

Proposed Meeting Agenda
SOUTH DAKOTA ELECTRICAL COMMISSION
via [Microsoft Teams](#)
or Call +1 605-679-7263 ID 308 259 093
Tuesday, October 24, 2023, at 9:00 a.m. CDT

- A. Call to Order
- B. Agenda
- C. Minutes of September 8, 2023 – Hearing and Regular Meeting
- D. Public Comment
- E. Application Review Process – Proposed Policy
- F. Demand Response Units and SDCL 36-16-16(1)
- G. Executive Session pursuant to SDCL 1-25-2, as necessary
- H. President’s Report Sean Lyons
- I. Executive Director’s Report Pamela Scouten
- J. Inspector’s Report Brent Schoulte
- K. Adjournment

Meeting Minutes
SOUTH DAKOTA ELECTRICAL COMMISSION
Microsoft Teams Meeting
September 8, 2023, 9:00 a.m. CDT

President Lyons called the meeting to order at 9:03 a.m. Director Scouten called the roll. A quorum was present.

Members Present: Sean Lyons, Dave Eide, Doug Fuerst, Tor Sorlien, Russ VanDerWerff

Members Absent: Rick Cronin

Others Present: Pamela Scouten– executive director, Kenisha Ewoldt- senior secretary, Jerry McCabe– DLR Sr. staff attorney, Ryan Darling- hearing examiner, Eric Collins, Craig Oedens, Jeff Kirstein, Donna Collins, Mark Collins, Tim Collins, Sally Haring, Marlys Mardian, Dave Costine, and Trisha Collins.

Doug Fuerst made a motion to add an executive session to the agenda after the appeal hearing. Tor Sorlien seconded the motion. **MOTION PASSED.** Russ VanDerWerff made a motion to approve the amended meeting agenda. Dave Eide seconded the motion. **MOTION PASSED.**

Doug Fuerst made a motion to approve the July 18, 2023, meeting minutes. Russ VanDerWerff seconded the motion. **MOTION PASSED.**

President Lyons opened the floor to public input. No input was received.

Hearing Examiner Darling convened an administrative hearing to hear the matter of Eric L. Collins, case no. 2023-01 to order at 9:08 a.m. Separate minutes of the administrative hearing were taken.

Tor Sorlien made a motion to enter executive session for the purpose of deliberation. Dave Eide seconded the motion. **MOTION PASSED.** The commission entered executive session at 10:27 a.m. with Hearing Examiner Darling to deliberate. The Board exited the executive session at 11:08 a.m. The Board reversed the decision of the Board office.

Hearing Examiner Darling concluded the administrative hearing at 11:12 a.m.

The next Commission meeting is tentatively scheduled for October 17th, 2023.

Rick Cronin made a motion to adjourn the Commission meeting. John Hoffman seconded the motion. A roll call vote was held. (Lyons -Aye, Cronin- Aye, Eide – Aye, Fuerst – Aye, Hoffman – Aye, Sorlien -Aye) **MOTION PASSED.** The meeting adjourned at 12:20 p.m.

ADMINISTRATIVE HEARING MINUTES
SOUTH DAKOTA ELECTRICAL COMMISSION
Appeal Hearing Case No. 2023-01
Meeting Via Microsoft Teams
September 8, 2023, 9:00 a.m. CDT

The South Dakota Electrical Commission convened at 9:08 a.m. on Friday, September 8, 2023, via Microsoft Teams.

The purpose of the administrative hearing was to hear the matter of Eric L. Collins, case no. 2023-01.

Members of the Board in Attendance: Sean Lyons (Chair), Dave Eide, Doug Fuerst, Tor Sorlien, Russ VanDerWerff

Others in Attendance: Pamela Scouten– executive director, Kenisha Ewoldt- senior secretary, Jerry McCabe– DLR Sr. staff attorney, Ryan Darling- hearing examiner, Eric Collins, Craig Oedens, Jeff Kirstein, Donna Collins, Mark Collins, Tim Collins, Sally Haring, Marlys Mardian, Dave Costine, and Trisha Collins.

