

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Joseph K. Sullivan	Vice Chair
Hwikwon Ham	Commissioner
Audrey Partridge	Commissioner
John Tuma	Commissioner

In the Matter of the Petition of Dakota Electric
Association to Modify Its Extension of Service
Tariff

DOCKET NO. E-111/M-25-178

**COMMENTS OF THE OFFICE OF
THE ATTORNEY GENERAL—
RESIDENTIAL UTILITIES DIVISION**

The Office of the Attorney General—Residential Utilities Division (OAG) respectfully submits the following initial comments in response to the Public Utilities Commission’s Notice of Comment Period issued on April 18, 2025, as extended on May 23, 2025.

In its miscellaneous tariff filing, Dakota Electric Association (Dakota Electric or the Cooperative) requests that the Commission modify its Extension of Service Tariff to provide service extensions to “extraordinary large load members within its service territory while ensuring that the Cooperative and existing members are protected.”¹ While the OAG agrees with Dakota Electric’s stated goals, the current request falls short of sufficiently protecting the Cooperative’s existing members.

In its proposed tariff, Dakota Electric proposes not to include any requirements for how it will determine the contribution in aid of construction (CIAC) for new extraordinarily large load customers, likely data centers. Instead, Dakota Electric chooses to only reference two documents that Dakota Electric and the new customers will negotiate and execute. Because the documents are only referenced in the tariff, Dakota Electric and the new customers could modify the method of

¹ Dakota Electric Petition at 12.

determining CIAC in those other documents without Commission approval. The cost of extending service to these new customers is immense, and Dakota Electric's members need the assurance that a reasonable CIAC will be charged. The OAG recommends, therefore, that the Commission modify Dakota Electric's proposed tariff to include certain requirements for any assessment of CIAC to new extraordinarily large load customers.

I. OVERVIEW OF DAKOTA ELECTRIC'S PROPOSAL.

The only action that Dakota Electric requests the Commission to take is to approve a modification to its extension of service tariff. The new language introduced by this modification² is reproduced below:

Extraordinary Large Commercial and Industrial and System Intensive Members

Dakota Electric Association will provide electric service, to the extent capacity is available, to large commercial and industrial members requiring service delivery at a voltage other than the Association's regular and customary service of 12.5 kV and system intensive members, in accordance with established applicable rates and charges or a Commission approved Electric Service Agreement, when the anticipated revenue from the prospective member justifies the expenditure. System intensive members are considered members with service requirements that involve significant system modifications, design, and/or engineering to extend service to these members. The Association will have the sole discretion to determine what member is considered system intensive. Members requesting, or requiring, this type of service will be screened through Dakota Electric's large load engineering project queue and will be required to execute the Association's Letter of Authorization and Construction and Engineering agreements to protect the financial interests of the Association and its other members. An economic analysis and an engineering analysis will be made for any member requesting this type of service and a contribution in aid of construction will be required for necessary distribution equipment and upgrades. The contribution in aid of construction and construction and energization requirements are detailed in the Association's Letter of Authorization and Construction and Engineering Agreements.³

² In addition to the substantive modification, Dakota Electric requests that the Commission makes minor updates to its table of contents and moving sections within sheets. *See* Dakota Electric Petition at 12.

³ Dakota Electric Petition, Proposed Tariff Clean, sec. VI, sheet 7.0, revision 4.

As shown above, the tariff does not include any method for determining the CIAC that an extraordinarily large load or system intensive member would need to pay to join the system. Instead, Dakota Electric proposes that these customers' CIACs be determined through a letter of authorization (LOA) and a construction and engineering agreement ("E&C agreement").⁴ Dakota Electric expressly "does not propose" to include these more detailed agreements in its tariff.⁵

II. THE PROPOSED TARIFF DOES NOT SUFFICIENTLY PROTECT DAKOTA ELECTRIC'S EXISTING MEMBERS FROM RISKS POSED BY THE ADDITION OF EXTRAORDINARILY LARGE LOAD CUSTOMERS.

Extraordinarily large load customers, such as data centers, present potential benefits to electric utility ratepayers, but they also present significant risks. To account for risks and maximize potential benefits, the Commission should require utilities use existing tools to protect ratepayers. One essential tool in this endeavor is requiring an appropriate CIAC from extraordinarily large load customers to ensure that the extraordinarily large costs of connecting these customers to the electric system is not borne by other ratepayers.

