MINNESOTA
PUBLIC UTILITIES COMMISSION

Staff Briefing Papers

Meeting Date	**November 25, 2025**	**Agenda Item **1**
Company	Dakota Electric Association (DEA or Cooperative)	
Docket No.	E-111/M-25-178	
	In the Matter of Dakota Electric Association's Petition to Modify its Extension of Service Tariff	

Issues

Should the Commission approve DEA's modifications to its Extension of Service tariff, attached to the Cooperative's September 2, 2025, Supplemental Comments?

Are any additional tariff modifications necessary?

Should the Commission approve or acknowledge DEA's Letter of Authorization and Engineering and Construction Agreement?

Are any modifications necessary to DEA's Letter of Authorization and Engineering and Construction Agreement?

Should the Commission require DEA to file for Commission approval a large load tariff or electric service agreement that complies with the provisions of Minn. Stat. § 216B.1622?

Staff	Sean Stalpes	sean.stalpes@state.mn.us	651-201-2252
	Christine Pham	christine.pham@state.mn.us	651-201-2249

✓ **Relevant Documents**	**Date**
Dakota Electric Association, Initial Filing	March 31, 2025
Citizens Utility Board of Minnesota, Initial Comments	July 8, 2025
Department of Commerce, Initial Comments	July 8, 2025
Office of the Attorney General, Initial Comments	July 8, 2025

✓ **Relevant Documents**	**Date**
Citizens Utility Board of Minnesota, Initial Comments	July 8, 2025
Dakota Electric Association, Reply Comments	July 29, 2025
CURE, Reply Comments	July 29, 2025
Citizens Utility Board of Minnesota, Supplemental Comments	August 21, 2025
Office of the Attorney General, Supplemental Comments	August 21, 2025
Department of Commerce, Supplemental Comments	August 21, 2025
CURE, Supplemental Comments	August 22, 2025
Dakota Electric Association, Response to Supplemental Comments	September 2, 2025

STATEMENT OF THE ISSUES

- Should the Commission approve DEA's modifications to its Extension of Service tariff, attached to the Cooperative's September 2, 2025, Supplemental Comments?
- Are any additional tariff modifications necessary?
- Should the Commission approve or acknowledge DEA's Letter of Authorization and Engineering and Construction Agreement?
- Are any modifications necessary to DEA's Letter of Authorization and Engineering and Construction Agreement?
- Should the Commission require DEA to file for Commission approval a large load tariff or electric service agreement that complies with the provisions of Minn. Stat. § 216B.1622?

SUMMARY

Dakota Electric Association (DEA or the Cooperative) requests Commission approval "to modify its Extension of Service tariff to establish a process to extend service to Extraordinarily Large Commercial and Industrial and System Intensive members."[1]

The Petition includes two agreements, listed below, which will create an "engineering and project review queue" and allow DEA to review, design, and energize prospective extraordinarily large loads:

- Letter of Authorization (LOA) and
- Engineering and Construction (E&C) Agreement.

Of note, DEA did not initially propose that the Commission formally approve the LOA and E&C agreements, since DEA likened them to the Commission's current handling of DEA's Technical Specifications Manual (TSM); however, some parties argued that Commission approval would create a layer of necessary regulatory oversight, so DEA became agreeable to formal Commission approval.

DEA explained that the need for modifications to its Extension of Service tariff stems from several inquiries received over the past 24 months for service from various types of large loads. According to DEA, these requests are unique because the prospective loads "are requesting service at voltages other than the Cooperative's customary 12.5 kilovolt (kV) service and/or will require significant distribution expenditures before service can be extended to these

[1] Petition, p. 1.

members."[2]

DEA believes these extraordinarily large loads will have a positive impact on its overall system and members, since the fixed costs of the system can be spread more widely. However, financial risks exist – for example, the uncertainty that the large load may not ultimately materialize – and these risks must be properly mitigated. Therefore, the intention of the modifications to the Extension of Service tariff, as DEA explained, is to allow the Cooperative to extend electric service to new members that involve significant system modifications, while providing protections to DEA and existing members.

