

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

**IN THE MATTER OF THE REQUEST FOR A
DECLARATORY RULING BY ALLEN BEYERS
REGARDING THE APPLICATION OF SDCL 49-32-6
TO A MIDCONTINENT COMMUNICATIONS LINE IN
IPSWICH, S.D.**

) **ORDER DISMISSING REQUEST**
)
) **TC12-023**
)

On February 13, 2012, the Public Utilities Commission (Commission) received a filing by Allen Beyers requesting a determination regarding the height requirements for a Midcontinent Communications overhead line in Ipswich, South Dakota. Mr. Beyers cited to SDCL 49-32-6 as providing the applicable height requirement. On February 16, 2012, the Commission electronically transmitted notice of the filing and the intervention deadline of March 2, 2012, to interested individuals and entities. No petitions to intervene or comments were filed. On February 27, 2012, the Commission received Midcontinent Communication's Answer. In its Answer, Midcontinent Communications requested dismissal of the request, arguing the line in question is not a "telecommunications facility" as referenced in SDCL 49-32-6 and that the Commission lacks jurisdiction to decide the matter. Specifically, Midcontinent Communications argued the line at issue provides cable television and internet services. On March 7, 2012, Mr. Beyers filed a reply to Midcontinent Communication's Answer. On March 7, 2012 Staff filed a letter in support of Midcontinent Communication's request to dismiss the docket.

At its regularly scheduled Commission meeting held on March 13, 2012, the Commission considered this matter. After hearing argument from the parties, the Commission voted unanimously to dismiss the request for a declaratory ruling. The Commission finds it does not have jurisdiction to make a ruling regarding the determination of the proper height of the line at issue, including the applicability of SDCL 49-32-6. It is therefore

ORDERED, the request for a declaratory ruling is dismissed.

Dated at Pierre, South Dakota, this 19th day of March, 2012.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.
By: <u>[Signature]</u>
Date: <u>3-19-12</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

[Signature]
CHRIS NELSON, Chairman

[Signature]
KRISTIE FIEGEN, Commissioner

[Signature]
GARY HANSON, Commissioner