

South Dakota Public Utilities Commission Meeting  
January 15, 2013 at 2:30 P.M. CST  
Room 413, Capitol Building  
Pierre, South Dakota

**NOTE:** *If you wish to join this meeting by conference call, please contact the Commission at 605-773-3201 by 5:00 p.m. CST on Monday, January 14, 2013. Lines are limited and are given out on a first come, first served basis, subject to possible reassignment to accommodate persons who must appear in a proceeding. Ultimately, if you wish to participate in the Commission Meeting and a line is not available, you may have to appear in person.*

**NOTE:** *To listen to the Commission Meeting live please go to the PUC's website [www.puc.sd.gov](http://www.puc.sd.gov) and click on the LIVE link on the home page. The Commission requests persons who will only be listening to proceedings and not actively appearing in a case listen via the web cast to free phone lines for those who have to appear. The Commission meetings are archived on the PUC's website under the Commission Actions tab, Click on "Commission Meeting Archives," to access the recordings.*

**NOTE:** *Notice is further given to persons with disabilities that this Commission meeting is being held in a physically accessible place. If you have special needs, please notify the Commission and we will make all necessary arrangements.*

# AGENDA OF COMMISSION MEETING

## Administration

1. Approval of the Minutes of the Commission Meetings Held on December 4, 2012, and December 18, 2012 (Staff: Joy Irving)

## Consumer Reports

1. Status Report on Consumer Utility Inquiries and Complaints Received by the Commission (Consumer Affairs: Deb Gregg)

## Electric

1. [EL11-023](#) In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy for Approval of a Credit Mechanism for a Department of Energy Settlement Payment Along with Deferred Accounting and Approval to Depart from Its Fuel Clause Tariff, as Necessary (Staff Analyst: Jon Thurber, Staff Attorney: Karen Cremer)

On August 16, 2011, Northern States Power Company d/b/a Xcel Energy (NSP) filed for approval of a credit mechanism for funds received from a Settlement with the United States Department of Energy (DOE) for DOE's partial breach of its contract to begin accepting spent nuclear fuel on or before January 31, 1998. The gross amount currently available for credit is

\$99,966,841 on a total NSP system basis, or approximately \$4.3 million on a South Dakota jurisdictional basis. On December 6, 2011, the Commission voted to approve the deferred accounting treatment of the 2011 Settlement proceeds. On December 28, 2011, Staff filed its Memorandum setting forth its recommendations on the remaining issues. On January 17, 2012, the Commission voted to approve the recommendations of Staff including distribution of the refund using the one-time bill credit and use of the same one-time bill credit method for returning future Settlement proceeds to customers and any interest thereon within 90 days of receipt from DOE. The most recent settlement payment from DOE was received on October 16, 2012. Credit for these amounts is due to ratepayers by January 16, 2013. On December 14, 2012, Xcel Energy filed a request to suspend the Order requiring the credit be made within 90 days of receipt while the rate case proceeds.

*TODAY, shall the Commission suspend the requirement in the Order Approving Credit Mechanism that Xcel use a one-time bill credit for future Settlement proceeds to customers within 90 days of receipt from the Department of Energy until the Commission renders its decision in Docket EL12-046?*

2. [EL12-060](#) **In the Matter of the Filing by Otter Tail Power Company for Approval of Tariff Revisions (Staff Analyst: Matthew Tysdal, Staff Attorney: Kristen Edwards)**

On December 7, 2012, Otter Tail Power Company (Otter Tail) submitted for Commission approval a revised Section 16.00, Sheet No. 4 of its Tariff Book. The municipal service agreement, currently listed as a contract with deviations, between Otter Tail and the City of Waubay will expire on January 2, 2013. The new agreement for municipal services brings rates within Otter Tail's current tariff on file with the Commission.

*TODAY, shall the Commission approve the tariff revisions?*

3. [EL12-061](#) **In the Matter of the Application of Black Hills Power, Inc. for Authority to Increase its Electric Rates (Staff Analysts: Jon Thurber, Brittany Mehlhaff, Patrick Steffensen, Staff Attorneys: Karen Cremer, Kristen Edwards)**

On December 17, 2012, the Commission received an application by Black Hills Power, Inc. (BHP) for approval to increase rates for electric service to customers in its South Dakota service territory by approximately \$13.7 million annually or approximately 9.94% based on BHP's test year ending June 30, 2012. The Company states a typical residential electric customer using 650 kWh per month would see an increase of \$7.11 per month. The proposed changes may potentially affect approximately 65,000 customers in BHP's South Dakota service territory.

