

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Montana-Dakota Utilities Co.
Applied Blockchain – Dickey County
Public Convenience and Necessity**

**Case Nos. PU-22-370
PU-22-366**

**DAKOTA VALLEY ELECTRIC COOPERATIVE, INC.’S CLOSING ARGUMENT
AND BRIEF IN OPPOSITION TO MONTANA-DAKOTA UTILITIES CO.’S APPLICATIONS FOR
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

[1] Dakota Valley Electric Cooperative, Inc., by and through its counsel Kimberly J. Radermacher, submits the following closing argument and brief in opposition to Montana-Dakota Utilities Co.’s applications for certificates of public convenience and necessity relative to the Applied Blockchain data processing center and office site near Ellendale, North Dakota.

PROCEDURAL HISTORY

[2] This matter came before the North Dakota Public Service Commission (hereinafter “Commission”) on application of Montana-Dakota Utilities Co. (hereinafter “MDU”) to serve a 180 MW data processing center and related office space being built by Applied Digital f/k/a Applied Blockchain (hereinafter “Applied”) to be located in the SE¼SE¼ of Sec. 4 and NE¼NE¼ of Sec. 9, all in Twp. 129N., Rge. 63W., Dickey County, North Dakota (hereinafter “Applied Blockchain site”). The applications for temporary authority were filed with the Commission on September 16, 2022, and for permanent authority on October 14, 2022. A protest and request for hearing were filed by Dakota Valley Electric Cooperative, Inc. (hereinafter “Dakota Valley”) on October 24, 2022.

[3] On November 17, 2022, the Commission issued a Notice of Opportunity for Hearing. A hearing before the Commission was subsequently held on December 19, 2022. At the hearing, the parties stipulated, and Administrative Law Judge Hope Hogan ordered, that the parties submit written closing arguments and briefs setting forth the ten factors the Commission must consider in

granting or denying MDU's certificates for public convenience and necessity and how each weigh in favor or opposition of the parties. Those ten factors are as follows:

1. From whom does the customer prefer electric service?
2. What electric suppliers are operating in the general area?
3. What electric supply lines exist within at least a two-mile radius of the location to be served, and when were they constructed?
4. What customers are served by electric suppliers within at least a two-mile radius of the location to be served?
5. What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?
6. Which of the available electric suppliers will be able to serve the location in question more economically and still earn an adequate return on its investment?
7. Which supplier's extended electric service would best serve orderly and economic development of electric service in the general area?
8. Would approval of the applications result in wasteful duplication of investment or service?
9. Is it probable that the location in question will be included within the corporate limits of a municipality within the foreseeable future?
10. Will service by either of the electric supplier in the area unreasonably interfere with the service or system of the other?

LAW AND ARGUMENT

[4] "In 1965, the Legislature enacted the Territorial Integrity Act to require an electric public utility to obtain a certificate of public convenience and necessity before extending electric service outside the corporate limits of a municipality." N.D.C.C. Chapter 49-03. "The Act was adopted at the request of the North Dakota Association of Rural Electric Cooperatives to provide 'territorial protection' for rural electric cooperatives and to prevent public utilities from 'pirating' rural areas." Prepared Testimony of Clarence Welander, Chairman of North Dakota Association of Rural Electric Cooperatives, February 25, 1965, Minutes of Senate Industry, Business and Labor Committee regarding House Bill 724. "The primary purpose of the Act was to minimize conflicts between suppliers of electricity and wasteful duplication of investment in capital-intensive utility facilities." Cass County Electric Coop., Inc. v. Northern States Power Co., 419 N.W.2d 181 (N.D.1988). *See also*

Capital Elec. Co-op., Inc. v. Public Service Com'n of State of N.D., 534 N.W.2d 587, (N.D. 1995).

QUESTION 1: From whom does the customer prefer electric service?

