

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Montana-Dakota Utilities Co.
Applied Block Chain Office – Dickey County
Public Convenience & Necessity**

Case No. PU-22-366

**Montana-Dakota Utilities Co.
Applied Block Chain Data Processing Extension
Public Convenience & Necessity**

Case No. PU-22-370

MONTANA-DAKOTA UTILITIES CO.'S REPLY BRIEF

Montana-Dakota Utilities Co. ("Montana-Dakota") submits the following Reply Brief to address the arguments raised by Dakota Valley Electric Cooperative ("Dakota Valley") in its Closing Argument and Brief.

Dakota Valley agrees with Montana-Dakota that several of the ten factors for consideration in this case favor Montana-Dakota, including: customer preference, supply lines in a two-mile radius, and which supplier is able to serve the location more economically and still earn an adequate return on investment. Dakota Valley also agrees with Montana-Dakota that the following factors are neutral: electric suppliers operating in the general area, and possibility the location will be included in the corporate limits of a municipality in the foreseeable future. Both Parties also agree that Montana-Dakota's service will not unreasonably interfere with the service or system of Dakota Valley.

Therefore, the only factors in dispute between the Parties are:

- What customers are served by electric suppliers within at least a two-mile radius of the location to be served?
- What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?
- Which supplier's extended electric service would best serve orderly and economic development of electric service in the general area?

- Would approval of the applications result in wasteful duplication of investment or service?

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

Dakota Valley had to get very creative to make the argument that this factor favors it in the analysis. First, the factor set forth by the Commission, and North Dakota case law, is “What customers are served by electric suppliers within at least a two-mile radius of the location to be served?” This factor establishes that, at a minimum, the Commission must look at the number of customers within a two-mile radius. Dakota Valley does not dispute that Montana-Dakota serves 77 customers within a two-mile radius of the Applied Digital Corporation’s (“Applied”) site and Dakota Valley only serves 15 customers within the same two-mile radius. If the Commission were to expand its analysis and consider a four-mile radius, Montana-Dakota serves 789 customers.

Rather than dispute the actual number of customers within the two-mile radius, Dakota Valley urges the Commission to change the factor to the number of customers served within a two-mile radius of the location outside of any city limits. This is simply not the law. In discussing this factor, the North Dakota Supreme Court explained “the number of customers served by electric suppliers in the larger vicinity should be considered for assessing capacity requirements in determining the orderly development of electrical service.” Cap. Elec. Coop., Inc. v. N. Dakota Pub. Serv. Comm'n, 2016 ND 73, ¶ 12, 877 N.W.2d 304 (noting the Commission should consider the number of customers served in the larger area for the purpose of examining duplication of services). There is no legal basis supporting Dakota Valley’s plea to change this factor to exclude customers within a two-mile radius who live in city limits.

The number of customers within at least a two-mile radius overwhelmingly favors Montana-Dakota. Dakota Valley's argument that this factor favors it is without merit.

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

Dakota Valley argues this factor does not favor either provider because they could both serve the Applied site with reasonable reliability. However, Dakota Valley's argument misses the point of this factor. The issue as stated in the Notice of Hearing requires the Commission to consider "the differences, if any, between electric suppliers . . . with respect to reliability of service." The differences in the reliability of service favors Montana-Dakota.

Dakota Valley agrees that since both Parties propose serving Applied's data center from Montana-Dakota's 345 kV substation, there would be no difference in reliability on the proposed extensions to serve the data center. Thus, the only issue for the Commission's consideration would be the differences between the Parties' proposed extensions to serve Applied's office.

Dakota Valley's argument on reliability ignores the fact that its own witness called to testify on reliability of the office extension, Brandon Giesler, conceded during cross-examination that Dakota Valley's proposed extension was over 13,000 feet more than Montana-Dakota's extension and Montana-Dakota's extension would be slightly more reliable due to the shorter length and less chance of damage to the line. Montana-Dakota's witness on reliability, Bruce Brekke, also testified Montana-Dakota would provide more reliable service. Further, the Commission has previously recognized that the distance of radial line to a proposed service location is indicative of differences in reliability of service. See Montana-Dakota Applications for Public Convenience and

Necessity, Consolidated Case Nos. PU-08-345, PU-08-346, PU-08-347 and PU-08-693.

Dakota Valley also submitted evidence at the hearing of the results of its System Average Interruption Duration Index (SAIDI), which is the average minutes of interruption per customer during the year. However, despite offering this evidence as indicative of the reliance of its system, Dakota Valley spends considerable time in its Brief arguing the Commission should disregard its own evidence on reliability. The SAIDI index is a tool the Commission has routinely used in TIA cases to compare the reliability of different electric providers. The reason Dakota Valley wants the Commission to disregard this evidence is because it clearly establishes Montana-Dakota has operated a more reliable system over the past five years.

Dakota Valley also erroneously asserts that “MDU did not testify as to what was calculated into its SAIDI statistics provided in Exhibit MDU-17.” See Dakota Valley Brief, page 10. To the contrary, Bruce Brekke, Montana-Dakota’s District Manager, testified regarding the SAIDI index and what comprised the results.

