

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

IN THE MATTER OF PETITION FOR ARBITRATION)
OF AN INTERCONNECTION AGREEMENT BETWEEN) **TC21-124**
MIDCONTINENT COMMUNICATIONS AND)
JAMES VALLEY COOPERATIVE TELEPHONE)
COMPANY)

**JAMES VALLEY COOPERATIVE TELEPHONE COMPANY’S RESPONSE TO
MIDCONTINENT COMMUNICATIONS’ MOTION TO COMPEL**

James Valley Cooperative Telephone Company (“James Valley”) herby submits its Response to Midcontinent Communications’ (“Midco”) Motion to Compel.

Midco’s motion should be denied for two reasons: first, Midco did not attempt to meet and confer about the dispute prior to filing its motion; and second, Midco’s discovery requests seek irrelevant *factual* information - the case’s remaining issues are legal issues.

First, before filing a motion to compel discovery responses, the filing party must meet and confer with its opponent about the dispute. SDCL 15-6-37(a)(2). In addition, the filing party’s motion must certify that the movant has in good faith conferred or attempted to confer with the party failing to make the discovery in an effort to secure the information or material without court action. *Id.* Prior to filing the motion, Midco did not attempt to confer with James Valley. Failure to meet and confer is often a basis for denying a motion to compel. *Krueger v. Grinnell Mut. Reinsurance Co.*, 2018 S.D. 87, ¶ 20, 921 N.W.2d 689, 695. That should be the result here.

The second reason to deny Midco’s motion is because it seeks irrelevant information. Midco focuses on Interrogatory No. 4 with its corresponding Document Request No. 4. In summary, the interrogatory seeks:

Identify each interconnection agreement between James Valley or any of its affiliates and any service provider that contains the following provision or any other provision intended to ensure or clarify that the agreement is contingent upon the other party complying with Commission orders:

This Agreement is subject to and contingent upon it and each Party complying with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to performance under this Agreement.

James Valley responded with an appropriate objection:

This interrogatory is objected to as not relevant. Under the Commission's March 10, 2022 Order, Midcontinent must obtain a Certificate of Authority in order to provide the services under the proposed interconnection agreement and this provision simply incorporates that requirement in the interconnect agreement. This interrogatory seems to imply that Midcontinent does not intent to comply with the Order, which is the very reason it should be a term and condition of the interconnect agreement.

Midco's interrogatory arises out of the language of the interconnect agreement's paragraph 10 that the parties are negotiating. Midco proposed this language:

10. Compliance with Laws and Regulations
Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.

Based on the Commission's ruling on the bifurcated issue, James Valley requests slightly different language. The Commission ruled that Midco "must obtain a Certificate of Authority from this Commission in order to provide the services described in the proposed interconnection agreement."¹ Consequently James Valley proposed the following to Midco for paragraph 10:

10. Compliance with Laws and Regulations
This Agreement is subject to and contingent upon it and ~~Each Party shall~~ complying with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to ~~its~~ performance under this Agreement.

¹ Order Ruling on Bifurcated COA Issue, dated March 18, 2022. This became a final Order when Midco failed to appeal it to the Circuit Court within the statutory deadline of "within thirty days after the agency served notice of the final decision" SDCL 1-26-31.

The James Valley revision merely implements the Commission's ruling on the bifurcated issue.

After James Valley expressed its position on that provision, Midco sent the discovery requests under consideration here, demanding to know what other interconnect agreements James Valley is party to that contain such language. The answer is irrelevant because, *in this case*, the Commission has ordered that Midco cannot provide the interconnect services without a COA. Other James Valley interconnects that differ on that language are not relevant because the Commission itself has created the difference between this case and other cases with its ruling on the bifurcated issue.

Midco's motion to compel should be denied on grounds of irrelevancy.

Dated: May 11, 2022.

Bantz, Gosch & Cremer, L.L.C

/s/ Josh Wurgler _____

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CERTIFICATE OF SERVICE

I hereby certify that an original of the RESPONSE TO MIDCONTINENT COMMUNICATIONS' MOTION TO COMPEL and filed in PUC Docket TC21-124 was served upon the PUC electronically, directed to the attention of:

Ms. Patty Van Gerpen, Executive Director
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A copy was also sent by e-mail to each of the following individuals:

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