

**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

**SUPPLEMENTAL JOINT OPPOSITION
OF FEM ELECTRIC ASSOCIATION,
INC., EAST RIVER ELECTRIC POWER
COOPERATIVE, INC., AND
BASIN ELECTRIC POWER
COOPERATIVE TO LEOLA DATA
CENTER’S MOTION FOR SUMMARY
JUDGMENT**

COME NOW FEM Electric Association, Inc. (“FEM”), East River Electric Power Cooperative, Inc. (“East River”), and Basin Electric Power Cooperative (“Basin Electric”) (collectively, the “Intervenors”), by and through their counsel of record, and submit this joint supplemental response requesting that this Commission deny Leola Data Center’s (“LDC”) Motion for Summary Judgment. The record in this case establishes that Data Center’s Petition fails to meet the substantive factual and legal requirements of SDCL § 49-34A-56. Accordingly, LDC’s Motion should be denied entirely until a hearing on the merits is held.

FACTUAL AND PROCEDURAL BACKGROUND

On August 5, 2024, LDC filed its Petition for Electric Service to have Montana-Dakota Utilities Co. (“Montana-Dakota”) assigned as its Electric Provider in the Service Area of FEM (the “Petition”). On August 8, 2024, in docket EL 24-027, Montana-Dakota filed a request for approval of an electric services agreement. *See generally* EL 24-028. In that docket, MDU seeks approval of an electrical service agreement (“ESA”) between it and LDC to provide electric service in FEM’s assigned territory.

In late August 2024, FEM, East River, and Basin sought to intervene in both dockets.

Intervention was granted in this docket and denied in EL 24-028.

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, including information regarding LDC’s:

- Electrical service requirements, including peak, monthly usage, and related projections
- Data Center’s lease
- Construction information/plans for the proposed facility
- The ESA between Data Center and Montana-Dakota

See January 9, 2025 Rule 56(f) Affidavit at Exhibit A, a true and correct copy of Leola Data Center LLC’s Answers to East River Electric Power Cooperative, Inc’s, Basin Electric Power Cooperative’s and FEM Electric Association, Inc.’s Joint Discovery Requests. The discovery requests were specifically tailored to determine not only the threshold statutory requirement dictating that LDC prove a contracted minimum demand of two thousand kilowatts, but also whether LDC meets its burden of proof under Subsections (1) and (6) of SDCL § 49-34A-56.

LDC did not respond to certain of the Joint Discovery Requests, after which Intervenors filed a Joint Motion to Compel Discovery on January 9, 2025. Hearing was held on January 21, 2025, at the conclusion of which the Motion was denied, with one dissenting vote.

On January 23, 2025, LDC filed a request for postponement of further proceedings in this matter because of ongoing discussion with the Planning and Zoning Board in McPherson County. On January 30, 2025, this Commission issued an Order continuing these proceedings indefinitely. On March 26, 2026, Data Center advised that the matters pending before McPherson County had resolved and requested that proceedings resume, specifically requesting that its Motion for

Summary Judgment be rescheduled for hearing. LDC did not file an Amended Petition or other document with this Commission explaining how the matters previously pending before McPherson County resolved. Hearing on LDC's Motion for Summary Judgment is currently scheduled for June 30, 2026.

SUPPLEMENTAL ARGUMENT AND RESPONSE

Intervenors incorporate herein their prior opposition to LDC's Motion for Summary Judgment, including the reasoning set forth in their Joint Motion to Compel. Judgment as a matter of law on this issue was and remains unsustainable.

1. LDC has not satisfied the threshold requirement of SDCL § 49-34A-56: a contracted minimum demand of two thousand kilowatts or more.

LDC bears the burden of proof under SDCL § 49-34A-56. To prevail on its Motion and obtain a ruling awarding it twenty acres of FEM's current existing electric territory, LDC must demonstrate there is no genuine dispute of material fact on any issue. It bears the burden of proof. Holding LDC to that burden of proof is consistent with the purpose of the South Dakota Territorial Integrity Act set out in SDCL Ch. 49-34A. The purpose of the Act is to establish assigned service territories for electric providers and to confer an "exclusive right to provide electric service" within that territory. Only when a customer satisfies the dictates of SDCL § 49-34A-56 can this Commission take away territory from one company and give it to another.