While Dakota Electric's agreements provide some helpful standards for assessing CIAC, Dakota Electric's refusal to include standards for how the CIAC is determined in its tariffs is troubling. Providing the utility with discretion to determine the appropriate CIAC not only fails to protect ratepayers from utility incentives that may not be fully aligned with ratepayers' interests, but also provides these sophisticated, extraordinarily large load customers with unreasonable bargaining power. These customers could apply significant pressure when negotiating the un-

⁴ Dakota Electric's tariff refers to a "Construction and Engineering Agreement." *See id.* However, Exhibit B to Dakota Electric's petition uses the term "Engineering and Construction Agreement," and the narrative of the petition and the Letter of Authorization use the terms "Engineering and Construction Agreement" or "E&C Agreement." *See, e.g.,* Dakota Electric Petition at 10, Ex. A at 2, Ex. B at 1. The OAG believes all three terms refer to the document included in Exhibit B.

⁵ Dakota Electric Petition at 11.

tariffed agreements with Minnesota’s smallest rate-regulated electric utility.⁶ Instead of ceding these important determinations to the utility, and ultimately to an extraordinarily large load customer, the Commission should require Dakota Electric to include certain requirements for CIAC in its tariff.

A. The Commission Has a Substantial Interest in Ensuring that CIAC Charged to Extraordinarily Large Load Customers Prevents Harm to Dakota Electric’s Existing Members.

Extraordinarily large commercial customers present unique risks to existing electric ratepayers. As such, the Commission has a significant interest in ensuring that these customers are assessed a fair CIAC in order to protect existing customers from the costs necessary to connect this new load to Dakota Electric’s system.

Dakota Electric asserts that “[t]hese types of large loads, if they materialize and take service from Dakota Electric, will have a positive impact on our system, and our members, by allowing the fixed costs of the system to be spread more widely.”⁷ But this positive impact is not guaranteed. Whether any new customer will benefit the system it joins depends on if it pays back both the cost of extending service and the customer’s ongoing costs. A benefit to existing customers is far from a certainty for these extraordinarily large load customers who require significant new capital additions, such as substations; who do not take their full service immediately; and whose large load could subsequently be reduced by improvements in technology.

⁶ Dakota Electric serves approximately 115,000 members. *See* Docket No. E-111/GR-24-400, Direct Testimony of Adam Heinen at 1 (Dec. 30, 2024). The next smallest rate-regulated utility in terms of customer count is Otter Tail Power Company, which serves approximately 133,000 customers across three-states. Our Company, Otter Tail Power Co., <https://www.otpc.com/about-us/our-company/>.

⁷ Dakota Electric Petition at 8.

The OAG appreciates that Dakota Electric recognizes many of these risks and does not appear to request a full CIAC waiver, noting that “given the types of potential loads that have inquired about service over the past 24 months, they also pose financial risks to the Cooperative that must be properly mitigated.”⁸ As Dakota Electric recognizes, data centers are different than its current large load members served under its existing large load agreement, which was designed for loads over 2 MW that could be “energized and reach its ultimate load in a short timeframe.”⁹

But Dakota Electric’s approach does not fully protect against risks unique to the Cooperative. While data centers present risk for all electric utility ratepayers, they present an acute risk for Dakota Electric’s members due to the Cooperative’s small size. Dakota Electric’s current system peak is approximately 450 MW.¹⁰ A single hyperscale data center could almost double that.¹¹ While the OAG appreciates Dakota Electric’s recognition of some risks and its proactive filing, there are several shortcomings in Dakota Electric’s approach to its tariff modification.

B. Dakota Electric’s Requested Tariff Approval Provides the Cooperative with Undue Discretion as to Whether the Provision Is Triggered and the Terms and Amount of any CIAC.

Dakota Electric’s proposed modifications to its tariff appear brief, but they provide the Cooperative with significant discretion to determine whether to apply the LOA and E&C agreements, and provide no guardrails on the specific provisions within those agreements. This

⁸ Dakota Electric Petition at 8. Other utilities have argued that extraordinarily large customers should receive a CIAC waiver based the new customers’ revenues will benefit the system and existing ratepayers. *See* Docket No. E-002/M-19-39, Xcel Petition for Contracts for Provision of Electric Service to Google’s Minnesota Data Center Project at 48-49 (Jan. 10, 2019) (“Google will not directly contribute to the costs related to installation of the electrical upgrades necessary for the provision of service to the data center. As such, we request approval of a one-time waiver of tariff provisions related to customer contributions for the interconnection infrastructure.”).

