

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE APPLICATION)
OF MONTANA-DAKOTA UTILITIES CO.,)
A SUBSIDIARY OF MDU RESOURCES)
GROUP INC., FOR APPROVAL OF AN)
ELECTRIC SERVICE AGREEMENT)
UNDER RATE 45 BETWEEN MONTANA-)
DAKOTA UTILITIES CO., A SUBSIDIARY)
OF MDU RESOURCES GROUP INC., AND)
LEOLA DATA CENTER LLC)**

**STAFF’S RESPONSE TO
MONTANA DAKOTA UTILITIES
CO., RESPONSE AND
OBJECTION TO PETITIONS TO
INTERVENE**

EL24-028

Comes now, Staff of the South Dakota Public Utilities Commission and hereby files this response to Montana-Dakota Utilities Co.’s Response and Objection to Petitions to Intervene in Docket EL24-028.

Background

On August 05, 2024, Montana-Dakota Utilities Co. (MDU) filed an Application for Approval of an Electric Service Agreement (ESA) under Rate 45 between MDU and Leola Data Center LLC (LDC). On August 21, 2024, FEM Electric Association, Inc. (FEM) filed a Petition to Intervene in this proceeding. On August 22, 2024, LDC filed a Petition to Intervene in this proceeding. On August 23, 2024, East River Electric Power Cooperative (East River) and Basin Electric Utilities Co. (Basin) each filed Petitions to Intervene in this proceeding.

On August 30, 2024, MDU filed a Letter regarding Response and Objection to the Petitions of FEM, East River, Basin. In its Letter, MDU stated no objection to LDC’s Petition to Intervene, but objected to the interventions of FEM, East River, and Basin because none of these proposed intervenors “have an interest in this particular docket which is cognizable by this Commission.” On September 13, 2024, Basin filed a Response to MDU’s Objection to Petitions to Intervene. On September 16, 2024, East River filed a Joinder in Basin’s Response to MDU’s Objection to Petitions to Intervene.

Staff supports LDC’s Petition to Intervene, but opposes FEM, East River, and Basin’s Petitions to Intervene.

Legal Authority

ARSD 20:10:01:15.02 provides that:

A person who is not an original party to a proceeding before the commission and who claims an interest in a pending proceeding may petition the commission for leave to intervene. The petition to intervene shall be filed with the commission within the time specified in the commission's weekly filings, public notice, or by applicable statute, rule, or order. The petition shall show service upon all parties to the proceeding. A petition to intervene which is not timely filed with the commission may be granted by the commission if granting the intervention will not unduly prejudice the rights of other parties to the proceeding or if denial of the petition is shown to be detrimental to the public interest.

ARSD 20:10:01:15.05 provides in relevant part that:

[a] petition to intervene shall be granted by the commission if the petitioner shows that the petitioner is specifically deemed by statute to be interested in the matter involved, that the petitioner is specifically declared by statute to be an interested party to the proceeding, or that by the outcome of the proceeding the petitioner will be bound and affected either favorably or adversely with respect to an interest peculiar to the petitioner as distinguished from an interest common to the public or to the taxpayers in general.

Analysis

LDC

According to its Petition to Intervene, LDC claims to have a direct and pecuniary interest in the docket as it is the intended customer, and a party to the Electric Service Agreement before the Commission in this Docket.

In MDU's response filed on August 30, 2024, MDU does not object to LDC's Petition to intervene stating "Leola has an interest in the pending proceeding in that, by the outcome of the proceeding, the Petitioner will be bound and affected with interest peculiar to the Petitioner."

LDC, by the outcome of the proceeding will be bound and affected either favorably or adversely with respect to an interest peculiar to LDC as distinguished from an interest common to the public or to the taxpayers in general as the Commission's decision whether to approve or deny this ESA will determine what rate MDU charges LDC. Based on these reasons, Staff agrees that LDC's Petition for Intervention should be granted.

FEM, East River, and Basin

According to FEM's Petition to Intervene, FEM claims that its pecuniary interests will be directly and immediately affected by the ESA, and no other party can adequately represent FEM's interest in this matter. FEM supports this argument on the basis that the ESA will allow MDU to serve the LDC in McPherson County, which is in the service territory of FEM. FEM believes that it can provide electrical service to LDC and should be permitted to review the terms and conditions of the ESA, and should be able to provide information regarding FEM's ability to provide retail power to serve LDC. Further, FEM claims LDC did not negotiate with FEM regarding electrical service, and FEM should be allowed to bid on the LDC project.

According to East River's Petition to Intervene, East River delivers wholesale power to its members, including FEM. East River is a Class A Member of Basin Electric, pursuant to which Basin sells and delivers capacity and energy requirements to East River for resale by East River to its member distribution Cooperatives. East River claims its pecuniary interests will be directly and immediately affected by the Commission's decision to approve the ESA, and no other party can adequately represent East River's interest in this matter. East River desires to intervene in this matter to provide information regarding its ability to provide wholesale power to FEM and construct reliable transmission and infrastructure to serve the data center. East River believes FEM can provide electrical service to LDC.

