

STATE OF SOUTH DAKOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION

In the Matter of the Petition by Leola Data Center LLC to have Montana-Dakota Utilities Co., a Subsidiary of MDU Resources Group Inc., Assigned as its Electric Provider in the Service Area of FEM Electric Association Inc.	DOCKET NO. EL24-027
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------

RESPONSE TO JOINT MOTION TO COMPEL DISCOVERY

COMES NOW, Leola Data Center LLC (LDC), by and through its attorney of record, William M. Van Camp, and offers this response to the Joint Motion to Compel Discovery filed by FEM Electric Association, Inc. (FEM), East River Electric Power Cooperative, Inc. (East River) and Basin Electric Power Cooperative (Basin), collectively referred to as the “the Cooperatives.”

The Cooperatives seek, in the most basic analysis, to see the specific financial details of the costs LDC must pay both Montana-Dakota Utilities Co. (MDU) and its landlord. They do this regardless of the fact that the only customer under the Electric Service Agreement (ESA) between LDC and MDU is LDC. No third party is bound by the terms of that agreement¹. The only tenant involved in the lease between LDC and its landlord is LDC.²

The curious or competitive reasoning for requesting the specific financial information must fit within the inquiry the Commission is conducting in this docket under SDCL 49-34A-56.

¹ In the counsels meet and confer, the Cooperatives expressed concern that without seeing the entirety of the ESA they were unsure in the event MDU and LDC ceased their relationship that FEM would not somehow be saddled with the terms and conditions of the ESA. It is unclear under what legal theory the Cooperatives believe that a third party could be responsible for the terms and conditions of an express written contract between two separate parties.

² MDU does not have obligations under this lease, nor would a third party Cooperative. Of note, MDU does not have an unredacted copy of the lease.

This is not the place, as it is in EL24-028, for considerations of rate payer interests writ large regarding the impact of the ESA between MDU and LDC. Nor are the Cooperatives parties in interest, determined by the Commission as a matter of law, able to involve themselves in the rate payer analysis.

The Cooperatives claim that the unredacted ESA and lease will provide:

- a. Confirmation of electric usage provided in writing.
- b. Details about construction, power utilization, interconnection upgrade costs paid for by LDC.
- c. Lease terms, land use and reclamation requirements.
- d. Bond data, relevant to analysis of the future financial viability of LDC. Joint Motion to Compel @6-7.

This list of claims, arguments of relevancy, ignores the request of LDC under 49-34A-56 and instead interposes what the Cooperatives would like to know. They must assert that this list is somehow relevant while ignoring in their Motion to Compel the statutory factors the Commission is faced with in determining the service territory exception.

The Commission must only look at the six factors set forth in SDCL 49-34A-56 after it is established that LDC is a new customer. Something no one is arguing. Those factors the Commission shall consider in determining if MDU can provide electrical service to LDC in the service territory of FEM are:

1. The electrical service requirements of the load to be served;
2. The availability of an adequate power supply;

3. The development or improvement of the electric system **of the utility** seeking to provide the electric service, including the economic factors relating thereto (*emphasis added*);
4. The proximity of adequate facilities from which electric service of the type required may be delivered;
5. The preference of the customer;
6. Any and all pertinent factors affecting the ability **of the utility** to furnish adequate electric service to fulfill customers' requirements (*emphasis added*). SDCL 49-34A-56.

As to the claim of the Cooperatives that SDCL 49-34A-56 (1) requires the ESA to be produced to confirm in writing, with documentary support, the load of the facility, LDC would suggest that the Commission has before it satisfactory information regarding that statutory requirement. The prefiled testimony of LDC and MDU both state the load is in excess of the statutory minimum.³ The discovery produced to date documents this further with a detailed description of the proposed facility and its electrical requirement. See, Conditional Use Permit-McPherson County filed in the docket for equipment specificity. See, also Staff's Brief in response to LDC's Motion for Summary Judgment @ 6-7. Further, by the nature of the proceeding itself, LDC seeks permission for a large load exception requiring greater than the statutory minimum amount of electrical service and any authority of MDU to provide that

³ Filed with the admonition of SDCL 49-1-9.1.

service is and will be conditioned by the Commission on the load being statutorily sufficient.

