2)~~ 49-1-11(2), (4).

Law Implemented: SDCL 1-26-17.1, 49-1-11(2), (4), 49-34A-13.1.

20:10:01:15.04. Answer to petition to intervene. A party to a proceeding may,  file an answer to a petition to intervene on or before the hearing date, if any, set for hearing upon the petition or on or before the date set for hearing upon the complaint, whichever is earlier, but in no event may a party have more than 15 days in which to file an answer to a petition to intervene or within 15 days after service of the petition, whichever is earlier, unless otherwise ordered by the commission. The answer shall show service of copies thereof upon all parties to the proceeding.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:04, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL ~~49-1-11~~ 49-1-11(2), (4).

Law Implemented: SDCL 1-26-17.1, 49-1-11(2), (4), 49-34A-13.1.

20:10:01:15.05. Commission action on petition to intervene. As soon as practicable after the expiration of the time for filing an answer to a petition for intervention, the commission shall grant or deny the petition in whole or in part.

A petition to intervene shall be granted by the commission if the petitioner shows that the petitioner is specifically deemed by statute to be interested in the matter involved, that the petitioner is specifically declared by statute to be an interested party to the proceeding, or that by the outcome of the proceeding the petitioner will be bound and affected either favorably or adversely with respect to an interest peculiar to the petitioner as distinguished from an interest common to the public or to the taxpayers in general.

A person granted leave to intervene in whole or in part is an intervener and is a party to the proceeding. As a party, an intervener is entitled to notice of hearing, to appear at the hearing, to examine and cross-examine witnesses, to present evidence in support of the person's interest, to compel attendance of witnesses and production of evidence, to submit briefs, to make and argue motions and objections, and to all other rights granted to parties by statute or this chapter.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:05, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL ~~49-1-11~~ 49-1-11(2), (4).

Law Implemented: SDCL 1-26-17.1, 49-1-11(2), (4), 49-34A-13.1.

20:10:01:16. Amendments. ~~Amendments may be allowed to any petition, complaint, application, or answer~~ A pleading may be amended once as a matter of right if filed and served prior to the filing of a responsive pleading or within 20 days, whichever is earlier. ^{from the date the pleading was filed and served} After such time, a pleading may be amended by stipulation of the parties or upon application of a party and at the discretion of the commission.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: ~~SDCL 49-1-11~~ 49-1-11(2), (4).

Law Implemented: ~~SDCL 49-1-11~~ 49-1-11(2), (4).

20:10:01:22.03. Manner of service. ~~Notices, petitions, answers, and other papers or copies thereof required to be served in a proceeding may~~ An initial pleading in a proceeding requiring service upon a person other than the commission shall be served either personally or by mail as provided by SDCL 15-6-5(b). When a party has appeared by attorney, service upon the attorney is proper service. Service by mail shall be evidenced by a certificate of service. Except in the case of a consumer complaint proceeding or as otherwise provided in ^{this chapter} these rules, all pleadings and documents in a proceeding after the initial pleading shall be served electronically. Electronic service shall be effected by attaching the pleading or document as a .pdf file or other commonly used file type to an email that is addressed and transmitted to the email address of the party provided pursuant to § 20:10:01:02.03. Documents ^{Any} containing colored graphics such as ^a maps, that ^{contains an} contain exhibits larger than eight and one half by fourteen inches, or that otherwise may not practicably be served by email attachment or printed by the

receiving party shall be served by mail. If a party or the attorney of a party does not have the capability to effect electronic service, the party or attorney shall provide notice of such fact to the commission and the other parties and such party may then serve and receive service by mail. Upon the request of a party or the commission, a party shall provide a paper copy of a particular document to the requesting party.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:18, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL ~~49-1-11~~ 49-1-11(2), (4).

Law Implemented: SDCL ~~49-1-11~~ 49-1-11(2), (4).

20:10:01:22.07. Exhibits at hearing. When exhibits have been prepared to be used at the hearing either as evidence or for illustrative purposes, or both, the parties shall have the exhibits marked prior to the hearing ~~if the exhibits have not already been submitted with prefiled testimony. The~~ If the exhibits have not previously been served on the other parties and filed with the commission, the party using exhibits shall provide copies of the exhibits at the hearing to the commissioners, commission and staff attorneys, the court reporter, and each party in the proceeding. If enlarged exhibits have been prepared for the hearing, copies of enlarged exhibits shall be reduced or folded to 8 1/2 inches by 11 inches in size prior to the hearing. If a party in a hearing does not follow the requirements of this section, the commission may or may not accept the exhibits at the hearing.

