

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Petition for a)
Declaratory Ruling Determining if South)
Dakota Law Would Allow Petitioner to)
Develop and Own its Own Renewable)
Energy Generation System)
)
)
)

EL-18-061

**INTERVENOR
BASIN ELECTRIC POWER
COOPERATIVE'S ARGUMENT
REGARDING PETITIONER'S
REQUESTED DECLARATORY
RULING**

Basin Electric Power Cooperative ("Basin"), by and through its attorneys of record, respectfully submits this Argument Regarding Petitioner's Requested Declaratory Ruling. Basin respectfully submits that Randall Community Water District's ("RWCD") requested declaratory ruling should be denied, or alternatively, that the Commission declare that Randall's proposed renewable energy generation systems would be in violation of SDCL § 49-34A-42. As support, Basin joins and specifically adopts and incorporates the arguments and authorities set forth by East River Electric Cooperative, Inc. ("East River"), and Charles Mix Electric Association, Inc. ("Charles Mix"), in their briefing on this matter. Additionally, Basin offers the following argument and authorities in support of its position.

SDCL § 49-34A-42 provides in relevant part: "Each electric utility has the exclusive right to provide electric service at retail at each and every location where it is serving a customer . . . and to each and every present and future customer in its assigned service area." This statute was enacted in 1965, at a time when it was understood that electricity was supplied by electric utilities, such as specifically referred to in the statute.

It was not then contemplated that independent producers or end users would be able to generate and provide electricity utilizing current technologies for generation of solar and wind power. Even though the term “electric utility” was specifically mentioned in SDCL § 49-34A-42, the statute cannot be so narrowly interpreted and still give effect to the intent of the first sentence of the statute.

In order for an electric utility to provide power to consumers, the utility company must make a large financial commitment to build the necessary infrastructure and to make necessary repairs and improvements. The statute grants to the electric utilities territorial protection, to ensure they can recover those capital investments and debt incurred to provide reliable and affordable energy to its customers. The legislature’s intent to protect the investment of electric utilities is clear.

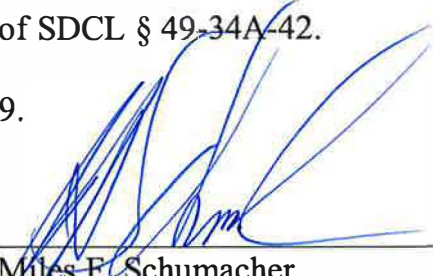
To further this intended purpose, the territorial restriction must apply whether the party seeking to infringe on the electric utility’s territory is another “electric utility” as explicitly referenced in the statute, or whether it is an independent producer.

Unfortunately, the factual record is so sparse that we cannot determine the scope and extent of RCWD’s generation and distribution. Accordingly, we are left to argue that any entity that produces power that Charles Mix would ordinarily provide, interferes with the exclusive right granted Charles Mix under SDCL § 49-34A-42, and takes away from the ability of Charles Mix, East River and Basin to recoup their respective investments without a financial burden to their other customers.

CONCLUSION

For all these reasons, Basin requests that RCWD's declaratory ruling be denied, or alternatively, that the Commission declare that RCWD's proposed renewable energy generation systems would be in violation of SDCL § 49-34A-42.

Dated this 31st day of January, 2019.



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