According to Basin's Petition to Intervene, Basin generates electric power which it sells and transmits to its Class A members for resale and retransmission to its Class C Members located in nine states for distribution to over three million users, residential and commercial. Basin claims that the revenues from the wholesale power contracts between Basin Electric and its Class A Members are the primary and essential support for Basin Electric's financial ability to operate, maintain, and improve the Basin electrical system. East River is a Class A Member of Basin Electric. Basin claims that it has a direct and substantial interest in this proceeding as this Commission's decision will, directly or indirectly, affect its contractual and financial relationship with its members.

In MDU's response filed on August 30, 2024, MDU objects to the intervention of FEM, East River, and Basin. MDU states that only the parties to the contract will be bound by the contract. MDU claims that since FEM, East River and Basin are not parties to the contract, they cannot be bound by its terms. MDU also states that "[n]one of them has an interest in this particular docket which is cognizable by this Commission, and they must have their intervention petitions rejected."

Basin makes the same claims in their Response to MDU's Objection to Petitions to Intervene (Response) as they make in their Petition to Intervene. Basin also adds in their Response that the two dockets are interrelated and that, under SDCL 1-26-17.1, Basin has the ability to intervene due to the financial impact Basin and East River would face if LDC and MDU's requests were granted. SDCL 1-26-17.1 states that "[a] person who is not an original party to a contested case and whose pecuniary interests would be directly and immediately affected by an agency's order made upon the hearing may become a party to the hearing by intervention, if timely application therefor is made." Staff agrees with Basin's Response that they do have the ability under SDCL 1-26-17.1 and ARSD 20:10:01:15.02 to apply for party status. Staff also believes that FEM and East River have the ability to apply for party status. However, FEM, East River, and Basin have the burden to show there is a legal basis for intervention under one of the three requirements laid out in ARSD 20:10:01:15.05. Showing that the petitioners meet one of the three requirements is how the parties would show that their interests would be directly and immediately affected as required in SDCL 1-26-17.1.

The petitions of FEM, East River, and Basin should fail because none of these petitions meet the standard for intervention set forth in ARSD 20:10:01:15:05. Neither FEM, East River, nor Basin has identified a statute that specifically deems them to be interested in the matter involved in this instance, nor a statute that specifically declares them to be interested in this matter. Further, Staff is not aware of any statute that specifically provides for intervention of a non-customer in an IOU's ESA, tariff, or rate proceeding.

Additionally, none of these parties have shown that they will be bound or affected with respect to a peculiar interest by the decision in this matter at issue in this docket. FEM, East River and Basin each

claim a pecuniary interest in this ESA proceeding. FEM claims they, as the utility provider assigned to the area, would lose income if not given the opportunity to provide electric service to LDC and that they should have the opportunity to bid to serve LDC. East River and Basin make similar claims that they will be financially impacted if FEM does not serve LDC. Staff does not dispute the claims that each of these entities may suffer a pecuniary loss if FEM does not serve LDC. But these arguments and potential pecuniary interests will not be the result of whether the ESA is approved. Instead, these potential impacts will be the result of whether LDC's request to select MDU as an electric service provider pursuant to SDCL 49-34-56 will be approved by the Commission in Docket EL24-027, a docket in which each of these three entities have already been granted intervention and will each have the opportunity to make arguments regarding their ability to serve LDC.

From Staff's perspective, FEM, East River, and Basin have no cognizable interest in this docket regardless of whether the Commission grants or denies LDC's request to have MDU serve in docket EL24-027. If this request in EL24-027 is denied, the ESA at issue necessarily fails because MDU could not legally serve LDC. If said request is granted, FEM, East River, and Basin still have no cognizable interest in the docket at hand because the matter for which these parties are interested – FEM's service to LDC – would already be decided. In other words, if the request in EL24-027 is granted, whatever the Commission decides in docket EL24-028 cannot affect any interest of these parties more than the decision of EL24-027 already has.

The matter at issue in this docket, whether an ESA between MDU and LDC for service under Rate 45 will be approved, will not, when considered in and of itself, impact FEM, East River, or Basin. An ESA under MDU's Rate 45 is specific to the high-density customer named in the ESA and does not bind any other entity to the terms and conditions in the ESA. The only potential impact to any entity beyond the parties to the ESA Staff can identify would be MDU's other customers. Because FEM, East River, and Basin are not tariffed customers of MDU, Staff does not recognize any cognizable financial impact on these entities, nor have any of these entities shown how they will be bound or affected by the Commission's decision in this docket.

Conclusion

For all the reasons explained, Staff has no objection to LDC's petition to intervene in this docket as LDC is a party to the ESA and also the customer to be served under Rate 45. However, because neither FEM, East River, nor Basin has shown a sufficient legal basis to justify intervention in this docket, Staff does not support their Petitions to intervene.

Dated this 17th day of September, 2024.



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