Source: 18 SDR 26, effective August 7, 1991.

General Authority: SDCL ~~49-1-11~~ 49-1-11(2), (4).

Law Implemented: SDCL ~~49-1-11~~ 49-1-11(2), (4).

20:10:01:24. Procedure for filing documentary evidence. Any party wishing to introduce in evidence in any hearing before the commission any exhibit or document of any kind that has not previously been served on the other parties and filed with the commission, must furnish, in addition to the original exhibit to be filed and incorporated into the record in the case, ~~four~~ five copies for use of the commission and a copy for adverse counsel or parties.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL ~~49-1-11~~ 49-1-11(2), (4).

Law Implemented: SDCL 1-26-19, 49-1-11(2), (4).

20:10:01:24.01. Technical matter must be in exhibits. When evidence to be presented consists of technical ~~matter~~ material or figures, ^{the evidence} ~~it~~ shall be presented in exhibit form. The technical ~~matter~~ material or figures may be supplemented and explained, but not duplicated, by oral testimony. Unless the commission otherwise orders, when technical material or figures have been compiled by the use of a computer program, an electronic copy of the evidence shall be provided to the commission and other parties that permits the receiving parties and commission to fully electronically access the data and formulae used in the evidence.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:30, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL ~~49-1-11~~ 49-1-11(2), (4).

Law Implemented: SDCL 1-26-19, 49-1-11(2), (4).

20:10:01:25. Briefs. The commission in its discretion may order the filing of written briefs and when so ordering shall fix the due dates for filing. Briefs shall contain the following matters: statement of the case; abstract of the evidence relied upon by the party filing the brief; specific citations to facts contained in the record; and arguments, including references to decisions of the commission, other commissions, or the courts; ~~and request for specific findings desired by the party filing the brief.~~ If requested by the commission, the parties shall file proposed findings of fact. The requested findings must be stated separately and numbered. ~~The original and ten copies~~ briefs shall be filed with the commission and a copy shall be served on each party. Certification of service shall be filed with the briefs.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-1-11(4).

Law Implemented: SDCL 49-1-11(4).

20:10:01:30.01. Application for rehearing or reconsideration. An application for a rehearing or reconsideration shall be made only by written petition by a party to the proceeding. ~~An original and ten copies of the~~ The application shall be filed with the

commission within 30 days from the issuance of the commission decision or order. An application for rehearing or reconsideration based upon claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the ground of error. An application for rehearing or reconsideration based upon newly discovered evidence, upon facts and circumstances arising subsequent to the hearing, or upon consequences resulting from compliance with the decision or order, shall set forth fully the matters relied upon. The application shall show service on each party to the proceeding.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:39, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-1-11(4).

Law Implemented: SDCL 49-1-11(4), ~~49-28-53~~, 49-34A-61.1.

20:10:01:34. Petition for declaratory ruling. Any person wishing the commission to issue its ruling as to the applicability to that person of any statutory provision or rule or order of the commission may file with the commission a petition for declaratory ruling. ~~in substantially the following form:~~

State of South Dakota

Public Utilities Commission

Petition for Declaratory Ruling

~~— Pursuant to the provisions of SDCL 1-26-15, I, (name of petitioner), of (address of petitioner), am (title or capacity of petitioner), and do hereby petition the South Dakota Public Utilities Commission for its declaratory ruling in regard to the following:~~

The petition shall contain the following:

(1) The state statute or commission rule or order in question is: ~~(here identify and quote the pertinent statute, rule, or order).~~ ;

(2) The facts and circumstances which give rise to the issue to be answered by the commission are: ; and

(3) The precise issue to be answered by the commission's declaratory ruling is:

~~—~~ Dated at _____ (city and state), this _____ day of _____ 19 20

—

(Signature of petitioner)

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11 49-1-11(5).

Law Implemented: SDCL 1-26-15, 49-1-11(5).

20:10:01:35. Commission action on petition. Upon receipt of the petition for declaratory ruling, the commission may request from petitioner ~~such other or further~~ information as may be required for the issuance of its ruling. ~~Within 30 days after the filing of the petition or within 30 days following the receipt of further requested~~

Notes provide a time frame, possibly with an exception.

information, the The commission shall issue act expeditiously in issuing its declaratory ruling and serve a copy of the ruling by mail upon the petitioner.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL ~~49-1-11~~ 49-1-11(5).