The LOA and the E&C Agreement are two separate, but related, agreements that, according to DEA, build the foundation for the large load engineering project queue and create a mechanism where DEA can efficiently and fairly process load requests.

Specifically, the LOA requires that a prospective member provide detailed information about the project, such as the annual electric load and required load ramp, as well as a non-refundable deposit to cover study costs. DEA will not conduct detailed analysis on serving this load until the receipt of an executed LOA.

If a project advances beyond the LOA, the E&C Agreement will lay out specific details about the project components and costs, service characteristics, responsibility of parties, and the Contribution-In-Aid-of-Construction (CIAC) schedule. According to DEA, the "ultimate goal of the E&C Agreement is to ensure that costs and risks are allocated to the parties responsible for the construction, not other Dakota Electric members, and to provide full transparency and understanding of Project construction."[3]

Importantly, DEA emphasized that the Petition does not address the rates that will be charged:

> The modifications and processes proposed in this Petition do not address the rates that will be charged or the service characteristics of these loads. These specifics will be addressed if, and when, an Electric Service Agreement (ESA) is executed and approved by the Commission, through existing rate classes, or through a future request to establish a unique rate class and rate design for these types of loads.[4]

DEA noted that its pending general rate case includes a proposed page order and presentation changes to this section of its tariff. If the modifications proposed in the instant docket are approved prior to the implementation of final rates in the pending rate case, DEA will make any

[2] Petition, p. 7.

[3] Petition, p. 11.

[4] Petition, p. 1.

necessary filings in the rate case as required by the Commission.

Four parties commented on DEA's Petition:

- Department of Commerce – Division of Energy Resources (Department)
- Citizens Utility Board of Minnesota (CUB)
- CURE
- Office of the Attorney General—Residential Utilities Division (OAG)

Table 1 below briefly summarizes the parties' final positions and recommendations. Staff notes that DEA's original proposal was significantly more disputed than the eventual proposal, as DEA made several modifications in Reply and Supplemental Comments that incorporated parties' concerns. At this juncture, all parties recommended approval, although some parties still recommend additional tariff modifications.

Table 1. Party Positions

Party	Position
Department	• Approve the Petition. • Acknowledge receipt of the LOA and E&C agreements.
CUB	• Approve with modifications that clarify the scope of the tariff and incorporate a system-intensive classification. • Require DEA to develop tariff language addressing the basis for taking service under the tariff. • Formally approve the LOA and E&C agreements and require DEA to annually file the agreements in the instant docket. • Require DEA to file any substantive modifications to the LOA and E&C agreements at least 30 days prior to their effective date(s). • Require DEA to submit for approval a large load tariff or electric service agreement that complies with Minn. Stat. § 216B.1622.
CURE	• Approve with modifications to member eligibility language. • Formally approve the LOA and E&C agreements. • Require DEA to file any substantive modifications to the LOA and E&C agreements at least 30 days prior to their effective date(s).
OAG	• Approve with modifications to the application of the tariff's provisions and inclusion of land rights costs in the CIAC calculation. • Formally approve the LOA and E&C agreements. • Require DEA to file any substantive modifications to the LOA and E&C agreements at least 30 days prior to their effective date(s).

PROCEDURAL BACKGROUND

To assess the need for DEA's requested modifications to its Extension of Service tariff, it is worth providing a background of the Cooperative's existing rate structure for large loads. In 2013, DEA filed a Large Load Agreement to address the uncertainty surrounding the plant investment required to serve a uniquely large individual member. One of the primary goals of the agreement was to protect existing members from shouldering the costs associated with new large loads.

The current Large Load Agreement (which has remained unchanged since its approval) was originally intended for loads over 2 MW. However, the recent inquiries from various types of large loads are orders of magnitude greater than this threshold. Therefore, DEA does not believe the current Large Load Agreement is the appropriate mechanism for the types of extraordinarily large loads requesting service.

DEA further explained that these new large loads are complex in nature and unique to each load. This will require DEA to expend significant time and resources before extending service. The LOA and E&C agreements are needed so that DEA can perform the necessary system studies and outline the framework under which DEA will undertake the work to extend service.

