

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

<b>IN THE MATTER OF RANDALL COMMUNITY )</b>	
<b>WATER DISTRICT'S PETITION FOR A )</b>	<b>ORDER DECLARING</b>
<b>DECLARATORY RULING DETERMINING IF )</b>	<b>DEVELOPMENT ENTITY IS NOT</b>
<b>SOUTH DAKOTA LAW WOULD ALLOW )</b>	<b>AN ELECTRIC UTILITY</b>
<b>PETITIONER TO DEVELOP AND OWN ITS OWN )</b>	<b>PROVIDING RETAIL ELECTRIC</b>
<b>RENEWABLE ENERGY GENERATION SYSTEM )</b>	<b>SERVICE TO THE PUBLIC;</b>
)	<b>NOTICE OF ENTRY</b>
)	
)	<b>EL 18-061</b>

On December 19, 2018, the South Dakota Public Utilities Commission (Commission) received a Petition for a Declaratory Ruling (Petition) from Randall Community Water District (RCWD) to determine if South Dakota law would allow RCWD to develop and own its own renewable energy generation system. According to the Petition, RCWD is a water user district in Charles Mix Electric Association Inc.'s assigned service area. RCWD intends to build one or more renewable generation systems to offset its current power consumption. Lacking the skill to do this itself, it intends to contract with a Development Entity to design, build, and fund the project. RCWD will consume all generated energy itself and not offer the generated energy to anyone else thus everything will occur behind-the-meter. On December 20, 2018, RCWD filed a letter clarifying that RCWD would be the sole owner of the facilities at the commencement of operation and would be providing electricity only to itself. RCWD stated that the precise issue to be answered by the Commission's declaratory ruling is:

Under the facts and circumstances laid out above, would the Development Entity be subject to the provisions of SDCL § 49-34A-42 or not?

On December 20, 2018, the Commission electronically transmitted notice of the filing and the intervention deadline of January 4, 2019, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. On January 3, 2019, Charles Mix Electric Association, Inc. filed a Petition to Intervene. On January 4, 2019, Basin Electric Power Cooperative; East River Electric Power Cooperative, Inc.; South Dakota Electric Utility Companies; and South Dakota Rural Electric Association, each filed a Petition to Intervene. On January 7, 2019, Commission staff filed a Request for Oral Argument at the Commission's February 1, 2019, regularly scheduled meeting. On January 22, 2019, the Commission issued an Order Granting Petitions to Intervene; Order Granting Request for Oral Argument; Notice of Oral Argument. On January 28, 2019, Commission staff filed its Memorandum in Response to Petition. Charles Mix Electric Association, Inc., Basin Electric Power Cooperative, East River Electric Power Cooperative, Inc., South Dakota Electric Utility Companies, and South Dakota Rural Electric Association each filed a response to the Petition. On February 1, 2019, Charles Mix Electric Association, Inc. filed its Exhibit D. On February 4, 2019, Charles Mix Electric Association, Inc. filed its Corrected Exhibit D.

The Commission finds it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-1, and 49-34A, specifically SDCL §§ 1-26-15, 49-1-11, 49-34A-1, 49-34A-4, 49-34A-42, and ARSD 20:10:01:34 and 20:10:01:35. The Commission may rely upon any or all of these laws or other laws of this state in making its determination.

At its regularly scheduled meeting on February 1, 2019, the Commission considered this matter. Having reviewed the filed documents and having listened to the oral presentations and arguments of the parties, the Commission voted unanimously to declare that the Development Entity is not an electric utility providing

retail electric service to the public pursuant to SDCL49-34A-42.

Under the facts presented, the Commission finds the Development Entity does not meet the definition of an electric utility pursuant to 49-34A-1(7) therefore the exclusive right of CME to provide electric service to RCWD under SDCL 49-34A-42 is not applicable. The exclusive right to provide electric service at retail at each and every location within an electric utility's assigned service area is found at SDCL 49-34A-42. No other electric utility shall render or extend electric service at retail into the assigned service area of another electric utility. *Id.* Electric service must be furnished to a customer for its own consumption. RCWD stated that the generation is all behind-the-meter. To be a customer, you must be purchasing the electric service from an electric utility. The Development Entity does not fit the definition of a public utility or an electric utility and therefore RCWD does not fit the definition as a utility customer of the Development Entity. The Development Entity is not furnishing electric service to a customer and the Development Entity does not control facilities for providing electric service. See SDCL 49-34A-1(3), (6), (7), (11), and (12). It is therefore

DECLARED, that the Development Entity is not an electric utility providing retail electric service to the public pursuant to SDCL49-34A-42.

Dated at Pierre, South Dakota, this 5<sup>th</sup> day of February 2019.

<p align="center"><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.</p> <p>By: <u>Karen E. Bremer</u></p> <p>Date: <u>02/05/19</u></p> <p align="center">(OFFICIAL SEAL)</p>
---

BY ORDER OF THE COMMISSION:

Gary Hanson  
GARY HANSON, Chairperson

Chris Nelson  
CHRIS NELSON, Commissioner

Kristie Fiegen  
KRISTIE FIEGEN, Commissioner

**NOTICE OF ENTRY**

PLEASE TAKE NOTICE that this Declaratory Ruling was duly issued and entered on the 5<sup>th</sup> day of February 2019.