Law Implemented: SDCL 1-26-15, 49-1-11(5).

Declaratory Ruling: The Public Utilities Commission has filed a declaratory ruling with the Legislative Research Council in the matter of the petition of West River Electric Association, Inc. for a ruling regarding service territory rights concerning Black Hills Power, Inc. and West River Electric Association, Inc. The Commission declared that the provision of electric service by Black Hills Power, Inc. to a certain portion of the Rapid City Waste Treatment Facility violated SDCL 49-34A-42 by rendering electric service at retail within the territory of West River Electric Association, Inc. Declaratory Ruling EL02-003 dated September 24, 2002. The commission's Declaratory Ruling EL02-003 was reversed by the South Dakota Supreme Court in *In re West River Elec. Ass'n. Inc.*, 2004 SD 11, 675 N.W.2d 222, Util. L. Rep. P 26,872.

20:10:01:39. Confidential information defined. All facts, information, reports, orders, memoranda books, accounts, documents, and computer peripherals of any nature in the possession of the commission are available for examination by the public except the following:

- (1) Personal information in confidential personnel records of the commission;

(2) Communications between counsel retained by the commission or staff and the commission and staff;

(3) Any information, records, or documents that constitute the work product of an attorney;

(4) Trade secrets or other confidential research, development, or commercial information recognized and protected by SDCL 15-6-26(c)(7) or other law;

(5) Information which is made confidential under any other provisions of state or federal law; and

(6) Information which is determined by the commission to be confidential by the commission and entitled to protection from disclosure or improper use.

Source: 16 SDR 148, effective March 22, 1990.

General Authority: SDCL ~~49-1-11~~ 49-1-11(6).

Law Implemented: SDCL ~~49-1-11~~ 49-1-11(6).

Cross-References:

Records open to inspection, SDCL 1-27-1.

Records declared confidential or secret, SDCL 1-27-3.

Discovery pending action, SDCL 15-6-26.

Attorney's duty to respect client's confidence, SDCL 16-18-18.

Lawyer-client privilege, SDCL 19-13-2 to 19-13-4, inclusive.

Privilege of trade secrets -- Protective measures if disclosure directed, SDCL 19-13-20.

Uniform Trade Secrets Act, SDCL 37-29-1 to 37-29-11, inclusive.

20:10:01:40. Confidential treatment of information — ~~Posted notice.~~

~~Information being afforded confidential treatment shall be kept in locked files separate, sealed envelopes and marked confidential. A notice in the following form shall be posted at the locked facilities in which confidential information is located:~~

NOTICE

~~The information in this file is designated confidential under chapter 20:10:01 of the rules of the South Dakota Public Utilities Commission. Disclosure of any such confidential information to a person other than commission members, employees, or agents is prohibited unless otherwise permitted by the commission.~~

Source: 16 SDR 148, effective March 22, 1990.

General Authority: SDCL ~~49-1-11~~ 49-1-11(6).

Law Implemented: SDCL ~~49-1-11~~ 49-1-11(6).

20:10:01:41. Requests for confidential treatment of information. A request for confidential treatment of information shall be made by submitting the material to the commission along with the following information:

(1) An identification of the document and the general subject matter of the materials or the portions of the document for which confidentiality is being requested;

(2) The length of time for which confidentiality is being requested and a request for handling at the end of that time. This does not preclude a later request to extend the period of confidential treatment;

(3) The name, address, and phone number of a person to be contacted regarding the confidentiality request;

(4) The statutory or common law grounds and any administrative rules under which confidentiality is requested. Failure to include all possible grounds for confidential treatment does not preclude the party from raising additional grounds in the future; and

(5) The factual basis that qualifies the information for confidentiality under the authority cited.

Information shall be sent to the commission's executive director, unless another person is designated. Each page must clearly be marked "confidential" in large, bold letters. Information submitted by mail or hand delivery must be in a separate, sealed envelope and clearly state in large, bold letters on each page and on the envelope that confidential treatment is requested. If filed electronically, the information must be filed as a separate document and must be accompanied by a letter stating that the person filing the information is requesting confidential treatment.

Source: 16 SDR 148, effective March 22, 1990.

General Authority: SDCL 49-1-11 49-1-11(6).

Law Implemented: SDCL ~~49-1-11~~ 49-1-11(6).