

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.

EL24-027

**JOINDER AND RESPONSE OF
MONTANA-DAKOTA UTILITIES CO., A
SUBSIDIARY OF MDU RESOURCES
GROUP INC., TO INTERVENOR'S
MOTION TO COMPEL DISCOVERY**

COMES NOW Montana Dakota Utilities Co., a subsidiary of MDU Resources Group Inc., (MDU) who makes its argument below and who also fully joins in the argument and authorities of Leola Data Center LLC's Response to Intervenors' Motion to Compel Discovery dated January 9, 2025.

MDU has claimed that privilege exists under statute as to confidential business and trade secrets regarding its responses to the Intervenors Discovery Requests. Intervenors object and seek to compel. The Commission should deny the motion.

LDC in its argument on file correctly points out how the information so fervently sought by the Intervenors fails to fit into the provisions of Section 56 and the Commission's application of those provisions. From Section 56:

Notwithstanding the establishment of assigned service areas for electric utilities provided for in §§ 49-34A-43 and 49-34A-44, new customers at new locations which develop after March 21, 1975, located outside municipalities as the boundaries thereof existed on March 21, 1975, and who require electric service with a contracted minimum demand of two thousand kilowatts or more shall not be obligated to take electric service from the electric utility having the assigned service area where the customer is located if, after notice and hearing, the Public Utilities Commission so determines after consideration of the following factors:

- (1) The electric 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;
- (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.

Source: SL 1975, ch 283, § 44.

In the instant case, and in light of the companion case, the highly sought after unredacted discovery simply isn't required to determine that the threshold questions, along with the six factors, are met completely and that the Commission should grant the requested relief. There's no neat way to read the discovery requests into those provisions of statute.

Further, existing state statute on the law of evidence supports the MDU position on its claim of privilege:

19-19-507. Trade secrets.

A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the holder of the privilege and of the parties and the interest of justice require.

Source: SL 1979, ch 358 (Supreme Court Rule 78-2, Rule 507); SDCL § 19-13-20.

The privilege sought and asserted by the parties isn't outlandish or unheard of. The redactions are not concealing fraud or working injustice. The business dealings between MDU and LDC are not the business of the Intervenors nor does the application of the statute make it so. As has been apparent from the start, the Intervenors seek to use these filings to learn as much as they can in order to obtain a competitive business advantage in this and future such matters. The Commission should not give in to such tactics.

[SIGNATURE PAGE TO FOLLOW]

Dated this 17th day of January, 2025.

MAY, ADAM, GERDES & THOMPSON LLP

BY:



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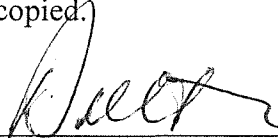
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CERTIFICATE OF SERVICE

Brett Koenecke, of May, Adam, Gerdes & Thompson LLP, hereby certifies that on the 17th day of January, 2025, he filed and served a true and correct copy of the foregoing in the above-captioned matter via the South Dakota Public Utilities Commission's electronic filing system, in which the service list of EL24-027 was copied.



BRETT KOENECKE