[5] Along with the requests for permanent authority submitted by MDU, there was a customer appearance by Applied dated August 25, 2022, which requested that MDU serve the proposed site. The customer appearance not only pre-dates the requests for permanent authority, but also any correspondence between Applied and/or MDU with Dakota Valley. Applied representatives testified at the hearing that they had reached out to MDU as early as fourth quarter 2021 and began conversations about finding a suitable site on MDU's system that would support the construction of Applied's facilities. At that time, Applied was simply shopping for sites and rates and not a specific utility to provide service. After months of conversations between Applied and MDU, the Ellendale site was chosen and rates negotiated. In June, 2022, about mid-way through the process, MDU notified Applied that the local rural electric cooperative would have to sign off in order for MDU to serve the load. At first, MDU did not even know who the rural electric cooperative was and mistakenly identified KEM Electric as the local provider. It wasn't until several weeks later that Dakota Valley was even mentioned to Applied representatives. On August 26, 2022, one day after Applied signed its customer appearance, an MDU representative attempted to reach out to Dakota Valley, which had been the first attempt ever by MDU or Applied to discuss with Dakota Valley the imminent request by MDU for a certificate of public convenience and necessity. It then took until October 11, 2022, for Applied to make contact with Dakota Valley. Prior to that time, Applied knew nothing about Dakota Valley, its reliability, rates or proposed extension to the Applied Blockchain site. In fact, Applied had no specific knowledge of such things until approximately December 9, 2022, when Dakota Valley submitted responses to MDU's request for

discovery. As such, the customer appearance by Applied dated August 25, 2022, seems a bit misplaced. Applied representatives reiterated this preference at the hearing, but went one step further in stating that it preferred MDU because of rates, reliability, responsiveness and regulation. At the time Applied was shopping for sites, it came down to rates and it is evident that this was and continues to be Applied's biggest concern. The rest is just white noise. There is no true difference in reliability between MDU and Dakota Valley as it pertains to the Applied Blockchain site. Furthermore, if Applied is willing to take interruptible service, reliability from MDU should be a concern as Applied only has an approximate 30 minute window to curtail its load when requested to do so by MDU and/or MISO. Dakota Valley's proposed rates do not require interruptible service. The reliance on regulation is also misguided. Every Commission regulated investor-owned utility has used this as a crutch in Territorial Integrity Act cases in order to garner favor with the Commission. While Dakota Valley is not regulated by the Commission, it is governed by a nine-member board, its members, and the law. Dakota Valley is a not-for-profit electric cooperative that must pay its margins back to the members. Given this fact, it would be nonsensical for Dakota Valley to raise its rates for any other purpose but to cover its costs of operation, which includes cost of power from Basin Electric and Central Power. Basin Electric is governed by FERC. As to responsiveness, Dakota Valley is locally owned and run, whereas MDU is not, and is overwhelmingly responsive to its members. The lack of alleged responsiveness by Dakota Valley in this case came as a result of being left in the dark for approximately nine months, during which time MDU did everything it could to keep Dakota Valley out of the loop and insure it had a leg up before going to the Commission. This then led to MDU having plenty of opportunity to develop its rates, whereas Dakota Valley did not.

[6] In Application of Montana-Dakota Utilities Co., 219 N.W.2d 174 (N.D.1974), the North Dakota Supreme court considered the effect of a rural customer's preference for service from an electric public utility. They stated that “a rural customer does not have a constitutional right to receive electric service from a public utility and customer preference [is] not determinative of public convenience and necessity, but "subjects the customer's preference for a regulated public utility service to an inquiry and decision by the Commission on the question of public convenience and necessity.” *Id.* at 181. See also Elkin, 224 N.W.2d at 792 (customer preference invokes consideration by the PSC, but is not determinative of public convenience and necessity). Capital Elec. Co-op., Inc. v. Public Service Com'n of State of N.D., 534 N.W.2d 587 (1995).