⁹ Dakota Electric Petition at 8.

¹⁰ *See* Docket No. E-111/GR-24-400, Direct Testimony of Chad Stevenson at 75 (Apr. 30, 2025).

¹¹ Rich Miller, Skybox Plans 300-Megawatt Campus South of Dallas, Data Center Frontier, <https://www.datacenterfrontier.com/site-selection/article/33015268/skybox-plans-300-megawattcampus-south-of-dallas> (Permalink: <https://perma.cc/6BX5-EFAA>)

discretion is particularly troubling because the LOA and E&C agreements includes a determination of the CIAC that a new extraordinarily large load customer would be required to pay.

First, Dakota Electric's proposed tariff provides the Cooperative with the sole discretion for applying its new extension of service provisions to "system intensive" customers. Dakota Electric's proposed tariff modification provides:

System intensive members are considered members with service requirements that involve significant system modifications, design, and/or engineering to extend service to these members. The Association will have the sole discretion to determine what member is considered system intensive.¹²

Providing Dakota Electric with this sole discretion to determine whether its proposed tariff revisions apply is not reasonable, and it could allow sophisticated customers with extremely large loads to exert undue influence on Dakota Electric not to assess the full CIAC. The OAG appreciates that Dakota Electric's tariff should ensure that customers causing the Cooperative to incur significant expense prior to connecting to the system are included. But without more specific criteria, extremely large customers would be able to obtain inappropriate exemptions. The Commission should modify Dakota Electric's proposed tariff to balance the Cooperative's need for some flexibility in protecting its members from the cost of connecting extraordinarily large load customers and the need for tariffs to apply uniformly across customers.

Second, Dakota Electric's proposed tariff does not include any certainty about how CIAC would be determined. It only provides the following regarding CIAC:

An economic analysis and an engineering analysis will be made for any member requesting this type of service and a contribution in aid of construction will be required for necessary distribution equipment and upgrades. The contribution in aid of construction and construction and energization requirements are detailed in the Association's Letter of Authorization and Construction and Engineering Agreements.¹³

¹² Dakota Petition, Tariff Amendments Clean, sec. VI, sheet 7.0, revision 4.

¹³ *Id.*

Although the proposed tariff limits the Cooperative's duty to extend electric service to situations "when the anticipated revenue from the prospective member justifies the expenditure," this provision does not state how the expenditures will be justified. Whether a new customer's revenue will justify an expenditure can be a complex determination. It depends on an assessment of the customer's anticipated load and a determination of the appropriate payback period over which existing customers will subsidize the new customer prior to receiving benefits. In the case of data centers, the anticipated load size, ramp-up periods, and an appropriate payback period are far from certain.¹⁴

Dakota Electric is clear in its petition that the LOA and E&C agreements will not be included in its tariff.¹⁵ Dakota Electric justifies this exclusion by stating, "It is important to note that the proposed tariff modifications and large load engineering project queue process, do not speak to the rates charged to these loads or service characteristics of these loads."¹⁶ This is incorrect. A "rate" is defined in statute as "every compensation, charge, fare, toll, tariff, rental, and classification, or any of them, demanded, observed, charged, or collected by any public utility for any service and any rules, practices, or contracts affecting any such compensation, charge, fare, toll, rental, tariff, or classification."¹⁷ A CIAC is a charge collected by the utility to extend service to a new customer. It is a "rate" within the law's plain meaning.

Dakota Electric's claim that no rates are at issue here not only misstates the law but also downplays the important function that CIAC plays. CIAC balances the fair treatment of new

¹⁴ While Dakota Electric's current version of its E&C agreement provides some helpful parameters for when CIAC must be paid, *see* Dakota Electric Petition, Ex. B at 8-9, because the requirements are not included in the tariff, they are not certain to remain in place.

¹⁵ Dakota Electric Petition at 11.

¹⁶ *Id.*

¹⁷ Minn. Stat. § 216B.02, subd. 5.

customers against reducing risks to existing customers of costs that the new customer imposes when joining the system. Because CIAC is “designed to alleviate situations where existing members end up shouldering the costs associated with plant investment required to serve a new customer,”¹⁸ it is an important component of utility’s rates and service that the Commission must ensure is reasonable.