Hearing Examiner Darling began the hearing in the matter of Eric Collins, license number AE 20418, case no. 23-01.

Attorney McCabe presented the Commission office's case. The Commission office called Pamela Scouten to testify. Hearing Examiner Darling swore in Scouten as a witness, and she testified.

During her testimony, Attorney McCabe offered the following pre-marked exhibits, which were received as evidence and marked with a letter as follows: 101 (Ex. A); 102 (Ex. B), 103 (Ex. C), 104 and 106 (Ex. D), and 105 (Ex. E).

Eric Collins presented his case as the licensee. Hearing Examiner Darling swore in Eric Collins, and he testified.

Hearing Examiner Darling swore in witness Craig Oedens. Craig Oedens testified.

Hearing Examiner Darling swore in witness Jeff Kirstein. Jeff Kirstein testified.

Hearing Examiner Darling swore in witness Donna Collins. Donna Collins testified.

Hearing Examiner Darling swore in witness Mark Collins. Mark Collins testified.

Hearing Examiner Darling swore in witness Tim Collins. Tim Collins testified.

Hearing Examiner Darling swore in witness Sally Haring. Sally Haring testified.

Hearing Examiner Darling swore in witness Marlys Mardian. Marlys Mardian testified.

Hearing Examiner Darling swore in witness Dave Costine. Dave Costine testified.

Hearing Examiner Darling swore in witness Trisha Collins. Trisha Collins testified.

Attorney McCabe made a closing statement.

Eric Collins made a closing statement.

Tor Sorlien made a motion to enter executive session for the purpose of deliberation. Dave Eide seconded the motion. **MOTION PASSED**. The commission entered executive session at 10:27 a.m. with Hearing Examiner Darling to deliberate.

The commission came out of executive session at 11:08 a.m.

The Board reversed the decision of the Board office, and Attorney McCabe agreed to send a proposed finding of fact, conclusions of law, and decision to Hearing Examiner Darling and Eric Collins immediately following the hearing.

Hearing Examiner Darling concluded the appeal hearing at 11:12 a.m.

DRAFT

**SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
ELECTRICAL COMMISSION**

LICENSE APPLICATION REVIEW PROCEDURE – STANDARD TRACK

- 1. APPLICATION RECEIVED.** An application form is received by the commission office and the date it was received is recorded (either manually or in the database).
- 2. APPLICATION COMPLETE.** Commission office staff shall internally review the application to ensure it is complete (all materials are received) and the reviewer shall document any obvious potential deficiencies, including missing required information or any disclosures about an applicant’s criminal history. If the complete initial application materials are not received within 30 days, the office shall send the applicant an expired application notice and the applicant shall be required to reapply.
- 3. SUBSTANTIVE REVIEW BY COMMISSION OFFICE STAFF.** Once an application is found to be complete, the application shall be reviewed by commission office staff to ensure it meets the minimum qualifications for licensure.
 - a. If the application meets the required minimum qualifications, the staff reviewer shall approve the applicant to sit for the relevant exam or, if no exam is required, approve the license, pending payment of all outstanding fees.
 - b. If the application appears incomplete, a deficiency notice shall be sent to the applicant and the application is moved to the deficiency track.
 - c. If the applicant marked “yes” to the question related to conviction of a crime of violence, the applicant shall be sent a deficiency notice requesting more information regarding the conviction and the application shall be moved to the deficiency track.
- 4. APPLICANT REQUIRED TO PASS EXAM, UNLESS EXEMPT.** Unless the applicant is not required to take an exam (reciprocity applicants), the applicant shall take and pass the relevant exam, including any retakes, in accordance with commission rules. Failure to pass in accordance with commission rules shall result in a denial of the application.
- 5. APPLICANT SHALL PAY ANY REMAINING FEES.** Upon the applicant being approved for issuance of the license, including after passing any required exam, the applicant shall pay all outstanding fees (including the required licensure fee, if not yet paid). At this stage, the review process shall be deemed complete.
- 6. LICENSE ISSUED BY COMMISSION OFFICE.** After completion of the review process and payment of all required fees, the appropriate license shall be issued to the applicant.