LDC must first prove it requires "electric service with a contracted minimum demand of two thousand kilowatts or more[.]" *See* SDCL § 49-34A-56. Without that initial showing, the Commission cannot consider the six factors set forth in SDCL § 49-34A-56. As the Staff correctly explained in the Staff's Brief in Response to Leola Data Center, LLC's Motion for Summary Judgment, in Section 3 titled Contracted minimum demand of two thousand kilowatts or more: "According to this requirement, LDC must have a contracted minimum demand of two thousand

kilowatts or more in order to qualify for the large load statute.” *Id.* at pg. 6.

The plain meaning of the statute must be given effect. As articulated by the South Dakota Supreme Court: “In conducting statutory interpretation, we give words their plain meaning and effect, and read statutes as a whole.” *Reck v. S. Dakota Bd. of Pardons & Paroles*, 2019 S.D. 42, ¶ 11, 932 N.W.2d 135, 139 (quoting *State v. Bowers*, 2018 S.D. 50, ¶ 16, 915 N.W.2d 161, 166 (quoting *Expungement of Oliver*, 2012 S.D. 9, ¶ 6, 810 N.W.2d 350, 352)). When words in a statute “have plain meaning and effect, [the reviewing body] should simply declare their meaning and not resort to statutory construction.” *Id.* (quoting *State v. Bariteau*, 2016 S.D. 57, ¶ 15, 884 N.W.2d 169, 175 (quoting *Dale v. Young*, 2015 S.D. 96, ¶ 6, 873 N.W.2d 72, 74)). Ultimately, “[t]he intent of a statute is determined from what the Legislature said, rather than what we think it should have said.” *Id.* (quoting *Engesser v. Young*, 2014 S.D. 81, ¶ 22 n.1, 856 N.W.2d 471, 478 n.1 (quoting *Esling v. Krambeck*, 2003 S.D. 59, ¶ 6, 663 N.W.2d 671, 676)). “Therefore, the starting point when interpreting a statute must always be the language itself.” *Id.* (quoting *State v. Livingood*, 2018 S.D. 83, ¶ 31, 921 N.W.2d 492, 499).

With those well-established principles in mind, the phrase “contracted for” means that the parties have formally agreed upon terms, with a binding obligation to provide certain services. It does not contemplate estimates, projections, expectancies or probabilities.

Minimum demand could be proven through the parties’ ESA. However, despite request, LDC and MDU refused to provide anything but a redacted version of the ESA. That redacted ESA fails to specify the contracted for demand.¹ Intervenors were denied access to the ESA on the basis it was not relevant. However, as demonstrated by the statute, the existence of a contract showing

¹ The sections relating to minimum demand, construction of required facilities, power utilization, term, and the estimated interconnection upgrade costs to be fully paid by LDC have all been redacted.

demand requirements is critical information. This information has a direct bearing on whether petitioner can prove it has a contracted for minimum demand.

South Dakota Codified Law § 15-6-56(f) provides the vehicle by which a party can demonstrate it has been deprived of “facts essential to justify [its] opposition,” in which case the reviewing court or agency can deny summary judgment or order that further discovery be had. The purpose of this statute is to prevent a premature decision as a matter of law when a party has not had an opportunity to discover evidence that creates a question of fact as to the viability of a claim or defense. Whether LDC has met the requirement of a “contracted for” minimum demand is “essential” to resist summary judgment. Here, we do not know whether the condition precedent to the applicability of the statute, i.e., an existing and binding contract that contains an obligation for the specified minimum demand, has been met.