Dakota Electric appears to be seeking the Commission’s blessing, although not approval, of the agreements as currently drafted. But simply incorporating these documents by reference gives Dakota Electric, and extraordinarily large load customers, the ability to update the CIAC at any time by modifying the LOA and E&C agreement without oversight. Indeed, in response to discovery, Dakota Electric acknowledged that it sought “a degree of flexibility based on the characteristics of a prospective load.”¹⁹ While some flexibility may be appropriate, including no requirements for how CIAC will be assessed is unreasonable.

Simply relying on Dakota Electric to inform the Commission of any changes to these documents would also fail to sufficiently protect the Cooperative’s members. In response to discovery, Dakota Electric stated that it will inform the Commission of any “changes made to the formula or methodology for determining contribution in aid of construction,” by making a compliance filing in this docket.²⁰ But notifying the Commission that a change has been made, potentially after the change has been executed with an extraordinarily large load customer, does not sufficiently protect Dakota Electric’s existing members.

¹⁸ Docket No. E-111/M-13-801, Comments of Minn. Dep’t of Comm. at 2 (Oct. 2, 2013); Order at 1 (Nov. 5, 2013) (“The Commission agrees with and adopts the recommendations of the Department of Commerce, which are attached and hereby incorporated into the Order”).

¹⁹ See Attach. 1 (Dakota Electric Response to OAG IR No. 003).

²⁰ See Attach. 2 (Dakota Electric Response to OAG IR No. 004).

Dakota Electric and its potential new customers should not have the sole discretion to determine the CIAC that customer pays with no guardrails from the Commission. The OAG understands, however, and agrees with Dakota that these loads are complex and determining that some inputs into the CIAC model will be customer dependent. Some potential baseline requirements, however, are necessary to protect ratepayers, as discussed further below.

III. DAKOTA ELECTRIC’S TARIFF SHOULD INCLUDE CERTAIN BASE CIAC REQUIREMENTS TO PROTECT EXISTING MEMBERS.

The Commission should require Dakota Electric to include tariff language that dictates with more specificity how the CIAC for extraordinarily large customers would be calculated. Specifically, Dakota Electric’s tariff should include, at a minimum, the following provisions:

- A requirement that the CIAC calculation include all costs required to connect the customer, including but not limited to:
 - Costs to plan, design, and commence procurement and preparation of electric facilities for the purpose of providing electric service to the customer, including a specified non-refundable deposit.²¹
 - Costs of any electric facilities, equipment, infrastructure, and planning associated with serving the customer.²²
 - Costs related to the acquisition of any land, easements, or rights-of-way that must be procured to site any facilities, equipment, or infrastructure to serve the customer.²³
- The CIAC payment schedule listed in section 2.C.ii of the E&C agreement.²⁴

²¹ See LOA sec. A, Dakota Petition, Ex. A at 2.

²² See E&C Sec. 2.A.i – 2.A.iii

²³ See E&C sec. C.i. The OAG notes that Dakota’s E&C agreement appears silent on who will cover the costs of the acquisition of necessary property rights, although the customer is responsible for obtaining any “necessary permits and permissions” from governmental agencies and other provisions related to siting substations and the LOA requires the Cooperative to review with the customer “Provisions needed to provide the appropriate land rights for the substation site and required distribution easements to be assigned to Dakota Electric.” See Dakota Petition, Ex. A at 5, Ex. B. at 5.

²⁴ Dakota Petition, Ex. B at 9.

- A requirement that if the extraordinarily large load customer delays any phase of design or construction by more than 20 business days, Dakota Electric may stop work and the new customer will reimburse Dakota Electric for all costs.²⁵
- A requirement that if the customer terminates the E&C agreement prior to its payment of all CIAC, the customer must (1) provide at least 30 calendar days' notice; (2) make all outstanding CIAC payment to Dakota Electric; and (3) pay to Dakota Electric all commercially reasonable and documented expenses incurred by or billed to Dakota Electric for its work through the effective date of the termination.²⁶

CONCLUSION

The OAG appreciates Dakota Electric seeking to protect its existing members by holding potential extraordinarily large load customers responsible for their high cost of connection. Dakota Electric, however, must include in its tariff more details of how the costs and the new customers' CIAC will be calculated. The OAG recommends the Commission order Dakota Electric to revise its tariff to include, at a minimum, the provisions listed in Section III above.

Dated: July 8, 2025

Respectfully submitted,

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ATTORNEYS FOR MINNESOTA
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²⁵ See E&C Sec. 2.D.i

²⁶ See E&C Sec. 4.C.