*TODAY, shall the Commission suspend the imposition of the tariff for 180 days beyond December 17, 2012? AND, shall the Commission assess a filing fee for actual expenses related to the general rate case not to exceed \$250,000? AND, shall the Commission assess a filing fee for actual expenses related to the transmission facility cost recovery tariff not to exceed \$50,000? AND, shall the Commission give the Executive Director authority to enter into necessary consulting contracts? AND, shall the Commission grant intervention to any parties that may have filed?*

4. [EL12-062](#) **In the Matter of the Application of Black Hills Power, Inc. for the Phase in of Rates Regarding Construction Financing Costs of Cheyenne Prairie Generating Station (Staff Analysts: Jon Thurber, Brittany Mehlhaff, Patrick Steffensen, Staff Attorneys: Karen Cremer, Kristen Edwards)**

On December 17, 2012, the Commission received an application by Black Hills Power, Inc. (BHP) pursuant to SDCL 49-34A-73 for authority to implement a phase in rate increase for its South Dakota customers relating to the construction financing costs of Cheyenne Prairie Generating Station (CPGS). CPGS is a natural gas-fired power plant that will be constructed in Cheyenne, Wyoming, that will provide 55 MW of generation to BHP. The Company states a typical residential electric customer using an average of 650 kWh per month would see an increase of \$0.88 per month for the first quarterly filing. Over the term of the phase in plan, the typical residential customer's bill will increase starting at around 1% and ending up at the completion of the phase in plan at approximately 4.5%. Staff and BHP have advised that they expect to file a Stipulation and a Joint Motion for Approval of the Stipulation regarding the effective date of phase in rates on or before January 11, 2013.

*TODAY, shall the Commission grant the Joint Motion for Approval of the Stipulation regarding the effective date of interim phase in rates? AND, shall the Commission assess a filing fee for actual expenses related to the phase in rate plan not to exceed \$250,000? AND, shall the Commission give the Executive Director authority to enter into necessary consulting contracts? AND, shall the Commission grant intervention to any parties that may have filed?*

**Grain**

1. [GW12-002](#) **In the Matter of the Grain Dealer's Bond of Anderson Seed Co., Inc. (Staff Analyst: Jim Mehlhaff, Staff Attorney: Kristen Edwards)**

On April 5, 2012, as a result of the Commission's April 4, 2012, Order, Commission Staff (Staff) filed a Petition for Receivership, a proposed Order, Notice of Hearing, and a Certificate of Service with the Spink County Clerk of Court. The documents were also served on parties and on known Anderson Seed Co. Inc. patrons. On May 1, 2012, the Fifth Circuit Court issued an Order Appointing the South Dakota Public Utilities Commission as Receiver over the proceeds of the grain buyer bond of Anderson Seed Co., Inc. in Redfield. On June 6, 2012, the Commission approved the procedures to be followed in administering the claims and determining entitlement to bond proceeds. On June 29, 2012, a letter and proof of claim form was sent to all known patrons of Anderson Seed Co. Inc. via certified mail with a claim filing deadline of September 18, 2012. On October 9, 2012, Staff sent letters to each Anderson patron who filed a proof of claim form setting forth Staff's analysis and recommendations regarding the claim. On November 14, 2012, the Commission received a request for hearing on Staff's recommended denial of claim from Ray Martinmaas on behalf of Martinmaas Dairy Inc. On December 4, 2012, the Commission voted to accept the assignment of claim from Gary Nagel to Jason Nagel, as well as to approve the request of Cindy and Alan Biegler to have their late-filed claim included in the bond proceeds distribution process. A hearing was held with regard to the denial of Martinmaas Dairy's claim on December 18, 2012. The bond proceeds remain in an interest-bearing account.

*TODAY, how shall the Commission rule on the Martinmaas claim? AND, how shall the Commission distribute the bond proceeds? AND, shall the Executive Director and General*

*Counsel be authorized to seek approval from the Spink County Circuit Court to execute the distribution of the bond proceeds?*

### **Natural Gas**

1. **NG12-008**     **In the Matter of the Application of Montana-Dakota Utilities Co. for Authority to Increase its Natural Gas Rates (Staff Analysts: Jon Thurber, Brittany Mehlhaff, Patrick Steffensen, Staff Attorney: Kristen Edwards)**

On December 21, 2012, the Commission received an application by Montana-Dakota Utilities Co. (MDU) for approval to increase rates for natural gas service to customers in its South Dakota service territory, consisting of the Black Hills and East River service areas, by approximately \$1.5 million based on MDU's test year ending June 30, 2012. MDU is also proposing to consolidate the Black Hills and East River areas into one rate jurisdiction. The Company states a typical residential customer in the Black Hills area using 75 dk on an annual basis will see an average increase of approximately \$3.00 per month while a typical residential customer in the East River area using 61 dk on an annual basis will see an average decrease of approximately \$1.10 per month. The proposed changes may potentially affect approximately 47,600 customers in MDU's Black Hills service area and approximately 7,200 customers in MDU's East River service area.

