



# MONTANA-DAKOTA

UTILITIES CO.

*A Subsidiary of MDU Resources Group, Inc.*

400 North Fourth Street  
Bismarck, ND 58501  
701-222-7900  
www.montana-dakota.com

August 28, 2024

Mr. Steve Kahl, Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard Ave, Dept 408  
Bismarck, ND 58505-0480

**Re: Application for Approval of Joint Service Area Agreement &  
Request for a Certificate of Public Convenience & Necessity  
Lake Isabel Area, Dawson, North Dakota  
Case No. PU-24-  
Case No. PU-24-**

Dear Mr. Kahl:

Montana-Dakota Utilities Co. (Montana-Dakota) respectfully submits the application for approval of joint Service Area Agreement. Enclosed are the original and seven copies of the joint application for approval of the Service Area Agreement between KEM Electric Cooperative, Inc. (KEM), and Montana-Dakota pursuant to North Dakota Century Code (NDCC) § 49-03-06. The approved Service Area Agreement will allow electric service to new service locations within the unserved areas around Lake Isabel near the city of Dawson to be served by Montana-Dakota and KEM.

Montana-Dakota also requests the North Dakota Public Service Commission issue a Certificate of Public Convenience & Necessity authorizing it to extend service to locations within the Montana-Dakota service area set forth in the Agreement.

If you have any questions, please contact Travis Jacobson at 701-223-7855 or [travis.jacobson@mdu.com](mailto:travis.jacobson@mdu.com).

Sincerely,

*/s/ Travis R. Jacobson*

Travis R. Jacobson  
Director of Regulatory Affairs

Enclosures

cc: Allison Waldon

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA**

In the Matter of the Joint Application for  
Approval between KEM Electric  
Cooperative Inc. and Montana-Dakota  
Utilities Co. for a Joint Service Area  
Agreement at Lake Isabel, Dawson,  
North Dakota

Case No. PU-24-\_\_\_\_

**Joint Application for Approval of Service Area Agreement**

KEM Electric Cooperative Inc., (KEM), an electric cooperative organized under North Dakota Century Code (NDCC) Chapter 10-13, and Montana-Dakota Utilities Co. (Montana-Dakota), an electric public utility, submit this joint application for approval of a Service Area Agreement pursuant to NDCC § 49-03-06. The Service Area Agreement, which accompanies this Application, was entered into by Montana-Dakota and KEM as electric providers in compliance with the provisions of NDCC § 49-03-06 to establish service areas and to designate service locations to be served by Montana-Dakota and KEM within the unserved areas around Lake Isabel near the city of Dawson, North Dakota. The Service Area Agreement complies with NDCC § 49-03-06 and is in the public interest because it will: (1) avoid misunderstanding and disagreement over areas to be served by each party, (2) accomplish the legislative intent of NDCC § 49-03-06 to encourage harmony and operational efficiency among electric providers, promote safety, discourage unreasonable duplication of electric facilities, assure adequate and reliable electric service and provide antitrust immunity to the electric providers, and (3) provide both parties with equitable participation in the provision of electric distribution service within unserved areas around Lake Isabel near the city of Dawson during the term of the Agreement.

Montana-Dakota and KEM request the North Dakota Public Service Commission, after Notice as provided in NDCC § 49-03-06(4), approve the Service Area Agreement after finding the Agreement in Compliance with NDCC § 49-03-06 and in the public interest.

Please refer all inquiries regarding this filing to:

Travis R. Jacobson  
Director of Regulatory Affairs  
Montana-Dakota Utilities Co.  
400 North Fourth Street  
Bismarck, ND 58501  
701-222-7855  
[travis.jacobson@mdu.com](mailto:travis.jacobson@mdu.com)

Victor J. Wald  
President  
KEM Electric Cooperative Inc.  
107 South Broadway Street  
Linton, ND 58552  
701-254-4666

Also, please send copies of all written inquiries, correspondence, and pleadings to:

Allison Waldon  
Attorney  
MDU Resources Group, Inc.  
PO Box 5650  
Bismarck, ND 58502-5650  
701-530-1089  
[allison.waldon@mduresources.com](mailto:allison.waldon@mduresources.com)

Thomas B. Bair  
Attorney  
Bair Law Firm  
PO Box 100  
210 1<sup>st</sup> Avenue NW  
Mandan, ND 58554-0100  
701-663-6568  
[tbair@bairlawfirm.com](mailto:tbair@bairlawfirm.com)

Dated this 28 day of August 2024.