Although Montana-Dakota and Dakota Valley operate relatively reliable systems, the differences between the suppliers in their proposed service to the Applied office demonstrate that Montana-Dakota can be expected to provide more reliable service. Therefore, this consideration favors Montana-Dakota's application.

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

Dakota Valley erroneously argues this factor weighs in its favor because its upgrade of three miles of single-phase line to three-phase line could potentially benefit other customers requiring three-phase service. Dakota Valley’s argument is based upon pure speculation. Dakota Valley has no three-phase customers within two miles of the

Applied site. More importantly, Dakota Valley has no three-phase customer along the three-mile route to extend service from the Ellendale substation to the Applied site. Thus, Dakota Valley's three-mile extension is solely to serve a single customer, Applied's office.

Dakota Valley references a customer located on 87th Avenue to the south of the Applied site that could receive three-phase service. However, that customer is located over two and a half miles south of the Applied site, as evidenced on Dakota Valley Exhibit 8. Based upon the cost estimate provided by Dakota Valley in Exhibit 12 to extend three miles of underground cable to the Applied site, it would likely cost well in excess of \$100,000 to run an underground three-phase line two and a half miles to serve a single customer. There is no evidence in the record that Dakota Valley would incur those costs to supply three-phase service to a single farm customer. It is pure speculation for Dakota Valley to argue its extension of three-phase service would potentially benefit other customers.

There can be no legitimate argument over which providers extension would better serve orderly and economic development of electric service in the area. Montana-Dakota has two substations directly bordering the Applied site which can provide service at a much lower cost. Montana-Dakota has existing three-phase service directly adjacent to the Applied site and its extension would be 7.5 times shorter than Dakota Valley's proposed extension.

Dakota Valley argues this factor should not take into consideration the economics of the cost to serve the site. Unfortunately for Dakota Valley, the North Dakota Supreme Court disagrees and has stated that this factor is "broad enough to include consideration of possible economic development in the area." Cap. Elec. Coop., 2016 ND 73, at ¶ 23. Further, the Commission has previously stated that a primary consideration of which

supplier would best serve orderly and economic development in these cases is whether a supplier's cost to provide service to a customer exceeds the cost to provide service to that same customer from a second supplier. See Public Service Commission's September 17, 2014 Findings of Fact, Conclusions of Law, and Order in Case No. PU-13-871, and its December 17, 2008 Findings of Fact, Conclusions of Law and Order in four related public convenience and necessity applications in Case Nos. PU-08-345, PU-08-346, PU-08-347, and PU-08-693. The undisputed evidence establishes Montana-Dakota's proposed costs of providing electric service to the Applied data center are between \$25,764,025 and \$51,666,573 less than Dakota Valley's. Applied's CEO Wes Cummins testified the project would not be economically viable at the rates proposed by Dakota Valley and it would cease development of the project near Ellendale if Montana-Dakota's Application were denied. A loss of the Applied business and the related economic development it would bring would have a negative impact on expected expansion of electric service and customers in the Ellendale area. This is an important consideration that favors Montana-Dakota.

Because Montana-Dakota's extension of service and corresponding cost to provide service to Applied will foster orderly and economic development of electric service in the Ellendale area, this factor supports Montana-Dakota's Application.

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

Dakota Valley erroneously argues that Montana-Dakota's 2,000-foot extension to Applied's office would result in wasteful duplication of service. Dakota Valley's argument is premised on its misplaced assertion that it has a single-phase line adjacent to the Applied site that could serve the office. The fallacy with Dakota Valley's argument is that

the undisputed evidence presented at the hearing was Applied required three-phase service for its office. Applied's VP of Power, Etienne Snyman, specifically testified Applied required three-phase service for its office. Dakota Valley acknowledged the fact that the Applied office required three-phase service by presenting evidence it would be extending three-phase service three miles to Applied's office. See Dakota Valley Exhibit 12. It is disingenuous for Dakota Valley to argue wasteful duplication because it has single-phase service located on the Applied property when it knows three-phase service is required for the Applied office.

Dakota Valley does not have any facilities in the immediate area and would have to construct three miles of new three-phase line to serve the Applied site. Conversely, Montana-Dakota has three-phase service directly adjacent to the Applied site. The North Dakota Supreme Court has explained that construction of additional infrastructure by one party to service a single customer can be a wasteful duplication of services when the opposing party has existing infrastructure in place that that can provide service. Minn-Kota Ag Prod., Inc. v. N. Dakota Pub. Serv. Comm'n, 2020 ND 12, ¶ 33, 938 N.W.2d 118. This factor favors Montana-Dakota, as its extension of service to the Applied site would not result in any wasteful duplication.

CONCLUSION

The consideration of the ten TIA factors set forth in the Commission's Notice of Hearing either favor Montana-Dakota or neither of the two suppliers. There is not a single factor that favors Dakota Valley. Based upon the evidence presented at the hearing, public convenience and necessity mandate that Montana-Dakota's Applications for Permanent Authority should be granted.

Dated this 3rd day of January, 2023.

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