This chicken cannot exist without the egg in the first place.

As to the efforts of the Cooperatives to see the specific financial data, upgrade costs, lease terms, etc., those must fall under either one would guess a claim of relevancy under the 49-34A-56(3), economic factor concerning the development or improvement of the electric system or the 49-34A-56(6) catch all “any and all pertinent factors.” The problem is both the (3) and (6) analysis for the Commission is that the review is limited to MDU’s (“the utility”) *particular* ability to serve customers, not the customer-LDC. What LDC pays or doesn’t pay to MDU, or its landlord, is not relevant in this docket. The payments to MDU by LDC are relevant in EL24-028. No where are the payments in the landlord-tenant relations of LDC relevant before the Commission.

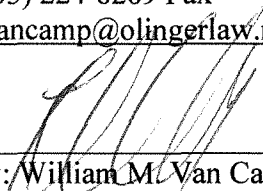
The Cooperatives correctly identify the standard for a Motion to Compel. The information sought must however be “relevant to the subject matter involved in the pending action...” SDCL 15-6-26(b)(1). The Cooperatives must show, and it is offered that they do not, that the information sought is reasonably calculated to lead to the discovery of admissible evidence. *Id.* To that end, the Commission must ask itself, what does the information sought matter in the 49-34A-56 analysis? If the interconnection costs \$1 million and LDC is paying for that or if it is \$20 million, is it relevant to the analysis? If the lease is \$1000 dollars a year or \$50,000 dollars a year is it relevant? The answer in EL24-027 is no. As Commissioner Nelson stated when denying party status to the Cooperatives in EL24-028, the matters before the Commission in that docket (ESA review and approval under applicable tariff) are those that are simply between MDU and LDC. See, September 24, 2024 Commission meeting, archived audio starting @23:31.

We cannot set aside that the Cooperatives sought intervention in EL24-028, in their own words to "...be permitted to review the terms and conditions of the electric service at the Data Center, and FEM allowed to bid on the project." East River Petition to Intervene in EL 24-028 @14. Joined or also sought by Basin and FEM. This is something not to be considered by or relief available the Commission under SDCL 49-34A-56. See, also *In re Montana-Dakota Utilities*, 740 N.W.2d 873 (SD 2007).

The Commission should reject the motion to compel as it seeks irrelevant information in the matters before it under a 49-34A-56 analysis and further does not seek information reasonably calculated to the discovery of admissible evidence. The effort of the Cooperatives is a bootstrapping exercise to obtain what it was denied access to by its exclusion as parties in EL24-028.

Dated this 17th day of January, 2025.

OLINGER, LOVALD, MCCAHCEN &
VAN CAMP, P.C.
117 East Capitol, P.O. Box 66
Pierre, South Dakota 57501-0066
(605) 224-8851 Phone
(605) 224-8269 Fax
bvancamp@olingerlaw.net


By: William M. Van Camp
Attorney for Leola Data Center

CERTIFICATE OF SERVICE

William M. Van Camp hereby certifies that on the 17th day of January, 2025, he served the foregoing Response to Joint Motion to Compel Discovery electronically with copies of the same to the following persons:

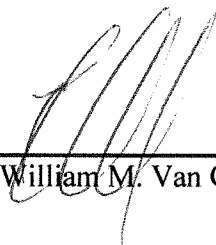
Mr. Logan Schaefbauer
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
Logan.Schaefbauer@state.sd.us

Daniel J. Brown
East River General Counsel
211 South Harth Ave., PO Box 227
Madison, SD 57042
dbrown@eastriver.coop

Meredith A. Moore
Attorney for Basin Electric
140 N. Phillips Ave., 4th Floor
PO Box 1400
Sioux Falls, SD 57101-1400

Vaughn P. Beck
Attorney for FEM
509 Bloemendaal Drive, PO Box 326
Ipswich, SD 57451
becklaw@midconetwork.com

Brett Koenecke
Attorney for MDU
503 S. Pierre St.
Pierre, SD 57501
brett@mayadam.net



William M. Van Camp