

**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 RESPONSE OF FEM ELECTRIC  
ASSOCIATION, INC., EAST RIVER  
ELECTRIC POWER COOPERATIVE,  
INC., AND  
BASIN ELECTRIC POWER  
COOPERATIVE TO LEOLA DATA  
CENTER'S STATEMENT OF  
UNDISPUTED MATERIAL FACTS**

FEM Electric Association, Inc. ("FEM"), East River Electric Power Cooperative, Inc. ("East River"), and Basin Electric Power Cooperative ("Basin") (collectively, the "Intervenors") submit the following Objections and Responses to Leola Data Center LLC's ("Data Center") Statement of Undisputed Material Facts. These Objections and Responses are also supported by the Intervenors' Brief in Opposition to Motion for Summary Judgment, Rule 56(f) Affidavit, and separate Motion to Compel Discovery and supporting Brief. As set forth in those additional supporting documents, Intervenors cannot adequately respond to Data Center's Motion without further discovery as that discovery will yield facts that are relevant to the application of the criteria set forth in SDCL § 49-34A-56.

**JOINT OBJECTIONS AND RESPONSES TO LEOLA DATA CENTER LLC'S  
STATEMENT OF UNDISPUTED MATERIAL FACTS**

1. Data Center approached Montana-Dakota Utilities Co. (Montana-Dakota) in 2023 about providing electric service to a proposed Data Center located immediately adjacent to its Leola Substation. Prefiled direct testimony of Bill (aka William) Connors (BCT) 241-42. Prefiled direct testimony of Darcy Neigum (DNT) @Pg2, 10-12.

**RESPONSE: Intervenors have no basis to dispute this statement.**

2. Approximately 200 feet of service line will need to be extended from the Leola Substation to the Data Center. BCT @83-84. DNT @Pg3, 1-2. Additional transformers, switchgear and other electrical equipment will also be needed. BCT @84-86.

**OBJECTION: Intervenors object to this statement to the extent it is not material to application of the criteria set forth in SDCL § 49-34A-56. For summary judgment purposes, "[a] disputed fact is ... material [if] it would affect the outcome of the suit under the governing**

substantive law[.]” *Stern Oil Co. v. Brown*, 2012 S.D. 56, ¶ 13, 817 N.W.2d 395, 400 (quoting *Robinson v. Ewalt*, 2012 S.D. 1, ¶ 10, 808 N.W.2d 123, 126).

Data Center has not yet commenced construction of its facility. Through discovery, Intervenor learned that Data Center has leased twenty acres of bare ground for its facility and its planned structure will occupy approximately two acres of the total leased property. Intervenor is without sufficient information at this time to know whether Data Center will secure the required conditional use permit and other permits necessary for construction. Data Center’s application for a conditional use permit for the data center came before the McPherson County Zoning Board of Adjustment on December 10, 2024. See Rule 56(f) Affidavit at Exhibit A. The Board of Adjustment approved a moratorium on data center conditional use permits until an ordinance could be adopted. *Id.* The Board later approved a one mile set back requirement and discussed a data center template ordinance. According to Data Center’s application, there are at least two dwellings 800 feet and 1,355 feet away from the proposed facility. It was reported that the Board of Adjustment would discuss the data center ordinance again on January 14, 2025. Depending upon the course of action the Board takes, the Data Center may not be built, in which case, Data Center’s pending Petition for assignment would be rendered moot. Intervenor believe it is premature to proceed with a summary judgment determination as it would be tantamount to an advisory opinion, which is not legally appropriate.

**RESPONSE:** Without waiving its objection and response, Intervenor have no basis to dispute this statement at this time.

3. Data Center is not an existing customer of Montana-Dakota. BCT @53. DNT @Pg2, 20.

**RESPONSE:** See Objection and Response to Statement No. 2. Intervenor do not dispute that the Data Center, if approved and constructed, would be a new customer.

4. Data Center is not an existing customer of FEM Electric Cooperative (FEM”. BCT @55.

**RESPONSE:** See Objection and Response to Statement No. 2. Intervenor do not dispute that the Data Center, which has not yet been built, is not an existing customer of FEM, but do assert that the proposed facility will be within FEM’s territory and that FEM would have a right to serve it if Data Center so elected.

5. The proposed Data Center site does not have existing utility services. BCT @70.

**RESPONSE:** See Objection and Response to Statement No. 2. Intervenor do not dispute that the proposed data center does not have existing utility services.

6. Data Center will require electric service with a contracted minimum demand of two thousand kilowatts or more. BCT @89. DNT @Pg3, 5-7.

**OBJECTION AND RESPONSE:** Intervenor is without sufficient information to respond to this Statement. Intervenor served Joint Discovery Requests on Data Center, seeking a copy of the proposed Electrical Service Agreement (“ESA”) and Data Center’s electrical service requirements, including peak, monthly usage, and other projections. Following a meet and confer process between counsel, a heavily-redacted copy of the ESA was provided, but each of Data Center and Montana-Dakota have objected to and refused to respond to other data requests. Intervenor has not seen any evidence or other documentation, outside of conclusory statements made in pre-filed testimony, establishing that LDC’s contracted minimum demand will be 2 MWs or more. Accordingly, Intervenor cannot respond to this statement.

7. Data Center has contracted for between 10 and 50 MW of available load from Montana-Dakota. BCT @48-51, DNT, Pg2, 15-17.

**OBJECTION AND RESPONSE:** Intervenor is without sufficient information to respond to this Statement. Intervenor served Joint Discovery Requests on Data Center, seeking a copy of the proposed Electrical Service Agreement (“ESA”) and Data Center’s electrical service requirements, including peak, monthly usage, and other projections. Following a meet and confer process between counsel, a heavily-redacted copy of the ESA was provided, but each of Data Center and Montana-Dakota have objected to and refused to respond to other data requests. Intervenor has not seen any evidence or other documentation, outside of conclusory statements made in pre-filed testimony, establishing that LDC’s contracted minimum demand will be 2 MWs or more. Accordingly, Intervenor cannot respond to this statement.

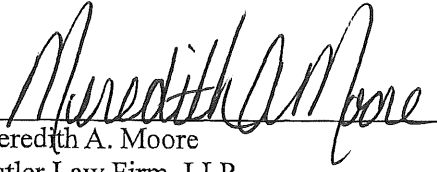
8. Montana-Dakota has available to it an adequate power supply as well as the ability to provide for the electrical needs of Data Center. DNT, Pg 3, 12-13.

**OBJECTION AND RESPONSE:** Intervenor objects to this Statement to the extent it is conclusory at this time because of the discovery deficiencies described in response to Statement Nos. 6 and 7. Intervenor does not dispute that Montana-Dakota owns the Leola Substation.

9. Data Center prefers to have Montana-Dakota provide its electric service. BCT @95-98, 110-111.

**RESPONSE:** Intervenor does not dispute Data Center’s subjective preference.

Dated this 9th day of January, 2025.



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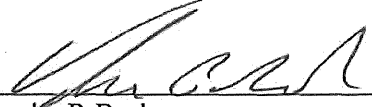
Dated this 9th day of January, 2025.

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