LICENSE APPLICATION REVIEW PROCEDURE – DEFICIENCY TRACK

1. **DEFICIENCY IDENTIFIED.** Once a deficiency notice is sent to the applicant, the application is paused pending a response from the applicant. All applications with deficiencies shall be reviewed by the executive director before being placed back on the standard track or any adverse decision notice being sent.
2. **DEFICIENCY NOTICES INVOLVING CRIMINAL CONVICTIONS.** For applications involving a conviction for a crime of violence, the office shall include in the deficiency notice a request that the applicant provide court records documenting the nature of the conviction (if not already provided with the application). The notice shall also state that the applicant may provide (within 20 calendar days) any supporting documentation or evidence, including written affidavits or statements, which:
 - i. Demonstrate that the conviction or convictions at issue do not directly relate to the profession; and/or
 - ii. Any evidence of the applicant's rehabilitation from the conviction or convictions at issue such that the applicant no longer poses the kind of risk to the profession normally associated with that type of conviction.

The executive director shall consider this documentation when making any determination on the application.

3. **ACTION AFTER RESPONSE TO ANY DEFICIENCY NOTICE.**
 - a. If no response is received within 20 calendar days, an adverse decision notice shall be sent to the applicant.
 - b. If a timely response is received that does not resolve the deficiency, an adverse decision notice shall be sent to the applicant. The executive director shall make the decision regarding whether any deficiency is resolved. If the executive director, in consultation with legal counsel, determines that a limited license is appropriate, the office shall issue a limited license notice to applicant.
 - i. For applications involving the conviction of a crime of violence, the deficiency shall not be considered resolved if the applicant still poses the kind of risk to the profession normally associated with that type of conviction.
 - c. If a response is received that resolves the deficiency, the application shall be returned to the standard track at the same stage at which it was removed.
4. **CONTESTED CASE, IF REQUESTED.** After receipt of the adverse decision notice, if the applicant requests a contested case hearing within 20 calendar days, the matter shall be scheduled for a contested case hearing in accordance with SDCL 1-26.

DEFINITIONS

Adverse Decision Notice – A notice to the applicant stating that the deficiencies in their application have not been remedied and that the commission office is denying their application based on those deficiencies. The notice shall inform the applicant of their right to request a contested case hearing before the commission pursuant to SDCL 1-26. The notice should clearly indicate that if the applicant does not request a hearing within 20 calendar days, the denial shall become final.

Deficiency Notice – A notice to the applicant stating that one or more deficiencies in their application has been identified during the review process. The notice shall include a list of the deficiencies and state that the applicant has 20 calendar days to provide any additional information or documentation that they wish to provide. The notice shall also inform the applicant of their right to withdraw the application at any time.

Expired Application Notice – A notice to the applicant stating that the application has expired, that no further action shall be taken on their application, and that if they wish to continue with an application, they must reapply. This is not a denial since the application was never completed.

Limited License - A license issued to an applicant which is only valid for a specific purpose, geographic area, limited time, or other purpose which is more restrictive than a normal license of the type issued. The license shall clearly indicate on the face of the license that it is “limited” and specify in clear and concise terms the limitations on the license. Limited licenses may only be used for the purpose of enabling individual applicants who would otherwise meet the minimum qualifications for license, but for one of the grounds listed in SDCL 36-16-33, they are presently deficient.

Limited License Notice – A notice to an applicant which states that the commission office has determined that the applicant does not meet the minimum qualifications for a regular or otherwise unrestricted license because of a reason under SDCL 36-16-33, but that the commission office has determined the applicant can be allowed to engage in license required work using a license with specific limitations. The notice shall clearly state the limitations of the limited license, including any limit on duration or ability to renew the license, and shall inform the applicant that, if the applicant disagrees with the limited license, the applicant has the right to request a contested case hearing before the commission pursuant to SDCL 1-26. The notice should clearly indicate that if the applicant does not request a hearing within 20 calendar days, the limited license shall become the final decision of the commission.