Perhaps what best demonstrates the lack of proof of this critical threshold issue is the pre-filed testimony of Darcy J. Neigum. The pre-filed testimony of Darcy J. Neigum states that MDU entered into an ESA with LDC “to serve between 10 and 50 MWs of electric power as part of the Company’s Rate 45 Tariff approved by the South Dakota Public Utilities Commission.” Page 3, 15–17. Any contention that Tariff Rate 45 satisfies the statutory requirement of a contracted minimum demand is misplaced. Rate 45 establishes only an eligibility threshold for service under that tariff; it does not create a binding contractual obligation requiring LDC to maintain a minimum demand of two thousand kilowatts. The tariff itself confirms as much: customers who fail to maintain the required service levels are simply transferred to the otherwise applicable rate schedule. See Montana-Dakota Utilities Co. Electric Rate Schedule, Section No. 3, Original Sheet No. 20, at 1. Thus, if LDC’s demand falls below 10 MW, the consequence is a rate change—not a breach of a contractual minimum-demand obligation.

For these reasons, summary judgment is inappropriate.

2. LDC has not provided information responsive to Subsections 1 and 6 of SDCL 49-34A-56 and therefore has not satisfied the requirements necessary to justify the forfeiture of FEM's territory to MDU.

Even if LDC can establish the existence of a contract obligating itself to the purchase of the statutory minimum demand, it has not provided additional information regarding the electric service requirements of the load to be served. *See* SDCL 49-34A-56(1). It has provided no information regarding the construction of required facilities, power utilization, term, and the estimated interconnection upgrade costs to be fully paid by LDC.

Further, LDC requires a conditional use permit from McPherson County to commence construction. LDC initially encountered county resistance with its initial permitting efforts, which is why this proceeding was suspended from January 2025 until recently. While LDC eventually resolved its issues with McPherson County, it did not file an amended petition or any information with this Commission regarding any conditional use permit it obtained or how that permit impacts the construction of the data center itself. These details are also critical to this Commission's determination. LDC must be required to demonstrate compliance with the local county zoning ordinance; otherwise, a grant of summary judgment is tantamount to an impermissible advisory ruling.

What should not be lost in this analysis is that this Commission's decision may result in the loss of FEM's assigned service territory. LDC has leased twenty acres of land for the construction of its data center. LDC has stated its data center will occupy 2 acres; however, it is unknown on what portion of the twenty acres the data center will be constructed. That information has a direct bearing on how much of the land at issue may be lost to MDU in perpetuity. If LDC's Petition is granted, MDU's new service area will be the current and future carve-out of the LDC

facility on the entirety 20-acre parcel. The details of construction, lease term, land use, and other land reclamation requirements are all relevant to the criteria in SDCL § 49-34A-56, all of which Petitioners have been denied access.

CONCLUSION

Intervenors respectfully request that Data Center's Motion for Summary Judgment be denied. In the event the Commission grants the Motion for Summary Judgment, Intervenors respectfully request that this Commission consider and include within the Order the following terms and conditions, at a minimum: (1) limitation of MDU's service area to no more than 2 acres based on a survey provided by LDC establishing the exact location of the site to ensure there is no ambiguity about the boundaries; (2) a statement the Order is contingent on LDC obtaining all necessary federal, state and local permits for the Project; (3) a limitation that any new business entities built on other areas within the 2 acres shall be considered in the FEM service territory; (4) if an entirely new business entity with a new/different business model takes over the LDC property, it shall be considered FEM's service territory; and (5) in the event LDC satisfies these conditions and becomes operational, FEM will not become obligated to serve LDC upon the expiration or termination of LDC's ESA with MDU unless otherwise agreed to by FEM.

Dated this 5th day of June, 2026.


Meredith A. Moore
Cutler Law Firm, LLP
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

/s/ Daniel J. Brown _____

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.*

/s/ Vaughn P. Beck _____

Vaughn P. Beck
Beck Law
509 Bloemendaal Drive, PO Box 326
Ipswich, SD 57451
Telephone: (605) 426-6319
Email: becklaw@midconetwork.com
Attorneys for FEM Electric Association, Inc.