Respectfully submitted,

Montana-Dakota Utilities Co.



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By: Travis R. Jacobson  
Director of Regulatory Affairs

KEM Electric Cooperative, Inc.



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By: Victor J. Wald  
President

## **SERVICE AREA AGREEMENT**

This Service Area Agreement (Agreement) is between Montana-Dakota Utilities Co., 400 North Fourth Street, Bismarck, ND 58501 (Montana-Dakota), and KEM Electric Cooperative, Inc., 107 S. Broadway St Linton, ND 58552 (KEM).

### **RECITALS**

Section 49-03-06 N. D. Cent. Code authorizes agreements among electric providers to encourage harmony and operational efficiency in the provision of electric distribution service; to promote safety; to discourage unreasonable duplication of electric facilities; to assure adequate and reliable electric service; and to obtain anti-trust immunity for agreements such as this.

Montana-Dakota and KEM are "electric providers" as defined under §49-03-01.5 N. D. Cent. Code.

Montana-Dakota and KEM desire to avoid misunderstanding and disagreement over areas that each party is to serve and over Service Locations within these areas; provide both parties with equitable participation in the provision of electric distribution service in un-served areas governed by this Agreement; encourage operational efficiency and safety and discourage unreasonable duplication of electric facilities; and assure orderly growth of electric infrastructure for adequate and reliable service in the areas governed by this Agreement.

### **ARTICLE I.**

#### **SERVICE AREAS, LOCATIONS AND FACILITIES**

Montana-Dakota and KEM agree to the following:

1. Areas Governed. The areas governed by this Agreement are those areas shaded in green and red on the attached map around Lake Isabel near the city of Dawson, North Dakota. The provision of electric distribution service outside the geographic scope of this Agreement shall be governed by applicable law, any future amendments extending the scope of this Agreement, or new service area agreements that may be made between the parties.
2. Definitions. For purposes of this Agreement:  
The term "Service Location" shall mean structures, facilities, or improvements located within the areas governed by this Agreement to which retail electric service is provided.

The term "Existing Service Location" shall mean the Service Locations to which a party provides service as shown by its books and records as of the effective date of this Agreement. The term includes all expansions, improvements, or additions to a Service Location made after the date of signing of this Agreement that do not amount to a New Service Location. Any changes to Service Locations between the

date the parties sign this Agreement, and its effective date will be provided to the other party within 10 business days from the effective date of this Agreement.

The term "New Service Location" shall mean a Service Location that is not an Existing Service Location. An Existing Service Location is converted to a New Service Location when: (1) retail electric service is provided to a Service Location after electric service has been disconnected and electric service use abandoned at the Service Location for a period of at least 90 days; or (2) a customer makes a material change of use of the Service Location or modifies the structures, facilities or improvements on the Service Location and such change or modification necessitates a replacement or substantial modification of the electric service facilities historically used to serve the Service Location, including but not limited to:

- Replacement of single-phase family/farm use to three phase commercial/industrial or three phase high density residential use (18 or more units); and
  - Replacement of single-phase commercial/industrial use to three phase commercial/industrial use of 1.0 MW or greater of connected load.
3. Montana-Dakota Service Area. The service area of Montana-Dakota is that area governed by this Agreement shaded in red on the attached map, incorporated by reference as integral to this Agreement. Montana-Dakota will provide retail electric service in this service area, and KEM shall not provide retail electric service in this service area, except as otherwise provided in this Agreement or in any amendment to this Agreement. That is, unless changed by the written consent of both parties, Montana-Dakota will serve all of its Existing Service Locations and all New Service Locations in its service area while KEM will continue to serve only its Existing Service Locations in Montana-Dakota's service area. KEM may serve New Service Locations within Montana-Dakota's service area only as provided in this Agreement or in any amendment to this Agreement.
4. KEM Service Area. The service area of KEM is that area governed by this Agreement shaded in green on the attached map, incorporated by reference as integral to this Agreement. KEM will provide retail electric service in this service area and Montana-Dakota shall not provide retail electric service in this service area, except as otherwise provided in this Agreement or in any amendment to this Agreement. That is, unless changed by the written consent of both parties, KEM will serve all of its Existing Service Locations and all New Service Locations in its service area while Montana-Dakota will continue to serve only its Existing Service Locations within KEM's service area. Montana-Dakota may serve New Service Locations within KEM's service area only as provided in this Agreement or in any amendment to this Agreement.
5. Separate Agreements Pertaining to Service Locations and Service Areas. With the written consent of the parties:
- Electric service may be supplied by one party to a New Service Location in another party's service area on a temporary or permanent basis.

- New or Existing Service Locations may be exchanged, even though the number or service characteristics of the Service Locations to be exchanged are not equal.
- All or portions of new or existing service areas may be exchanged or transferred, even though the number or service characteristics of the Service Locations located in said areas to be exchanged or transferred are not equal.

Agreements pertaining to Service Locations or service areas shall not alter or stand as precedent to alter the intent of this Agreement regarding the provision of retail electric service in defined service areas.

6. Service Location Disputes. This Agreement is subject to the continuing jurisdiction of the North Dakota Public Service Commission to settle Service Location and service area disputes arising under the Agreement.
7. Duplication of Facilities. The parties will avoid unreasonable duplication of facilities in order to provide electric service for all consumers efficiently and economically. The incidental duplication of some facilities, however, will not violate or serve as grounds to alter this Agreement.
8. Sale, Transfer, Exchange or Lease of Equipment or Facilities. A sale, transfer, exchange or lease of equipment or facilities owned by one party but located in the other party's service area may be made with the written consent of both parties. To the extent applicable, a sale, exchange, transfer or lease of equipment or facilities made under this section of this Agreement is subject to §49-04-05 and §10-13-08.1 N. D. Cent. Code.
9. Tapping Facilities. A temporary tap of one party's facilities may be made by the other with the written consent of both parties to an interconnection agreement and/or electric wheeling agreement governing the terms of the tap.
10. Scope of the Agreement. This Agreement governs electric distribution service by the parties to Service Locations within the areas governed by this Agreement. This Agreement does not apply to nor does it affect the rights of either party:
  - To construct transmission or distribution line facilities in the other party's service area for the purpose of providing adequate electric power in any area it serves;
  - To maintain existing transmission or distribution line facilities in the other party's service area for the purpose of providing adequate electric power in any area it serves;
  - To the provision of electric transmission or distribution services outside of the areas governed by this Agreement; or
  - Under applicable law, except only to the extent specifically enumerated herein.

ARTICLE II.  
RELATIONSHIPS WITH OTHER ENTITIES

11. Filing the Agreement for Approval. This Agreement shall be filed with the North Dakota Public Service Commission substantially concurrent with its execution. Both parties will file written statements with and appear before the North Dakota Public Service Commission supporting unconditional approval of this Agreement.
12. Conditions Precedent to Agreement. This Agreement is subject to approval of the North Dakota Public Service Commission. If this Agreement is disapproved by the North Dakota Public Service Commission, it shall be void *ab initio*.
13. Future Requests for Certificates of Public Convenience and Necessity. After the effective date of this Agreement, in all cases under the provisions of Chapter 49-03 N. D. Cent. Code, when Montana-Dakota applies to the North Dakota Public Service Commission for a certificate of public convenience and necessity to extend its electric service to a New Service Location within the Montana-Dakota Service Area as defined by this Agreement, provided that such does not violate the terms of this Agreement, KEM shall not object to Montana-Dakota's application.
14. Review Requirement. It is realized that this Agreement will not cover all conditions that may arise but, if followed in good faith by both parties, will serve as a guide to future development and growth for both parties. The parties shall meet on a bi-annual basis to review the operation of this Agreement and the parties' respective growth in electric service within the areas governed by this Agreement since the effective date of this Agreement.