It has come to our attention that a number of electrical utilities are offering demand response units (DRU) to their members as a way to turn off water heaters and air conditioners during peak times to conserve power. It is the position of the commission office that installations of these DRU meters by the utility company do not qualify for the exemption under 36-16-16 highlighted below because these meters are not directly responsible for manufacturing or distributing electricity.

36-16-16. Persons exempt from license requirement.

The following persons are not required to hold an electrician's license:

- (1) An employee of a utility engaged in the manufacture and distribution of electrical energy if engaged in work directly pertaining to the manufacture and distribution of electrical energy, or a person that is engaged in work pertaining directly to such services if the work is designed, supervised, or installed by a person qualified in the work being done. This exemption terminates at the first point of service attachment, except for the installing or testing of electric meters and measuring devices and the maintenance of their service;
- (2) An employee of telephone, telegraph, radio and television communication services and pipelines, or a person that is engaged in work pertaining directly to such services if the work is designed, supervised or installed by a person qualified in the work being done;
- (3) A person doing electrical work on automotive equipment, on equipment in a mine, ship, railway, or rolling stock, or on equipment in a packing plant supervised and regulated by the Department of Agriculture and Natural Resources;
- (4) A person replacing a lamp and connection of a portable electrical device to a suitable receptacle that has been permanently installed;
- (5) A radio and appliance service repair department;
- (6) A person doing maintenance on an oil burner and on a space heater where installation of same has been effected by a Class B or journeyman electrician in accordance with this chapter;
- (7) An architect, designer, or engineer engaged in the planning and laying out of electrical work;
- (8) An employee of an electrical utility engaged in the installation and maintenance of utility street lighting, traffic signal devices or electric utility-owned security lights or persons or companies when engaged in work pertaining directly to such services, if the work is designed, supervised, or installed by a person qualified in the work being done; or
- (9) An employee of an alarm and communications company or service when wiring an alarm or communications system where the system is classified as power limited class 2 or class 3 signaling circuits, power limited fire protective signaling circuits, class 2 or class 3 alarm circuits, or communications circuits or systems; or a person or a company when engaged in work pertaining directly to such wiring, if the work is designed, supervised, or installed by a person qualified in the work being done.

Here is a snippet from a clara.com regarding what a DRU is and how they function:



Aclara® DRU

Demand Response Unit



When energy demand is high, the Aclara DRU reduces peak-power costs without impacting customer service.

The Aclara Demand Response Unit (DRU) is a two-way device that curbs demand and safeguards against under-voltage or under-frequency conditions. At the heart of the DRU is the unique Intelligent Comfort™ system, which employs a patent-pending, adaptive load-control algorithm and a unique, 24-hour energy-use appliance profile to provide adaptive control while eliminating the need for complex system modeling.

EACH ACLARA DRU DELIVERS:

Distributed Load Shedding

Cycles appliances on and off intelligently to maintain acceptable customer satisfaction.

Power-Interrupt Protection

Maintains load-control strategies during momentary outages.

Direct and Autonomous Load Control

Ensures fair distribution of loads across network.

Flexible Load management

Adjusts for time and season.

Tamper Detection

Indicates potential bypass of the control relay.

Two-Way Communication

Aids in troubleshooting.

Adaptable Design

Handles up to two residential appliances or commercial systems.