On March 31, 2025, DEA filed the Petition requesting modifications to the Cooperative's Extension of Service tariff and acknowledgement of the LOA and E&C agreements.

As noted above, at this stage, the Petition will "establish a multi-step process" to prepare for the requisite work for extending service to extraordinarily large loads, and the tariff modifications are designed to protect DEA and existing members. However, the rates charged will be addressed through separate ESA filings.

On July 8, 2025, the Department, CUB, and the OAG filed comments. Initially, the Department found the provisions and processes set forth in the agreements to be reasonable, but suggested modifications to the LOA and E&C agreements. CUB and the OAG voiced strong opposition to certain aspects of the tariff, in particular the lack of specificity in how the CIAC payments would be calculated. CUB also argued that the proposal had insufficient Commission oversight and protection for existing members.

On July 29, 2025, DEA filed Reply Comments, which contained significant modifications to the originally-proposed tariff language, including more specificity on the CIAC payments.

On August 21, 2025, the Department, CUB, CURE, and the OAG filed Supplemental Comments on the revised tariff changes. The parties generally agreed that DEA's proposed tariff modifications were helpful and addressed many of their concerns, but a few, minor changes would improve the proposal.

The next section will discuss the parties' comments in greater detail. Then, Staff will summarize DEA's response to the parties and the Cooperative's final recommendations. Following those sections, Staff will lay out which issues remain and what the Commission needs to decide.

Before summarizing parties' comments, Staff believes it might be helpful to address the distinction between "large commercial and industrial members," which would likely be served directly from the transmission system, and "system intensive members," which would apply only in a situation where the prospective load is served by the Cooperative's 12.5kV distribution system.[5] The reason this distinction is important is because there are two disputed issues related to the "system intensive" designation:

1. DEA's sole discretion in applying the "system intensive" designation (note that DEA would not have discretion for designation of extraordinarily large loads because they will be served at a voltage other than 12.5kV), and

2. Future incremental load/data center expansion (for example, if costs are borne by existing members because another load becomes "system intensive" over time).

Both issues will be discussed later in these briefing papers.

PARTY COMMENTS

I. Department of Commerce

A. Recommendations

The Department determined that the provisions and processes set forth in the agreements are reasonable and recommends the Commission:

- approve DEA's Petition;
- approve DEA's modifications to its original tariff proposal; and
- acknowledge receipt of DEA's LOA and E&C agreements. (Staff notes that "acknowledge" means the Commission would not formally "approve" the agreements, which is a distinction from CUB, CURE, and the OAG.)

B. Analysis

In Initial Comments, the Department's main concern was that the E&C Agreement did not contain a governing law or dispute-resolution provision, so the Department suggested that DEA

[5] The proposed tariff states: "System intensive members are considered members served from Dakota Electric's 12.5 kV distribution system with service requirements that involve significant system modifications, design, and/or engineering to extend service to these members. The Association will exercise reasonable discretion, based on internal workflows and load characteristics, to determine what member is considered system intensive."

incorporate provisions addressing the forum in, and process by which, disputes relating to the E&C Agreement will be resolved. In Reply Comments, DEA responded that the Cooperative would be willing to discuss whether a governing law provision should be added to the E&C Agreement and offered to work with the Department to resolve this concern.

In Supplemental Comments, the Department determined that DEA's inclusion of the CIAC payments in the tariff appropriately addresses the lack of certainty regarding member protections. The Department further stated that it will continue to work with DEA to address the governing law provision discussed above:

> DEA's proposal to include the CIAC payments in the tariff largely addresses the Department's concerns over the lack of certainty regarding the application of the protections in the agreements. Including the CIAC payment requirements in the tariff assuages the concern that the payment requirements could be changed before the agreements are executed. The Department also appreciate DEA's willingness to discuss whether a governing law provision should be added to the E&C agreement and is amenable to DEA's suggestions to work with the Department to resolve this concern depending on what actions the Commission takes on the agreements.[6]

II. Office of the Attorney General

In Initial Comments, the OAG argued that several modifications to the tariff were necessary, especially regarding the CIAC payment calculation. Specifically, DEA should account for all costs required to connect the customer, including but not limited to: 1) costs to plan, design, and commence procurement and preparation of electric facilities; 2) costs of any electric facilities, equipment, infrastructure, and planning; and 3) costs related to the acquisition of any land, easements, or rights-of-way that must be procured. The OAG also discussed reimbursement in the event of significant delays and customer termination of the E&C Agreement prior to its payment of all CIAC.