*TODAY, shall the Commission suspend the imposition of the tariff for 180 days beyond December 21, 2012? AND, shall the Commission assess a filing fee for actual expenses not to exceed \$250,000? AND shall the Commission give the Executive Director authority to enter into necessary consulting contracts?*

### **One Call**

1. **OC12-012**     **In the Matter of the Complaint Filed by Watertown Municipal Utilities, Watertown, South Dakota, Against Stromseth Construction, Watertown, South Dakota, for an Incident Occurring on July 28, 2012, in Watertown, South Dakota (One Call Executive Director: Larry Janes, Staff Attorney: Kristen Edwards)**

On July 31, 2012, Watertown Municipal Utilities filed a complaint against Stromseth Construction for One Call violations. The One Call Enforcement Panel met on August 29, 2012, and determined a violation occurred. The Panel recommended a \$5,000 penalty with \$2,500 suspended under specified circumstances for the July 28, 2012, violation; a \$5,000 penalty for the July 29, 2012, violation; and a \$5,000 penalty for violations of ARSD 20:25:03:05.03. The recommendation was accepted by both parties, and the South Dakota One Call Board issued an Order adopting the Enforcement Panel Recommendation to pursue collection activity if necessary and to close the docket. A payment of \$2,500 was received by the Public Utilities Commission on October 9, 2012. Stromseth Construction violated the terms of the suspension by failing to pay the entirety of the amount not suspended, as well as failing to conduct and document an in-house gas safety meeting for its employees. The Board sent a demand letter for payment of \$12,500 on November 9, 2012. No response or payment was received.

*TODAY, shall the Commission bring an action in the name of the State of South Dakota pursuant to SDCL 49-7A-28 for the collection of the penalty?*

**Telecommunications**

**1. In the Matter of the Failure of Certain Telecommunications Companies to Timely Pay their Gross Receipts Tax (Finance Manager: Cindy Kemnitz)**

The following companies have failed to timely pay their gross receipts tax as required by SDCL 49-1A:

Local Exchange providers:

Access Point, Inc.  
NET TALK.COM, Inc.  
321 Communications, Inc.

Long Distance Providers:

Momentum Telecom, Inc.  
Pulse Telecom, LLC  
Main Street Telephone Company  
Hawk Relay, LLC  
Pac-West Telecom, Inc.  
Univance Telecommunications, Inc.

*TODAY, shall the Commission issue an Order to Show Cause as to why the Commission should not fine, and/or suspend or revoke the Certificates of Authority of each of these companies for failure to pay the requisite gross receipts tax?*

**2. [TC12-121](#) In the Matter of the Filing by Matrix Telecom, Inc. dba Matrix Business Technologies also dba Trinsic Communications for Approval of Revisions to its Access Services Tariff No. 5 (Staff Analyst: Patrick Steffensen, Staff Attorney: Karen Cremer)**

On August 2, 2012, the Commission received a filing from Matrix Telecom, Inc. dba Matrix Business Technologies also dba Trinsic Communications. This filing requests approval of switched access rate reductions required in the Federal Communications Commission Report and Order in WC Docket No. 10-90, etc., FCC No. 11-161 ("FCC Order") with an effective date of August 3, 2012, for usage on or after July 1, 2012. On December 13, 2012, the Commission received responses to staff's first data request and tariff page revisions. On January 7, 2013, the Commission received responses to staff's second data request and tariff page revisions.

*TODAY, shall the Commission approve the proposed tariff changes?*

**3. [TC12-134](#) In the Matter of the Filing by TC Systems, Inc. for Approval of its Access Service Tariff (Staff Analyst: Patrick Steffensen, Staff Attorney: Karen Cremer)**

On September 11, 2012, TC Systems, Inc. requested approval of its initial Access Services Tariff. This filing complies with the orders of the FCC regarding intercarrier compensation reform for VoIP-PSTN traffic, as well as standard switched access. TC Systems, Inc. is requesting an effective date of October 1, 2012. The Commission received responses to staff's data requests on January 4, 2013, and corresponding revised tariff pages on January 7, 2013.