[7] “Customer preference, therefore, invokes consideration by the Public Service Commission, but it is not to be a controlling factor. It is the Public convenience and necessity, after all, with which the Commission is concerned, not private preference.” Tri-County Elec. Co-op., Inc. v. Elkin, 224 N.W.2d 785, (1974)(quoting Tri-City Motor Transportation Co. v. Great Northern Ry. Co., 67 N.D. 119, 270 N.W. 100 (1936), and 42 C.J. Motor Vehicles, Section 121, page 687). “The convenience and necessity which the law requires to support the public service commission's order for the establishment or extension of . . . service is the convenience and necessity of the *public* as distinguished from that of *an individual or any number of individuals*, and this is the primary matter to be considered in determining what constitutes such public convenience and necessity in a particular case, and the propriety of granting a certificate to that effect.” *Id.* (emphasis added). For the reasons stated above, the Commission should give this very little weight in determining whether MDU’s requests for certificates of public convenience and necessity should be granted.

QUESTION 2: What electric suppliers are operating in the general area?

[8] Dakota Valley and MDU are the primary electric suppliers operating in the general area. This factor does not favor either Dakota Valley or MDU.

QUESTION 3: What electric supply lines exist within at least a two-mile radius of the location to be served, and when were they constructed?

[9] According to Exhibit MDU-4, MDU has a 41.6 kV overhead transmission line that runs in various directions from the Applied Blockchain site that ultimately interconnects with the Central Power Electric Cooperative (hereinafter "Central Power") Ellendale substation. Dakota Valley would utilize to extend three phase service to the Applied Blockchain office site. MDU also has a three-phase overhead line in the general area. It is not entirely evident to the undersigned when these lines were put into service. MDU also has a 345 kV substation near the Applied Blockchain site that was granted a CPCN in September of 2013, as well as a 230 kV substation (date of construction unknown). The 345 kV substation is subject to the rules and regulations of the MISO Open Access Transmission and Energy Markets Tariff and currently serves no MDU customers. MDU's 230 kV substation serves the city of Ellendale, as well as several other cities according to testimony from MDU representatives. Dakota Valley has a single-phase overhead line that crosses the east side of Applied's property, which could be easily accessed to provide service to the office site. The line was put in sometime in the late 1940's and comes out of the Central Power Ellendale substation to the north and continues south past the Applied Blockchain site. It would be Dakota Valley's intention to replace this single-phase overhead line with three-phase underground line as part of its line extension to the Applied Blockchain site. Dakota Valley has a multi-phase member to the south of the site that would ultimately benefit from the three-phase extension. There is also a cattle rancher to the east of the site that could benefit as well. In addition, Dakota Valley has two more overhead single-phase lines and a single-phase underground line within the two-mile radius. Dakota Valley

has three-phase line just outside of the two-mile radius to the east. Giesler indicated that this three-phase line could be extended off of as well to provide service; however, the more logical point of connection appeared to be out of the Ellendale substation given the already existing single-phase service on that route. The Ellendale substation, which is located north of the Applied Blockchain site and outside of the two-mile radius, was completely replaced by Central Power in 2006 and received upgrades in capacity in 2009 and 2016. In 2016, Central Power also did additional maintenance to the substation. Central Power has made in excess of \$281,000.00 in improvements to the substation.

[10] In order to service the office site, both Dakota Valley and MDU would have to make new extensions off of their existing lines/infrastructure. MDU would have to extend three-phase service approximately 2,000 feet at a cost in excess of \$63,953.29, which is close to \$20,000.00 over the original estimate provided by MDU. At the time of the hearing, MDU had incurred contractor expenses of \$43,953.69 and had estimated that over \$20,000.00 of materials had not been included in those numbers. It is not known whether the line extension to the office was complete at the time of the hearing and whether additional contractor costs would be incurred. Dakota Valley would extend service approximately 15,500 feet from the Central Power Ellendale substation at an approximate cost of \$141,968.84, which would be an overall system improvement and not just an extension for the benefit of the Applied Blockchain site.

