

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
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SUPPLEMENTAL REPLY BRIEF

COMES NOW, Leola Data Center LLC (LDC), by and through its attorney of record, William M. Van Camp, and offers this Supplemental Reply Brief.

LDC incorporates its prior arguments in support of its Motion for Summary Judgment and supplements them with this Reply which includes the Affidavit of Counsel.

1. The Leola Data Center has met the threshold requirements of 49-34A-56.

The Cooperatives assert that an electrical service agreement (“ESA”) has not been fully disclosed that establishes the contracted minimum demand load required in SDCL 49-34A-56. A redacted ESA has been provided with propriety information withheld. The contract provides for the statutory minimum demand. See, Affidavit of Counsel (“WVC Aff”) at 1. Any objections to the inclusion of the statement of counsel in affidavit form as to a specific section of a redacted ESA between LDC and MDU versus the entire ESA should be disregarded as irrelevant. Notwithstanding such disclosure, the Coops initial reading of the statutory requirement in SDCL 49-34A-56 is in error.

Whether or not a sufficient contracted minimum demand is currently in a written contract, which it is, does not change the actual requirement under the code for the territorial exception to be granted. The code as written has a forward looking requirement, as the customer

will require a contract with in excess of 2MW of minimum demand. Nevertheless, the redacted ESA with the inclusion of Section 15 language detailed in the attached Affidavit shows that not only does LDC have a contracted minimum demand load as required by statute, the ESA was obviously drafted specifically to address the statutory requirements for the large load exception. But in the end, LDC requires much more electrical service than the 2MW threshold.

2. LDC has provided information to satisfy subsections (1) and (6) of SDCL 49-34A-56.

The Coops, for reasons that are not found in statute, wish to argue now before the Commission that the large load exception cannot be satisfied absent a disclosure of such things as the estimated interconnection upgrade costs paid by LDC, LDC's estimated power utilization and the specifics on construction of any necessary electrical facilities. See, Supplemental Response of the Coops at 6. They also argue that the conditional use permit necessary from McPhearson County is a prerequisite to a large load exception being granted.

None of these items sought by the Coops or argued here are found in the statutory analysis before this Commission. It has been the clear point of the Cooperatives in this proceeding that they wish to see the costs associated with LDC being served by MDU for competitive reasons. It is the costs of MDU in providing services to this particular large load customer the Coops are after with their argument.

It is possible that the Coops argue that it is the other pertinent factors analysis under 49-34A-56(6) that opens the door wide to avoid Summary Judgment. The required costs, specificities and other broad based information, including the lease term with the projects landlord as an example, is all information that the Coops would like to know but are not able to obtain at this point. This is due in part to the denial previously by this Commission of their

Motion to Compel. Also, the Coops were unable to join companion docket EL 24-028 as parties. The catchall in 49-34A-(6) does not provide the Coops now access through argument and discovery what they were previously unable to obtain in an effort to forestall summary judgment.

Regarding the CUP, nothing being analyzed by the Commission here requires that parallel track permit required at the county level be completed before this Commission can grant a large load exception to LCD. This is not a siting docket. See, SDCL 49-41B-22(1), ARSD 20:10:22:19. The effort to require the CUP to be obtained first by this Commission is an effort of nothing more than to delay this proceeding. Hoping that perhaps the problem in one forum extends to the other forum to the detriment of the project itself.

The Coops must present specific facts showing that genuine material issues exist for hearing. *See Anderson vs. Anderson, 738 NW2d 40, 45, (SD 2007)*. The Coops have to be “diligent in resisting the motion, and mere general allegations and denials which were not set forth with specific facts, will not prevent issuance of a judgment.”¹

The use of retreaded and unsuccessful arguments seeking information that the Coops have been denied access to does not create those material issues for a determination at hearing. Those matters have been resolved. This docket is certainly well positioned for determination under summary judgment and SDCL 1-26-18.

As to the concluding suggestions of the Coops in their supplemental filing, LDC thinks it does no harm while serving no purpose for the Commission to require in its order that LDC obtains its local permits for construction before the territorial exception is effective. Obviously if the facility never gets built, LDC is not entitled to convey, transfer or monetize the territory

¹ Quoting, *Rotenbuger vs. Burghduff, 729 NW2d 175, 178, (SD 2007)*.

exception granted by this Commission. MDU has no customer to serve and won't control service at the location. Clearly, absent a CUP, LDC cannot develop. That is the reality whether or not the Commission acknowledges it.

As was made clear by the Supreme Court *In Re West River Electric Association*, 675 NW2d 222 (SD 2004), a plant's location is what is served by a utility. "(L)ocation" denotes a place where something is or could be located; a site." Id at 230. The *West River Electric Ass'n* case was an analysis of a SDCL 49-34A-42 right to serve after an upgrade in utility usage of a stranded customer of Black Hills Power in the territory of the local Cooperative. The analysis is applicable here.

LDC has leased 20 acres. In the time that has passed since this docket has opened and the local issue have been worked through in McPherson County, technology has continued to improve. As technology does. What was shown in the prior rendering of the facility site as four buildings has been reduced to one. See, WVC Aff at 2. The site is the site. The service territory exception sought under the SDCL 49-34A-56 is for service of a new customer in a new location. The analysis in *West River Electrical Ass'n* is applicable and the location of the territory exception being granted by the Commission is the leased property by LDC. Not 2 acres as the Coops suggest.

LDC is in agreement that if a new business is to be built on the property leased by LDC that business would not be covered by any ruling here on the large load exception. However, that new business if it had a load sufficient could avail itself to SDCL 49-34A-56. As to the concern again of the Coops that they would somehow be on the hook or bound by an ESA entered into between LDC and MDU, LDC is unaware on what basis this could occur warranting the Commission to consider or issue as a condition the possibility as a part of a ruling. The

exception grants the responsibility to serve to MDU at the location of the facility. That does not revert back to FEM because of a LDC/MDU contractual disagreement. See, *Matter of Northwest Public Service Co, 560 NW2d 925 (SD '97)*.

CONCLUSION

For the reason stated in the previous filings and herein, LDC is positioned, as a matter of law based on the docket and materials before the Commission to be granted the ability to obtain electrical service from MDU pursuant to SDCL 49-34A-56.

Dated this 18th day of June, 2026.

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CERTIFICATE OF SERVICE

William M. Van Camp hereby certifies that on the 18th day of June, 2026, he served the foregoing Supplemental Reply Brief in Support of Leola Data Center LLC's Motion for Summary Judgment electronically with copies of the same to the following persons:

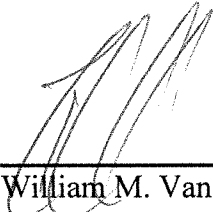
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