STATE OF SOUTH DAKOTA
 CASH CENTER BALANCES
 AS OF: 09/30/2023

AGENCY: 10 LABOR & REGULATION
 BUDGET UNIT: 1036 ELECTRICAL COMMISSION - INFO

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	103600080801	1140000	511,914.07	DR	ELECTRICAL COMMISSION
6503	103600080802	1140000	167,135.27	DR	ELECT COMM-BONDING ACCT
COMPANY/SOURCE TOTAL 6503 808			679,049.34	DR *	
COMP/BUDG UNIT TOTAL 6503 1036			679,049.34	DR **	
BUDGET UNIT TOTAL 1036			679,049.34	DR ***	

STATE OF SOUTH DAKOTA
 REVENUE SUMMARY BY BUDGET UNIT
 FOR PERIOD ENDING: 09/30/2023

AGENCY 10 LABOR & REGULATION
 BUDGET UNIT 1036 ELECTRICAL COMMISSION - INFO

CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE	
COMPANY NO 6503						
COMPANY NAME		PROFESSIONAL & LICENSING BOARDS				
103600080801	6503	4293800	PERMITS-EC & CBE	900.00	22,080.00	
103600080801	6503	4293801	PERMITS-HO	750.00	2,790.00	
103600080801	6503	4293802	PERMITS-FORM B	.00	6,495.00	
103600080801	6503	4293804	EC LICENSE FEES	800.00	2,600.00	
103600080801	6503	4293806	JM LICENSE FEES	240.00	3,600.00	
103600080801	6503	4293807	AE LICENSE FEES	360.00	3,020.00	
103600080801	6503	4293808	IEC LICENSE FEES	.00	160.00	
103600080801	6503	4293810	IJM LICENSE FEES	.00	240.00	
103600080801	6503	4293811	EC RECIPROCAL FEES	640.00	4,060.00	
103600080801	6503	4293812	JM RECIPROCAL FEES	80.00	1,880.00	
103600080801	6503	4293813	MAINTENANCE LICENSE	.00	160.00	
103600080801	6503	4293814	EXAM FEES	1,400.00	4,880.00	
103600080801	6503	4293815	RE-EXAM FEES	60.00	360.00	
103600080801	6503	4293817	INSPECTION FEES	20,324.29	202,107.04	
103600080801	6503	4293818	RE-INSPECTION FEE	.00	210.00	
ACCT:	4293	BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)		25,554.29	254,642.04	*
ACCT:	42	LICENSES, PERMITS & FEES		25,554.29	254,642.04	**
103600080801	6503	4393200	ADMINISTRATIVE PENALTY	.00	600.00	
ACCT:	4393	PENALTIES (NON-GOVERNMENTAL)		.00	600.00	*
ACCT:	43	FINES, FORFEITS & PENALTIES		.00	600.00	**
103600080801	6503	4596110	MISC INCOME	.00	40.00	
ACCT:	4596			.00	40.00	*
ACCT:	45	CHARGES FOR SALES & SERVICES		.00	40.00	**
103600080801	6503	4920045	NONOPERATING REVENUES	.00	25,464.74	

STATE OF SOUTH DAKOTA
 REVENUE SUMMARY BY BUDGET UNIT
 FOR PERIOD ENDING: 09/30/2023

AGENCY 10 LABOR & REGULATION
 BUDGET UNIT 1036 ELECTRICAL COMMISSION - INFO

CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE	
ACCT:	4920		NONOPERATING REVENUE	.00	25,464.74	*
ACCT:	49		OTHER REVENUE	.00	25,464.74	**
CNTR:	103600080801			25,554.29	280,746.78	***
103600080802	6503	4293816	UNDERTAKING FEES	300.00	1,500.00	
ACCT:	4293		BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)	300.00	1,500.00	*
ACCT:	42		LICENSES, PERMITS & FEES	300.00	1,500.00	**
103600080802	6503	4920045	NONOPERATING REVENUES	.00	3,564.74	
ACCT:	4920		NONOPERATING REVENUE	.00	3,564.74	*
ACCT:	49		OTHER REVENUE	.00	3,564.74	**
CNTR:	103600080802			300.00	5,064.74	***
COMP:	6503			25,854.29	285,811.52	****
B UNIT:	1036			25,854.29	285,811.52	*****