ARTICLE III.  
EFFECTIVE DATE AND TERM

15. Effective Date. This Agreement shall become effective on the first day of the month following the date of the approval of this Agreement by the North Dakota Public Service Commission.
16. Term. Unless terminated sooner by the written consent of both parties, this Agreement shall continue from its effective date through July 31, 2044.

Either party may give written notice to the other on or before July 31, 2043 of its intent to terminate the Agreement at the end of its term.

If neither of the foregoing two events occurs, this Agreement shall remain in force after July 31, 2044, until either party gives twelve months' written notice to the other party of its intent to terminate this Agreement or negotiate a new agreement consistent with the intent and purpose of this Agreement. It is the intent of the parties that upon or prior to termination of this Agreement, they will enter into negotiations for a new service area agreement to provide both parties with a reasonable opportunity for equitable participation in the future provision of electric distribution service to New Service Locations within the unserved areas around Lake Isabel near the City of Dawson.

The party giving notice to terminate under this paragraph must also give contemporaneous notice to the North Dakota Public Service Commission.

ARTICLE IV.  
MISCELLANEOUS PROVISIONS

17. Entire Agreement. This Agreement, including the attachments, constitutes the parties' entire agreement. It supersedes and terminates all previous agreements, written or oral, between the parties with respect to matters included within the scope of this Agreement.
18. Waiver of Certain Rules of Construction. This Agreement is the result of good faith negotiations between the parties, each having equal bargaining status and each having participated in the drafting of this Agreement to express the parties' intentions. Accordingly, each party waives the benefit of any rule of contract interpretation premised on the other party's responsibility for drafting the Agreement or the other party's bargaining status.
19. Independence of the Parties. The parties are entirely independent and neither have the right to act for or control the other. This Agreement does not create a joint venture, partnership or other agency relationship between the parties.
20. No Third-Party Rights. This Agreement confers no rights or obligations upon anyone other than the parties. It may be enforced solely by the parties. This Agreement creates no third-party beneficiaries.
21. Assignment. Either Party may assign this Agreement in connection with a merger, sale of substantially all of its assets, consolidation or other reorganization resulting in another acquiring the right of a party to provide electric service in the service area of that party.
22. Waiver of Right of Enforcement. The failure of either party to require strict performance of any portion of this Agreement or the waiver of a breach of any condition in this Agreement shall not waive or affect that party's right to require full and conforming performance thereafter.
23. Partial Invalidity. Each provision of this Agreement is to be interpreted to make this Agreement effective and enforceable under applicable law. If any provision is held invalid or unenforceable, the remainder of this Agreement is not to be affected thereby but is to be reformed only to the extent necessary to make the Agreement effective and enforceable as if the invalid or unenforceable provision had never been included in the Agreement.
24. Notices. All notices from one party to the other shall be given in writing. Notice to Montana-Dakota, when required, must be mailed to Montana-Dakota Utilities Co. Attn: Region Director, 909 Airport Rd. P.O. Box 1457 Bismarck, ND 58502-1457. Notice to KEM, when required, must be mailed to KEM Electric Cooperative, Inc., 107 S. Broadway St Linton, ND 58552. Any party may change its respective address for the purpose of this agreement by written notice to the other parties.

[Signatures on Following Page]

MONTANA-DAKOTA UTILITIES CO.

*Harriet Jenger*

Chief Utilities Officer

ATTEST:

*[Signature]*

Assistant Secretary

Date: 08/05/2024

KEM  
ELECTRIC COOPERATIVE, INC.

*Nita J Wald*

President

ATTEST:

*[Signature]*

Secretary

Date: 7-30-24

Lake Isabel Area Near Dawson, ND  
Service Area Agreement – 2024  
KEM Electric Cooperative & Montana Dakota Utilities

