

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

IN THE MATTER OF THE PETITION OF  
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.

**EL-24-027**

**JOINT MOTION FOR CONTINUANCE  
OF FEM ELECTRIC ASSOCIATION,  
INC., EAST RIVER ELECTRIC POWER  
COOPERATIVE, INC., AND  
BASIN ELECTRIC POWER  
COOPERATIVE**

COME NOW FEM Electric Association, Inc., East River Electric Power Cooperative, Inc., and Basin Electric Power Cooperative (collectively, the “Parties”), by and through their counsel of record, and jointly move the Commission for an Order, whether following hearing on December 3, 2024, or through ad hoc means, continuing the deadlines and summary judgment hearing date established in its November 13, 2024 Order, which dates include response and reply deadlines of December 2, and December 10, 2024, respectively, and a hearing date of December 17, 2024. In support of their Motion, the parties state as follows:

**FACTUAL AND PROCEDURAL BACKGROUND**

1. On August 5, 2024, Leola Data Center, LLC (“LDC”) filed its Petition for Electric Service to have Montana-Dakota Utilities Co., assigned as its Electric Provider in the Service Area of FEM Electric Association Inc. (the “Petition”).

2. On August 8, 2024, in a companion docket to EL 24-027, Montana-Dakota Utilities Co. (“MDU”) filed with this Commission a request for approval of an electric services agreement. *See generally* EL24-028. In that docket, MDU seeks approval of an electric service agreement between it and LDC to provide LDC with electric service needs in FEM’s assigned territory.

3. On August 21, 2024, FEM Electric Association, Inc. (“FEM”) filed its Petition to Intervene. On August 23, 2024, each of East River Electric Power Cooperative, Inc. (“East River”) and Basin Electric Power Cooperative (“Basin”) filed a Petition to Intervene.

4. A hearing on each of the three Petitions to Intervene was held on August 27, 2024, at which time this Commission determined that each of FEM, East River, and Basin demonstrated good cause for intervention, thus granting to the three Petitioners party status and the right to

receive pleadings, conduct discovery, and present evidence and written argument regarding the issues presented in the Petition. This Commission’s Order granting intervention was filed on August 29, 2024.

5. On October 4, 2024, FEM, East River, and Basin served joint discovery requests on LDC (the “Joint Discovery Requests”). Those Requests specifically sought information related to the factors set forth in SDCL 49-34A-56. For example, the Joint Discovery Requests sought information regarding LDC’s electrical service requirements for its planned Data Center and related facilities, including peak, monthly usage, and other projections. The discovery requests further sought information related to the property LDC sought to acquire through lease or purchase, the transmission facilities to be constructed, and the electric service agreement between LDC and MDU.

6. On November 4, 2024, LDC submitted pre-filed testimony from Bill Connors, LDC’s Managing Director. The filing consisted of testimony only; no exhibits were referenced in or filed with the testimony.

7. On November 7, 2024, LDC served its objections and responses to the Joint Discovery Requests. Despite having served both interrogatories and requests for production of documents, no documents were provided. In its responses, LDC either relied on the pre-filed testimony of Bill Connors or objected wholesale to the requests on the basis of relevancy.

8. Also on November 7, 2024, LDC filed a Motion for Summary Judgment, arguing a hearing on its Petition was unnecessary because LDC satisfied all statutory criteria set out in SDCL 49-34A-56 based on the testimony of Bill Connors.

9. On November 8, 2024, Commission Staff served second data requests on FEM and first data requests on East River and Basin, with the deadline for responding to the same set for November 25, 2024. Staff’s data requests sought each of the parties’ positions on the statutory criteria set forth in SDCL 49-34A-56.

10. On November 12, 2024, and consistent with the obligation to meet and confer in good faith to resolve discovery disputes, Counsel for East River sent an email to Counsel for LDC. East River’s Counsel inquired whether LDC would respond to the Joint Discovery Requests and provide the requested documentation if all parties entered into a nondisclosure agreement or protective order. Counsel also indicated that a motion to compel complete responses to the Joint Discovery Requests may be necessary if LDC would not provide the requested information.

11. Notice of Hearing on LDC’s Motion for Summary Judgment, in which MDU joined, was issued on November 13, 2024. That Order set hearing for December 17, 2024, thereby making the deadline for responses and objections to that Motion due no later than December 2, 2024, and LDC’s reply due on December 10, 2024.

12. On November 14, 2024, LDC’s Counsel responded to East River’s Counsel regarding discovery, indicating he would speak with his client and respond regarding its position on the Joint Discovery Requests. To date, no further response has been received.