[11] Both MDU and Dakota Valley have considerable infrastructure in the area. While MDU technically owns the 345 kV substation to be utilized for the data processing center, Basin Electric Cooperative, Dakota Valley's generation source, could access the 345 kV substation under the provisions of the MISO Open Access Tariff. Therefore, the only defining difference between the two

electrical providers is the proximity of three-phase service to the office site. Applied requested three-phase service to the office site. It is unknown whether this was driven by a need for three-phase service, an attempt to save money given temporary three-phase service was needed for the concrete batch plant, or a means to put Dakota Valley at a competitive disadvantage. It is believed that the fire suppression system could be ran off of single-phase power or in the alternative, off of the 345 kV substation so long as Applied does not have to curtail its power usage. Under Dakota Valley's proposed rate schedule, Applied would not have to curtail and therefore it could be a feasible alternative. However, since Applied has made the specific request for three-phase, Dakota Valley recognizes that the Commission will honor customer preference versus a reasonable alternative. As such, this factor weighs slightly in favor of MDU.

QUESTION 4: What customers are served by electric suppliers within at least a two-mile radius of the location to be served?

[12] Dakota Valley currently serves approximately 15 members within the two-mile radius of the proposed Applied Blockchain site. MDU has approximately five customers outside of the city limits of Ellendale.¹ While it is true that this factor calls for identification of customers within a two-mile radius, the Commission has to realize that including the customers in the outskirts of a municipality that is over 1.5 miles away erroneously skews this factor. Furthermore, as Brandon Giesler from Dakota Valley testified, this number can also be skewed by where exactly the two-radius is measured from. When Dakota Valley calculated the two-mile radius, it barely touched Ellendale city limits, which calls into question exactly how many municipal customers truly fall within the area as

¹ On direct examination, MDU testified that it had eight customers within the two-mile radius outside the city limits of Ellendale; however, on cross-examination, MDU acknowledged that it had eight service connections, two of which belonged to customers who had more than one service connection and that a third service connection belonged to MDU itself.

this can be manipulated to the benefit of either party. In light of the above, Dakota Valley would argue that this factor weighs in its favor.

QUESTION 5: What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?

[13] In this case, it would not be appropriate for either party to argue it is truly more reliable than the other party. Dakota Valley proposes to extend service to the data processing center from MDU's 345 kV MISO substation. Therefore, weighing the reliability of the service to the data processing center is meaningless. Where there could be a difference would be the service to the office site. However, even so, it is worth noting that MDU's 41.6 KV transmission line interconnects with the Central Power Ellendale substation. According to Dakota Valley's exhibit 14, a majority of the outages at the Ellendale substation were as a result of MDU's transmission line. Since the reliability of Central Power's Ellendale substation relies heavily on the reliability of MDU's transmission line, it would also be erroneous to compare the two providers in that aspect. MDU argued at the hearing that a 2,000-foot extension is more reliable than a 15,500-foot extension. However, MDU did not take into account the actual number of customers it serves off of the 230 kV substation where its office extension is coming from in making that assessment. MDU representatives testified that in excess of 700 customers in the vicinity of Ellendale are served from that substation, as well as several other cities. Dakota Valley, on the other hand, only has approximately 256 service connections on the Central Power Ellendale substation. This plays into the issue of reliability.

[14] At the hearing, both parties submitted SAIDI statistics dating back to 2017. The difficulty with comparing SAIDI statistics between the two electrical providers is the actual data used to calculate the statistics, as well as the number of members/customers served by each. MDU serves

