

Memorandum

To: Commissioners Christmann, Haugen-Hoffart and Fedorchak

From: Victor Schock, Director of Public Utilities

VS

Date: December 7, 2023

Re: Montana-Dakota Utilities / Dakota Valley Electric, Ellendale, North Dakota, Service Area Agreement, Case No. PU-23-272

On July 20, 2023, Montana-Dakota Utilities Co. (MDU) and Dakota Valley Electric Cooperative, Inc. (DVEC) filed a joint application for approval of a Service Area Agreement (SAA) to designate service locations to be served by MDU and DVEC surrounding the Applied Digital Data Center location near the city of Ellendale, North Dakota.

On August 16, 2023, the Commission issued a Notice of Opportunity for Hearing, which provided until September 29, 2023, for receiving written comments or hearing requests. No response was received. The notice identified the issues to be considered in this proceeding are:

1. Whether the SAA complies with North Dakota Century Code (NDCC) Section 49-03-06.
2. Whether approval of the SAA is compatible with the public interest.

On November 29, 2023, DVEC filed a letter supporting unconditional approval of the SAA.

Staff has conducted a thorough review of NDCC 49-03-06 and the proposed SAA. My findings are as follows:

1. NDCC 49-03-06 specifies that approval of an SAA by the Commission is appropriate if the SAA complies with NDCC 49-03-06 and is in the public interest.
2. Staff believes the SAA complies with NDCC 49-03-06.
3. At present both MDU and DVEC serve numerous customers within the boundaries of the proposed SAA. The SAA specifies that these existing locations will continue to be served by the party currently serving them.
4. The primary function of the SAA appears to be a financial guarantee rather than any assurance that there will be continued agreement on the appropriate party to serve locations within the SAA. It would also appear that MDU may not be the appropriate utility to serve some of the areas within the SAA based upon the fact that DVEC currently serves and intends to continue serving numerous locations within the territory designated in the SAA.

For these reasons, staff believes further investigation and evidence is necessary prior to rendering a decision on the SAA.