**ARGUMENT AND ANALYSIS**

13. This Commission regulates which utility can or will provide service to a customer. The applicable statutory scheme created in 1975 and known as the South Dakota Territorial Act vested within this Commission the authority to assign service territories, with the stated goal being the avoidance of duplicative services and wasteful spending. *See In re Montana-Dakota Utilities Co.*, 2007 S.D. 104, ¶ 7 740 N.W.2d 873, 876 (citing *In the Matter of Establishing Certain Territorial Elec. Boundaries*, 281 N.W.2d 65, 70 (S.D. 1979)).

14. The Legislature further established exceptions which allow a customer to obtain service from a company other than the assigned provider in that customer’s territory. *See* SDCL 49-34A-56. The relevant statute sets forth six factors to be considered when determining whether an alternate service provider should be assigned to the territory and customer. Case law analyzing the statutory scheme set forth in the South Dakota Territorial Act provides for a hearing at which time these criteria should be considered based on evidence presented by the petitioning customer.

15. Here, each of FEM, East River, and Basin were granted party status on the basis each has a substantial right and financial interest impacted by the relief sought by LDC. The Parties have a right to conduct discovery and evaluate whether the statutory criteria are met for assignment of an alternate provider. They have attempted to do so but have thus far been deprived of the ability to explore their questions and advance objections.

16. The discovery process requires that the parties engage in good faith negotiations before pursuing a motion to compel. At the time of this filing, while counsel for the parties have exchanged emails, there has been little meaningful discussion and a question as to whether the discovery disputes can be resolved remains pending. A motion to compel will likely be required absent a chance in position by LDC. However, that motion will not be resolved prior to the December 2, 2024 deadline for the filing of responses to LDC’s motion for summary judgment.

The resolution of the anticipated motion to compel will materially impact the completeness of FEM, East River, and Basin's responses. At this time, none of the Parties are able to respond meaningfully to Staff's Data Requests or to LDC's Motion for Summary Judgment in which MDU has joined. In that regard, while FEM, East River, and Basin can respond to LDC's Motion by invoking their rights under SDCL 15-6-56(f)<sup>1</sup>, the parties respectfully submit that considering summary judgment while a motion to compel is pending results in a piecemeal approach that is neither economical nor efficient for this Commission or any of the parties. Any response from FEM, East River, and Basin at this point will assert they have been denied the opportunity to conduct discovery that allows them to justify any opposition to the motion for summary judgment and that the Commission must either deny the motion or hold it in abeyance pending completion of discovery.

17. Resolving the discovery issues in advance of hearing the pending Motion for Summary Judgment is not only efficient, it also allows the Parties to determine whether a resolution short of a full hearing on Petitioner's request may be had.

18. Any decision made without a full and meaningful opportunity for all to be heard will have precedential effect on how the statutes at play should be interpreted and applied. This is particularly important given existing case law establishing that an alternate provider granted a right to serve a customer outside of its assigned territory will essentially be vested with exclusive rights to the territory in which that petitioning customer is situated.

19. In the interests of allowing the Commission a full opportunity to address the Petition, and for other good cause, the parties to this Joint Motion request an Order suspending the pleadings deadlines set forth in the November 13, 2024 Notice of Hearing on LDC's Motion for Summary Judgment and postponing the summary judgment hearing presently set for December 17, 2024.

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<sup>1</sup> SDCL 15-6-56(f) provides:

Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Dated this 25th, day of November, 2024.

CUTLER LAW FIRM, LLP

Attorneys at Law



Meredith A. Moore

140 N. Phillips Ave., 4th Floor

PO Box 1400

Sioux Falls, SD 57101-1400

Telephone: 605-335-4950

Email: meredithm@cutlerlawfirm.com

*Attorneys for Basin Electric Power Cooperative*



Daniel J. Brown

East River General Counsel

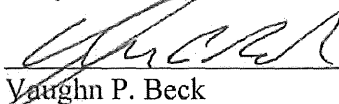
211 South Harth Ave., PO Box 227

Madison, SD 57042

Telephone: (605) 256-4536

Email: dbrown@eastriver.coop

*Attorneys for East River Electric Power  
Cooperative, Inc.*



Vaughn P. Beck

Beck Law Office

509 Bloemendaal Drive, PO Box 326

Ipswich, SD 57451

Telephone: (605) 426-6319

Email: becklaw@midconetwork.com

*Attorney for FEM Electric Association, Inc.*