customers in at least four states, whereas Dakota Valley serves approximately eight counties within the state of North Dakota. Outage statistics are typically based on consumer average and SAIDI is specifically calculated by taking the average duration of interruptions per consumers during the year (See DVEC-15). It is the ratio of the annual duration of interruptions (sustained) to the number of consumers. Therefore, a SAIDI statistic of 81 means something quite different for a provider that has only 4600 members versus a provider that has 425,000 customers. For the sake of comparison, taking a SAIDI statistic of 81 which MDU lists for 2020, MDU would have sustained outages totaling 34,425,000 minutes. On the other hand, Dakota Valley would have only sustained outages totaling approximately 372,600 minutes. Furthermore, MDU did not testify as to what was calculated into its SAIDI statistics provided in Exhibit MDU-17. Dakota Valley's Brandon Giesler even questioned this during his testimony when asked if MDU was more reliable based on the SAIDI statistics provided. Giesler indicated that there are many factors that go into SAIDI, such as major events, power supply issues, planned maintenance, etc. In DVEC-15, Dakota Valley sets forth each SAIDI statistic for comparison. However, MDU did not and therefore it is unknown if major events, power supply, or other factors were taken into account in the statistics provided. Because of the interplay of MDU's infrastructure with Central Power and Dakota Valley's, it would not be appropriate for Dakota Valley to say that MDU is less reliable than Dakota Valley. The same goes for MDU. As such, without taking into consideration required interruption or curtailment of service, as would be mandated by the MDU/Applied ESA, this factor does not weigh in favor of either electrical provider as both could serve the site with reasonable reliability. If such interruption/curtailment requirements are to be considered, then this factor would currently weigh in favor of Dakota Valley as Dakota Valley's proposed rate structure does not require any interruption.

QUESTION 6: Which of the available electric suppliers will be able to serve the location in question more economically and still earn an adequate return on its investment?

[15] Based on the proposed revenue that would be generated by each electric supplier in comparison to each supplier's proposed cost of extension relative to both services, it is evident that both parties would earn an adequate return on its investment. Loads such as the one proposed by Applied are unheard of and would have a significant impact on the revenue of each electrical provider. As such, return on investment is not an issue for either party. Both parties acknowledged that any line extension to Applied's data processing center would be passed on 100 percent to Applied. Dakota Valley and Central Power argued that its cost of extension using MDU's MISO substation would be substantially similar, if not the same, as that proposed by MDU. MDU attempted to argue that if it held the load on the 34.5 kV tertiary, that Dakota Valley and Central Power would be forced to extend off of the 230 kV side of the substation, which would require a much more expensive extension. However, for MDU to hold the load would likely result in a missed opportunity for Applied as it is unlikely Applied would extend with the additional costs and the unknowns of whether the substation could sustain over 360 MWs of load. As to the office extension, MDU submitted MDU-9, which allegedly sets forth the specifics of that extension. However, through cross-examination, it was learned that MDU had already experienced cost overruns by having to contract out the labor and that the actual costs would be somewhere in the ballpark of \$20,000 over the original estimate. It is unknown why MDU would submit into evidence an Exhibit that it knew contained inaccurate information at the outset. Dakota Valley submitted Exhibit DVEC-12, which shows the estimate for its line extension to be \$141,968.44, which Dakota Valley acknowledges is approximately twice as much the line extension proposed by MDU. Worth noting, however, is that while it is twice as much in value, it is over 7 times in length, showing the

average per foot extension by Dakota Valley is significantly less than MDU. Unlike MDU, Dakota Valley's proposed extension is not for the sole benefit of Applied, but rather a system-wide improvement. Instead of extending service from the east, Dakota Valley saw an opportunity to take the existing single-phase overhead line crossing Applied's property and convert it to three-phase underground, with the future goal of continuing south to clean up a multi-phase account down the line. Because of this, Dakota Valley was willing to cover additional costs associated with the line extension. Dakota Valley also has other members in the area that could ultimately benefit from having three-phase service in the area.

[16] As to rates, there are some differences between the two electric suppliers. Dakota Valley would argue that this is primarily due to the six plus months lead time MDU had over Dakota Valley to develop a rate structure for the data processing center that was appealing to Applied. At the time that Applied began shopping for a second site in North Dakota, neither MDU nor Dakota Valley had a rate that Applied would have been willing to take electric service under. However, in the first half of 2022, MDU began development of its Rate 45, which was introduced to the Commission for approval on August 1, 2022. On August 1, 2022, this load wasn't even on Dakota Valley's radar. By the time that Dakota Valley became aware of the load, it was left scrambling to put something together for rates in time for the December hearing before the Commission. In looking at Rate 45 and the ESA signed between MDU and Applied on September 1, 2022, relative to the data processing center, there is technically no set rate by which Applied would take power from MDU. The only defined rates are the basic monthly service rate and MDU's per kWh transaction charge. The remainder of the charges typically assessed by MISO are passed on to Applied. In MDU-12, MDU sets forth two different rates – one using the average MISO energy charge for the MDU

