

STATE OF SOUTH DAKOTA  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

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| <b>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.</b> | DOCKET NO. EL24-027 |
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**MEMORANDUM IN SUPPORT OF LEOLA DATA CENTER LLC'S  
MOTION FOR SUMMARY JUDGMENT**

COMES NOW, William Van Camp, as the Attorney of record for Leola Data Center LLC (Data Center) and offers this Memorandum in Support of Data Center's Motion for Summary Judgment.

**BACKGROUND**

On August 5, 2023 Leola Data Center, LLC (Data Center) petitioned the Commission pursuant to SDCL 49-34A-56 to have Montana-Dakota Utilities Co., a Subsidiary of MDU Resources Group Inc. (Montana-Dakota), assigned as its electrical provider in the service territory of FEM Electric Association Inc. (FEM). Data Center wishes to locate adjacent to Montana-Dakota's Leola Substation which is in the assigned service territory of FEM.

After the petition of Data Center was filed and noticed by the Commission, Montana-Dakota, FEM, East River Electric Power Cooperative, Inc. (East River) and Basin Electric Power Cooperative (Basin) all petitioned for intervention and were granted party status by order of the Commission dated August 29, 2024.

In EL24-028 Montana-Dakota seeks to serve the electric needs of Data Center pursuant to an electric service agreement between the parties and under its Rate 45 tariff which had previously been approved by this Commission. See, EL22-024. The intervention efforts of FEM, East River and Basin in EL24-028 were denied by the Commission in an order dated September 24, 2024.

In this Docket, EL24-027, the Commission singularly must decide if the request of Data Center to be served by Montana-Dakota meets the requirements of SDCL49-34A-56. Data Center would suggest to the Commission that based on the docket and the averments of Data Center and Montana-Dakota, Summary Judgment is proper at this point as there is no genuine issue as to any material fact which would impact the Commission decision and Data Center is entitled to a judgment as a matter of law. The Commission must only look at the six factors set forth in SDCL 49-34A-56 after it is established that Data Center is a new customer. Those factors the Commission shall consider in determining if Montana-Dakota can provide electrical service to Data Center 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;
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.

SDCL 49-34A-56.

#### **STANDARD OF REVIEW**

Summary Judgment is properly granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law". *Estate of Lien v. Pete Lien and Sons*, 740 N.W.2d 115, 119 (S.D. 2007); SDCL § 15-6-56(c). The evidence must be viewed most favorably to the non-moving party and reasonable doubt should be resolved against the moving party. The non-moving party, however, must present specific facts showing that a genuine, material issue for trial exists. *Anderson v. First Century Federal Credit Union*, 738 N.W. 2d 40, 45 (S.D. 2007). The party opposing a motion for Summary Judgment "must be diligent in resisting the motion, and mere general allegations and denials which do not set forth specific facts will not prevent issuance of a judgment." *Rotenburger v. Burghduff*, 729 N.W.2d 175, 178 (S.D. 2007). Furthermore, the non-

moving party may not rest on its pleadings and must point to specific facts which establish a genuine material issue for trial. *Schwaiger v. Avera Queen of Peace Health Services*, 714 N.W.2d 874,878 (S.D. 2006). A party cannot create an issue of material fact with only argument and no contradictory evidence. *DFA Dairy Financing Services L.P. v. Lawson Special Trust*, 781 N.W.2d 664, 671 (SD 2010).

Issues of credibility or factual disputes irrelevant to the elements of the cause of action are further insufficient to preclude summary judgment. *See, e.g., Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 2709, 91 L.E.2d 20. Summary Judgment should not “be viewed as a disfavored procedural shortcut, but rather as an integral part of [our rules] as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action.” *Accounts Management, Inc vs Litchfield*, 576 N.W.2d 233, 234 (SD 1998), *internal citations omitted*. SDCL 1-26-18 further provides that:

Opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy. However, each agency, upon the motion of any party, may dispose of any defense or claim:

- (1) If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law...”

### **ARGUMENT**

Any effort of FEM, East River and Basin (Adverse Intervenors) to have the Commission consider matters beyond SDCL 49-34A-56 should be seen as improper. Rather, on analysis of the six factors to be considered by the Commission under the request of Data Center, this docket provides the text book case for a grant of service right under SDCL 49-34A-56. If not here, frankly, the answer would have to be never, thus making the statute itself meaningless in practice. <sup>3</sup>

In the first instance, under SDCL 49-34A-56, Data Center must be a new customer at a new location. It certainly is that. *See, Leola Data Center LLC’s Statement of Undisputed Material Facts (LDF) @3-5*. It is not an existing customer of Montana-Dakota or FEM. *Id @ 3-4*. The statutory factors after that threshold to be considered by the Commission are as follows:

#### **SDCL 49-34A-56 (1) The electrical service requirements of the load to be served**

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<sup>3</sup> There is a presumption against the Construction of a statute rendering it ineffective or meaningless. *Citibank, N.A. v. South Dakota Department of Revenue*, 868 N.W.2d 381, 389 (SD 2015), *internal citation omitted*.

