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

RE: TC21-124

Ms. Van Gerpen,

Staff submits this letter in order to provide explanation regarding the question of scheduling posed on the January 4, 2022 agenda. The reason for the difficulty in scheduling the Motion to Dismiss to be heard is as described below. However, the Parties are not all in agreement as to how rigid the timeline in federal law is. Specifically, as Staff understands it, the Parties do not agree as to whether or not the filing of a Motion to Dismiss tolls the deadlines.

If the Motion to Dismiss is granted, the deadlines become irrelevant. However, if the Motion is denied and does not toll the deadlines, the timeline going forward becomes somewhat untenable. Pursuant to 47 USC § 252(4)(C) and ARSD 20:10:32:32, the Commission must issue a written decision that resolves all issues set forth in the petition for arbitration no later than nine months from the date the ILEC received the request for negotiations.

If the Commission agrees with James Valley that the request was received on June 3, 2021, then a hearing would need to be held and a decision issued no later than March 3, 2022. If the Commission agrees with Midco that the timeline started on July 16, 2022, the deadline would be April 16, 2022. Therefore, if the Motion were denied and also did not toll the deadlines, delay in resolving this motion would be an issue. Staff can find nothing in federal law to suggest that the nine-month deadline tolls absent an agreement by the Parties.

As required by administrative rule, Midco filed with its Petition a draft timeline, which can be found at the end of its Exhibit 4. Many of the deadlines listed in that filing would also be affected by the Motion to Dismiss, specifically James Valley's answer deadline of January 3, 2022. At this point, Staff has not looked into potential hearing dates, as the Parties do plan to agree to a temporary and limited tolling in order to resolve the issues discussed in SDTA's Limited Petition to Intervene.

One legal issue in question is whether the South Dakota Rules of Civil Procedure dictate that the clock has stopped while a Motion to Dismiss is pending. SDCL 15-6-12(a) provides deadlines for presenting defenses and objections. However, the deadlines do not align with those provided in 47 USC § 252(3), which would give James Valley 25 days from the petition to respond. It is Staff's interpretation that the federal law is controlling here. However, we respect that other Parties have a different opinion and, therefore, defer to the Commission's interpretation on the applicability of the state statute.

At this time, Staff intends to request at the January 4 Commission Meeting that the Motion to Dismiss be heard at the January 18 Commission meeting. Due to the January 17 holiday, this would be held on less than 10 days' notice. With a January 18 hearing date, Staff requests responses to the Motion to Dismiss be filed no later than January 7, 2022, with a deadline for James Valley to Reply on January 14, 2022.

Sincerely,



Kristen N. Edwards
Staff Attorney