load node and one for the average MISO energy charge for Ellendale LMP (Day Ahead). Dakota Valley contends that the Commission cannot even consider the rates calculated under the local marginal pricing model (LMP) as there are simply too many variables. Basin Electric and Central Power representatives testified that purchasing electricity on the open market can often time be volatile and that the LMP in the Ellendale area is considerably low at this time given the excess energy derived from nearby windfarm(s) that MDU is unable to adequately shed. At times, the LMP runs in the negative, requiring MDU to pay others to take the energy. However, once Applied's 180 MW load is put on to the system, as well as MDU's planned transmission facility extensions, the LMP will be significantly impacted, causing the price of power in the area to rise. In looking at the ESA and Rate 45, there is nothing that states that Applied is entitled to take power under the LMP pricing (this is left open). Both the ESA and Rate 45 are so ambiguous it is truly hard to determine what rate Applied would be getting, other than what is alleged by MDU in its Exhibits 12 and 15. Because the rates being utilized by MDU are market driven, there can be no certainty as to what those rates are going to be for any considerable amount of time. Furthermore, any proposed rates under Rate 45 and the ESA can be unilaterally amended by MDU, giving Applied only the right to terminate the agreement should it choose not to take service at the new rate(s). (See Rate 45 and ESA).

[16] In reviewing Exhibit MDU-15, the Commission should consider only the MDU Load Node Average Energy estimates, if anything, in comparing rates and determining this factor relative to the data processing facility load (although Dakota Valley argues that market fluctuations and the above arguments call into question reliance on even these estimates). In making its calculations in MDU-15, MDU used monthly kWhs of 123,120,000, while Dakota Valley used monthly kWhs of

124,830,000. MDU's reasoning was that it used a 30-day month, resulting in 360 days, rather than 365 days. When asked what difference this would make in rate calculations, MDU representative Larry Oswald indicated that Dakota Valley's monthly bill estimate would be reduced by approximately \$54,000.00, with a total annual difference of approximately \$650,000.00. Therefore, Dakota Valley's monthly revenue estimate would be around \$7,867,054 rather than \$7,921,054, without the Demand Response Rate credit and \$7,147,054 rather than \$7,201,054 with the Demand Response Rate credit. Even with the reduction, Dakota Valley is cognizant there still exists a disparity between the two providers' rates when looking purely at the numbers provided by the parties. However, Dakota Valley would argue that this disparity gets smaller when taking into consideration capital credits, no required curtailment/interruption in service, no security deposit requirement and stable rates that are not subject to market fluctuations. Dakota Valley estimated that Applied would receive approximately \$1.5 million back via capital credits annually. While capital credits are paid out over time, it is still an asset to Applied at the moment they are earned that will never be lost even if Applied terminates service with Dakota Valley. Furthermore, in determining rates, Dakota Valley did not even calculate the Demand Response Rate credit provided by Basin Electric as that is an option that Applied can apply for and take, if it so chooses. However, there is no requirement by Dakota Valley that Applied take interruptible service. It is evident that the only way Applied can really get the rate that it wants from MDU is by having to curtail to keep its cost of power down during the time of extreme market fluctuations. But even then, there are no protections given that the market re-prices every five minutes. However, if this is something that Applied desires and is willing to take, it will soon be an option available to it if Dakota Valley is awarded the load as Basin Electric indicated at the hearing that it has a market-based rate it is

working on with the hope that it will be in place by mid-2023.