*TODAY, shall the Commission approve TC Systems, Inc.'s Access Services Tariff?*

4. [TC12-186](#) **In the Matter of the Filing by Onvoy, Inc. dba Onvoy Voice Services for Approval of Revisions to its Access Services Tariff No. 1 (Staff Analyst: David Jacobson, Staff Attorney: Kristen Edwards)**

On November 8, 2012, the Commission received a filing from Onvoy, Inc. dba Onvoy Voice Services (Onvoy) for approval of revisions to its Access Services Tariff No. 1. The purpose of this filing is to update the definitions and switched access service sections. Onvoy requests an effective date for this filing of November 9, 2012.

*TODAY, shall the Commission approve Onvoy, Inc. dba Onvoy Voice Services' tariff revisions?*

5. [TC12-188](#) **In the Matter of the Filing by MCC Telephony of the Midwest, LLC for Approval of Revisions to its Access Services Tariff No. 1 and Waiver to ARSD §§ 20:10:29:10, 20:10:29:12 and 20:10:29:16 (Staff Analyst: David Jacobson, Staff Attorney: Kristen Edwards)**

On November 30, 2012, the Commission received a filing from MCC Telephony of the Midwest, LLC (MCC) for approval of revisions to its Access Services Tariff No. 1. The purpose of this filing is to adjust the Company's intrastate originating access rates in response to the Federal Communications Commission's (FCC) Second Order on Reconsideration in WC Docket Nos. 10-90, etc., FCC Release No. 12-47 (April 25, 2012), which delayed through June 2014 the requirement that a carrier's intrastate originating access charges for IP-PSTN traffic be set in parity with its interstate originating access rates. MCC requests an effective date for this filing of December 30, 2012.

*TODAY, shall the Commission approve MCC Telephony of the Midwest, LLC's tariff revisions and request for waiver of ARSD §§ 20:10:29:10, 20:10:29:12 and 20:10:29:16?*

6. [TC12-190](#) **In the Matter of the Filing by Qwest Corporation dba CenturyLink for Approval of Waiver of the Utilization Threshold Requirements in Sioux Falls, South Dakota (Staff Analyst: David Jacobson, Staff Attorney: Kristen Edwards)**

On December 11, 2012, Qwest Corporation dba CenturyLink (CenturyLink) filed for a waiver of the utilization threshold requirements outlined in FCC's Number Resource Optimization Orders, FCC 00-429 and FCC 01-362 released in CC Docket No. 99-200, which would allow PA/NeuStar, the Number Pooling Administrator, to open a new NXX Code to provide 1,000 numbers to CenturyLink in the 605 NPA, Sioux Falls Rate Center.

*TODAY, shall the Commission approve the request for Waiver of Utilization Threshold Requirements?*

### **Leadership**

1. **Election of a Chairperson and Vice-Chairperson of the Commission. (General Counsel: John Smith)**

South Dakota Codified Law 49-1-8 states in part that, "The members of the Commission shall elect a chairperson by majority vote and prescribe his duties." SDCL 49-1-12 requires that, "Every vote and official action of the Public Utilities Commission shall be entered of record and its proceedings shall be public upon the request of either party or any person interested." SDCL 1-25-1 requires that all official meetings of Commission be open to the public. Accordingly, the determination of the Commission's leadership structure shall be made at this public meeting.

*TODAY, how shall the Commission provide for its Executive Leadership?*

### **Items for Commission Discussion**

#### **Announcements**

1. Commissioners will attend the Mid-America Regulatory Conference Commissioners Retreat January 10-12, 2013, in Austin, Texas.
2. Commissioners and staff will attend the Ag Expo, Thursday, January 17, 2013, at the Sioux Falls Convention Center, Sioux Falls, S.D.
3. Commissioners will attend the South Dakota Corn Growers Association Annual Meeting, Saturday, January 19, 2013, at the Sioux Falls Convention Center, Sioux Falls, S.D.
4. The PUC offices will be closed Monday, January 21, 2013, in observance of Martin Luther King, Jr. Day.
5. An ad hoc commission meeting is scheduled for Tuesday, January 22, 2013, at 2:30 p.m. CST in Room 413 at the State Capitol Building, Pierre, S.D.
6. The PUC will host an open house for legislators on Wednesday, January 30, 2012, from 7:30 to 11:00 a.m. CST in the Commission Office, First Floor, State Capitol Building, Pierre, S.D.
7. The next regularly scheduled commission meeting will be Wednesday, January 30, 2013, at 2:30 p.m. CST in Room 413 at the State Capitol Building, Pierre, S.D.
8. Commission meetings are scheduled for February 12 and 26, 2013.