Does Data Center require electric service with a contracted minimum demand of two thousand kilowatts or more? The answer is yes. LDF @6. It is anticipated that the load demand will be between 10 and 50 MWs. *Id* @7.

**SDCL §49-34A-56(2) The availability of an adequate power supply**

Does MDU have an adequate power supply to meet the needs to Data Center? Yes it does. LDF @8.

**SDCL §49-34A-56 (3) The development or improvement of the electric system of the utility seeking to provide the electric service, including the economic factors relating thereto**

Montana-Dakota is seeking to provide the utility service in this docket. Not the Adverse Intervenors. It seeks to do so under its previously approved Rate 45 tariff. LDF @8. The Data Center is immediately adjacent to the Leola Substation of Montana-Dakota. *Id* @1. Buildout will be minimal. *Id* @2. There are no existing utilities on the Data Center property. *Id* @5. This factor is easily met.

**SDCL §49-34A-56 (4) The proximity of adequate facilities from which electric service of the type required may be delivered**

Data Center seeks to build immediately adjacent to the Montana-Dakota Leola Substation. LDF @1. Buildout will be minimal, approximately 200 feet of service line is needed. *Id* @2. Again, this factor is easily met.

**SDCL §49-34A-56 (5) The preference of the customer**

Data Center has petitioned the Commission to have it served by Montana-Dakota. This factor has been met. LDF @9.

**SDCL §49-34A-56 (6) Any and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill customers' requirements**

Montana-Dakota has represented, and will continue to represent to the Commission in this docket that it has the ability to serve the needs of Data Center. LDF @ 8. The Commission further must, in Docket EL24-028, approve the electric service agreement under Rate 45 between Data Center and Montana-Dakota. This factor is also met.

The Adverse Intervenors, in a twist of fate and circumstances, seem to take now the position that Montana-Dakota took nearly 20 years ago in a similar large load dispute. See, *In re Montana-Dakota Utilities*, 740 N.W.2d 873 (SD 2007). The Court in that case determined that

SDCL 49-34A-56 was not intended to allow for open competition amongst service providers. *Id* @ 878. This despite in their own words and pleadings what the Adverse Interveners seek, a right to bid on the service to Data Center. East River Petition to Intervene @14. Basin Petition to Intervene @11, joining in the statements made by East River in its Petition. FEM Petition to Intervene @12. The Commission simply cannot give, statutorily, the relief the Adverse Interveners seek.

SDCL 49-34A-56 itself seeks to “accommodate” the customer’s needs, not the utilities. *Montana-Dakota Utilities* @878. Regardless, in that case, of the claim of Montana-Dakota that its facilities were much closer to the prospective customer and would cost it less to provide service than it would FEM. *Id* @ 877. The Court reaffirmed its earlier decision that the plain language of SDCL 49-34A-56 “indicates the Legislature intended to do nothing more than provide a new large load customer at a new location an option to be exercised prior to receipt of service.” *Id* @878, quoting *In the Matter of Northwestern Public Service Co.*, 560 N.W.2d 925, 928 (SD 1997). While Montana-Dakota sought to service a new large load in the service territory of FEM, the Court’s rationale is equally applicable here:

SDCL 49-34A-56 was intended to make peace between competing utilities and protect new large load customers from costly delays and time-consuming regulatory hearings<sup>4</sup>when the customer prefers service from the local provider. It gives the customer the right to seek service from an outside competing utility, but it cannot be used to force the customer to accept service from an outside provider when the assigned provider is the customer’s choice. *Montana-Dakota Utilities* @ 878.

At the end of the day, the Adverse Interveners will not be able to offer a material fact in dispute that warrants a further hearing in this Docket. The Adverse Interveners cannot meet the standard found in *Anderson v First Century Federal Credit Union, supra*, or pursuant to SDCL 1-26-18 for this matter to proceed to hearing.

### CONCLUSION

Summary judgment is warranted, as a matter of law, under the standards the Commission must consider pursuant to SDCL §49-34B-56 as there are not facts that remain in dispute which could change the outcome of the decision of the Commission. The relief sought by Data Center

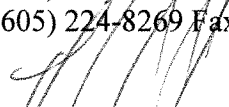
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<sup>4</sup> FEM made this argument in 2007. *Id* @ 877.

it its Petition to have Montana-Dakota assigned as its electric service provider in the service territory of FEM should be granted.

Dated this 7<sup>th</sup> day of November, 2024.

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#### CERTIFICATE OF SERVICE

William M. Van Camp hereby certifies that on the 7th day of November, 2024, he served the foregoing Memorandum in Support of Leola Data Center LLC's Motion for Summary Judgment electronically with copies of the same to the parties listed on the service list in the docket.



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William M. Van Camp