[17] Lastly, MDU requires a significant security deposit from Applied by way of an irrevocable letter of credit, whereas Dakota Valley is only requesting that Applied pre-pay its electric bill on a bi-monthly basis. As such, there are expenditures and a reduction in borrowing power by Applied in taking service with MDU that it would not experience by taking service from Dakota Valley.

[18] As to the office site, MDU estimates cost of power to Applied to be approximately \$11,114.00 annually (See MDU-13). Dakota Valley estimates cost of power to be approximately \$7,971.00 (See DVEC-5). In making its calculations, MDU assumed annual usage to be in the ballpark of 84,000 kWh, whereas Dakota Valley estimated usage to be approximately 70,000 kWh (as it had zero details relative to Applied's energy usage and requirements at the time it made its calculations). If Dakota Valley were to use the same numbers as MDU, Dakota Valley would still be cheaper at approximately \$9,284.00 annually. Dakota Valley representatives testified that depending on actual energy usage that Applied may be able to qualify for the Commercial Incentive Rate Discount (See Exhibit DVEC-4), which would further decrease Applied's office site bill. One other difference worth noting is that MDU treated the office space as a secondary service, whereas Dakota Valley did not. By considering it a secondary service, MDU reduced its monthly service charge to Applied by \$44.00 per month and its demand charges by \$1.50 per Kw.

[19] Dakota Valley finds it difficult to concede this factor to MDU. Territorial Integrity Act disputes should not come down to customer preference and rates, especially rates that are purely speculative. Yes, it is true, that based on the data processing rates provided by MDU at the time of the hearing, that MDU has an advantage over Dakota Valley. However, the rates are market based and no one knows what the markets will do in 2023 or going forward. Dakota Valley knows what its

rates are for 2023 and what it can confidently offer to Applied without reservation or contingencies. Furthermore, Dakota Valley isn't looking to pad its pockets from this load. MDU's overall profit is ten times more than that of Dakota Valley's. It is no wonder why MDU kept this load as close to its vest for as long as it did.

QUESTION 7: Which supplier's extended electric service would best serve orderly and economic development of electric service in the general area?

[20] Unlike MDU, Dakota Valley does not believe this factor takes into consideration the economics set forth under Factor 6, as that would be not only redundant but not in line with the actual question being posed. This question looks beyond the proposed site/load in question. Currently, MDU has no customers along the road going north and south of the Applied Blockchain site. The only members MDU does serve in at least a mile of the site are along the Highway 11 corridor. It is unknown when or how MDU obtained these customers. It was assumed by many that testified at the hearing that these sites pre-dated the electric cooperative and the TIA. With that said, MDU's physical extension to the Applied Blockchain site would do nothing to benefit the customers along Highway 11. There would be no system upgrades that would ultimately benefit those customers. Rather, MDU proposes to extend off of its 230 kV substation and go north and west of there 2,000 feet to bring three-phase underground line solely to the Applied Blockchain office site. This extension would serve no other customers, nor could it without MDU first obtaining a CPCN. On the other hand, Dakota Valley has at least four members within a 3-mile radius along the road by Applied Blockchain. The current single-phase line that follows the road serves those members. As indicated previously, it would be Dakota Valley's intention to replace the single-phase overhead line with a three-phase underground line. This would improve system reliability and be a potential upgrade in service for those members along the route, particularly to the multi-phase

member down the line from the Applied Blockchain site. Dakota Valley's extension isn't for the sole benefit of Applied Blockchain. Because of this, as well as because this is Dakota Valley's territory in which it serves more members without the need for a CPCN, it is clear that this factor weighs in favor of Dakota Valley.²

QUESTION 8: Would approval of the applications result in wasteful duplication of investment or service?

[21] Dakota Valley would argue that MDU's 2,000-foot line extension to Applied's office site would result in a wasteful duplication of investment or service. As indicated previously, Dakota Valley has a single-phase line that is already located on the Applied Blockchain property that could have been used to provide service to the office site. However, Applied opted for three-phase service instead. As a result, Dakota Valley figured it would retire the single-phase overhead line and convert it to three-phase underground for the benefit of all of its members in the area. MDU's extension of service would be for the sole benefit of Applied and provide no improvements to MDU's system in the area. This factor weighs in favor of Dakota Valley.

