

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

**IN THE MATTER OF RANDALL)
COMMUNITY WATER DISTRICT'S)
PETITION FOR A DECLARATORY)
RULING DETERMINING IF SOUTH)
DAKOTA LAW WOULD ALLOW)
PETITIONER TO DEVELOP AND OWN ITS)
OWN RENEWABLE ENERGY)
GENERATION SYSTEM)**

**STAFF'S MEMORANDUM IN
RESPONSE TO PETITION FOR
DECLARATORY RULING**

EL18-061

COMES NOW, Staff (Staff) of the South Dakota Public Utilities Commission (Commission) and hereby submits this Memorandum in Response to Request for Declaratory Ruling. At its regular meeting on January 18, 2019, the Commission set oral arguments in this docket for February 1, 2019. In the interest of efficiency, Staff now submits its argument in writing.

The Petitioner, Randall Community Water District, seeks declaration of whether the Development Entity developing its behind-the-meter generation facility would be subject to the provisions of SDCL 49-34A-42.

The question asked is narrow, only seeking a declaration as to whether SDCL 49-34A-42 would preclude Petitioner's plan. It does not extend to any other provisions of SDCL Title 49. Therefore, Staff limits its legal analysis to the application of that statute.

SDCL 49-34A-42 provides

Each electric utility has the exclusive right to provide electric service at retail at each and every location where it is serving a customer as of March 21, 1975, and to each and every present and future customer in its assigned service area. No electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless such other electric utility consents thereto in writing and the agreement is approved by

the commission consistent with § 49-34A-55. However, any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area.

The commission shall have the jurisdiction to enforce the assigned service areas established by §§ 49-34A-42 to 49-34A-44, inclusive, and 49-34A-48 to 49-34A-59, inclusive.

This statute, by providing that “no *electric utility* shall render or extend electric service...”, applies only to electric utilities. SDCL 49-34A-1(7) defines an electric utility as “any person operating, maintaining, or controlling in this state, equipment or facilities for providing electric service to or for the public including facilities owned by a municipality.” Electric service is electricity “furnished to a customer for ultimate consumption, but not including wholesale electric service furnished by an electric utility to another electric utility for resale.”¹

As detailed in the Petition, Petitioner intends to work with a Development Entity to design, build, and fund the renewable energy generation system.² However, Petitioner supplemented its filing to clarify that Petitioner will be the sole owner of the facilities at the time they come into operation and would be providing electricity only to itself.³ The operative facts are that the Development Entity is not furnishing electric service to a customer and the Development Entity does not control facilities for providing electric service. Therefore, the Development Entity is not, under these facts, an electric utility as defined by SDCL 49-34A-1(7).

¹ SDCL 49-34A-1(6)

² See Petition at page 2.


³ See December 20, 2018 Letter

Because it is not an electric utility, SDCL 49-34A-42 does not apply, and thus, does not prohibit the Development Entity from working with Petitioner in the manner described in the Petition.

Conclusion

The precise question for which Petitioner sought an answer is, “under the facts and circumstances laid out [in the Petition], would the Development Entity be subject to the provisions of SDCL 49-34A-42?” Staff submits the answer is no as it is not an electric utility and is not providing retail electric service.

Dated this 28th day of January 2019.



Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501