OAG No. 003

**State of Minnesota
Office of the Attorney General
Utility Information Request**

In the Matter of the Petition of Dakota Electric Association to Modify its Extension of Service Tariff **MPUC Docket No.**

E-111/M-25-178

Requested from: Dakota Electric Association

Requested by: OAG-RUD

Date of Request:
Due Date:

May 13, 2025
May 30, 2025

Definitions: The Definitions provided in OAG Information Request Number 002 apply to the requests below.

Reference: Dakota Petition at 9 states:

Dakota Electric does not propose including our LOA and E&C Agreements in our tariff, but we see these agreements as being akin to our internal engineering standards or our Technical Specification Manual (TSM) for distributed energy resources. Although formal Commission approval of these agreements is not necessary, nor is Dakota Electric requesting this, we do believe that an acceptance or acknowledgement of the process may be administratively helpful and provide regulatory, and process certainty, for potential members.

Request:

- A. Provide all reasons why Dakota Electric believes it is in its members' interests to not include the LOA or E&A Agreements in its tariffs.
- B. Provide all reasons why Dakota Electric believes it is in the public interest to not include the LOA or E&A Agreements in its tariffs.

Response:

- A. There are two primary reasons why Dakota Electric believes it is in our members' interest to not include these agreements in the tariff. First, the development of these type of loads (notably hyperscale data center) is still evolving, and it is a new type of load for Dakota Electric. It is possible that minor developments or changes could be appropriate and, if

Response by: Adam Heinen _____
Title: Vice President _____
Department: Regulatory Services _____
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the agreements are in the tariff, it would require Commission-approval of these minor adjustments. Second, not including the agreements in the tariff provides Dakota Electric with a degree of flexibility based on the characteristics of a prospective load. For example, the E&C Agreement includes a Contribution-in-Aid-of-Construction (CIAC) schedule, but if we had a speculative type load (*e.g.*, Crypto-mining) look to site in our service territory, it would be in our members' best interest for us to require CIAC of all costs or at a cost level higher than what is set forth in the schedule.

- B. Dakota Electric believes that member interest and the public interest are sufficiently similar in this instance.

Response by: Adam Heinen _____
Title: Vice President _____
Department: Regulatory Services _____
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Reference: Dakota Electric Proposed Tariff, Sec. VI, sheet 7.0, revision 4.

Dakota Electric Association will provide electric service, to the extent capacity is available, to large commercial and industrial members requiring service delivery at a voltage other than the Association's regular and customary service of 12.5 kV and system intensive members, in accordance with established applicable rates and charges or a Commission approved Electric Service Agreement, when the anticipated revenue from the prospective member justifies the expenditure. . . . An economic analysis and an engineering analysis will be made for any member requesting this type of service and a contribution in aid of construction will be required for necessary distribution equipment and upgrades. The contribution in aid of construction and construction and energization requirements are detailed in the Association's Letter of Authorization and Construction and Engineering Agreements.

Requests:

- A. Does Dakota Electric plan to inform the Commission of any subsequent changes made to the formula or methodology for determining contribution in aid of construction in the Letter of Authorization and Construction and Engineering Agreements after this proceeding is concluded?
- B. If the answer to Part A above is anything other than an unqualified denial, how does Dakota Electric plan to provide an update to subsequent changes?

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- C. If the answer to Part A above is anything other than an unqualified denial, at what cadence will the Commission be informed of any changes?
- D. Will Dakota Electric seek to designate any part of executed Letters of Authorization and Engineering Agreements as protected data pursuant to Minn. R. 7829.0500?
- E. If the answer to part D above is anything other than an unqualified denial, state the information that Dakota Electric will seek to designate as protected data pursuant to Minn. R. 7829.0500.

Response:

- A. Yes, we will inform the Commission of changes made to the formula or methodology for determining contribution in aid of construction in the Letter of Authorization and Construction and Engineering Agreements.
- B. Dakota Electric envisions notifying the Commission in manner similar to how changes in the Technical Specification Manual are made. The Cooperative would propose making a compliance filing in this docket with a redline and clean copy of any changes.
- C. The Commission will be informed of changes when they occur.
- D. Dakota Electric does not anticipate this currently.
- E. If information related to the potential end user represents a trade secret/business competition concern from the end user's perspective or some sort of overarching security concern (*e.g.*, national security), then the Cooperative would seek data protection but only to the extent necessary and with sufficient justification to warrant designation.

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