QUESTION 9: Is it probable that the location in question will be included within the corporate limits of a municipality within the foreseeable future?

[22] The Applied Blockchain site is located over 1.5 miles west of the city limits of Ellendale. In the past few years, most of the development within Ellendale has occurred to the south near the Highway 281 corridor. Given the distance from the site and the lack of any recent or significant development to the west of Ellendale, it is highly unlikely that the location in question will ever be included within the corporate limits of any municipality. This factor does not favor either Dakota

² In considering this factor, Dakota Valley did not look at the extension relative to the data processing center as that extension would be identical regardless of who served the load. It is evident that due to the unique nature of the data processing center load that the extension would have to be for the sole benefit of Applied and outside of revenue, would have no impact on orderly and economic development of electric service in the general area.

Valley or MDU.

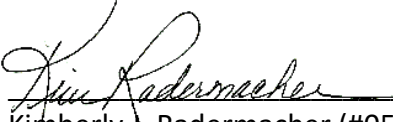
QUESTION 10: Will service by either of the electric supplier in the area unreasonably interfere with the service or system of the other?

[23] Both Dakota Valley and MDU currently operate in the area and it does not appear that extensions of service by either company to the Applied Blockchain site will interfere with the other. The extension proposed by Dakota Valley does not cross over or under MDU's existing or proposed lines. However, MDU's extension would cross under Dakota Valley's existing single-phase line (which Dakota Valley concedes is not prohibited). Furthermore, because MDU's 345 kV substation is subject to MISO's open access tariff, MDU knew and agreed it was likely that another MISO member could apply for access to MDU's substation. Therefore, Dakota Valley's access to and use of MDU's substation would not unreasonably interfere with MDU's service or system. Furthermore, the use and access to said substation appears to be governed by MISO and as a result, it would be MISO and not the Commission's authority to determine the issue of interference relative to access of MDU's 345 kV substation. This factor does not favor either Dakota Valley or MDU.

CONCLUSION

[24] Based on the foregoing, Dakota Valley respectfully requests that Commission deny MDU's Applications for Certificates of Public Convenience and Necessity in these matters.

Dated this 30th day of December, 2022.



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**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Montana-Dakota Utilities
Applied Block Chain – Dickey County
Public Convenience and Necessity**

**Case Nos. PU-22-370
PU-22-366**

CERTIFICATE OF SERVICE BY EMAIL

STATE OF NORTH DAKOTA)
)ss
COUNTY OF LAMOURE)

[1] I, Kimberly J. Radermacher, do hereby certify that December 30, 2022, I served the following document(s):

- 1.) **DAKOTA VALLEY ELECTRIC COOPERATIVE, INC.’S CLOSING ARGUMENT AND BRIEF IN OPPOSITION TO MONTANA-DAKOTA UTILITIES CO.’S APPLICATIONS FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**
- 2.) **DAKOTA VALLEY ELECTRIC COOPERATIVE, INC.’S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

[2] by sending a true and correct copy thereof via email to:

**Hope Hogan
Administrative Law Judge
hhogan@nd.gov**

**Paul Sanderson, Attorney
Montana-Dakota Utilities Co.
psanderson@esattorneys.com**

**North Dakota Public Service Commission
ndpsc@nd.gov
jschuh@nd.gov
jghamre@nd.gov**

[3] To the best of my knowledge, information and belief, such email addresses are the addresses of the parties intended to be served. That the above document was duly served in accordance with the applicable provisions of North Dakota law.

Dated this 30th day of December, 2022.

A handwritten signature in black ink, appearing to read "Kim Radermacher", written over a horizontal line.

Kimberly J. Radermacher (#05856)

RADERMACHER LAW FIRM, P.C.

Attorney for Dakota Valley Electric Coop, Inc.

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