As discussed above, DEA's Reply Comments included several modifications to its original tariff. After reviewing DEA's tariff modifications, the OAG submitted Supplemental Comments stating that "Dakota Electric's revised tariff contains significantly more clarity and protection for existing members to ensure that CIAC will represent 'the full cost to extend service.'"[7]

However, the OAG suggested two additional, minor edits regarding member eligibility and land rights in the CIAC calculation. The OAG proposed modifications on member eligibility to "avoid any potential ambiguity that *both* members seeking to take service at a voltage other than 12.5kV *and* 'system intensive members' are considered to take "this type of service." DEA

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[6] Department, Supplemental Comments, p. 1.

[7] OAG, Supplemental Comments, p. 1.

incorporated the OAG's edit into the revised tariff attached to its September 2, 2025, Response to Supplemental Comments. DEA also incorporated the OAG's modification on land rights, so additional Commission action on these issues are necessary beyond approving DEA's tariff revisions.

III. Citizens Utility Board of Minnesota

In Initial Comments, CUB recommended against approving the Petition, arguing the proposal would limit Commission oversight and fail to provide sufficient protection for existing members. In Supplemental Comments, CUB stated that DEA's changes partially addressed CUB's concerns.

Procedurally, CUB agrees with parties and DEA that the Cooperative should:

- seek formal approval of the LOA and E&C agreements;
- annually file its LOA and E&C agreements in the instant docket; and
- submit to the Commission any revisions contemplated for its LOA and E&C agreements, with revisions being subject to a 30-day negative check-off.

Regarding the tariff, CUB argued that "several modifications are still necessary to ensure existing members are adequately safeguarded against the costs and risks of bringing large load entities online."[8]

First, CUB argued that the member protections in the LOA and E&C agreements are <u>entirely dependent on the system intensive designation</u>, and DEA would have <u>exclusive authority</u> to determine whether prospective members qualify as "system intensive." CUB recognized that some level of flexibility may be warranted, but "it is essential to avoid weakening member protections by making their application subject to the Cooperative's unilateral determination of what constitutes 'system intensive.'"[9]

Second, CUB argued that DEA should clarify the scope of the tariff, and CUB suggested a modification (similar to the OAG's) "to make clear that both system intensive members <u>and</u> large load entities receiving service at non-customary voltages will be required to execute LOA and E&C agreements."[10] CUB recommended the following tariff adjustment:

> Members requesting, or requiring, ~~this type of service~~ system intensive service or service at voltages other than 12.5 kV 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 Engineering and Construction

[8] CUB, Supplemental Comments, p. 1.

[9] CUB, Supplemental Comments, p. 3.

[10] CUB, Supplemental Comments, p. 3.

> 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~~ these types of services and a contribution in aid of construction will be required for necessary distribution equipment and upgrades.

Third, CUB discussed the potential risks associated with future expansion of large loads like data centers. CUB argued that "if the system intensive classification is not applied at the outset, other members could bear the costs of future changes in demand that necessitate the construction of infrastructure."[11] To address this, CUB recommend the following tariff adjustment:

> If members taking service under this section require subsequent system modifications, design, and/or engineering studies after the initial extension of service, such members are responsible for bearing those costs. An engineering study and economic analysis will be conducted for any member requesting a change in service that necessitates materially significant system investments. Such members will be required to execute the Association's Letter of Authorization and Engineering and Construction agreements, and must provide payment of a CIAC for distribution equipment and upgrades necessary for the continuation or expansion of service.

Fourth, CUB argued that it would be inappropriate to rely on system intensive classifications when eventually designing large load rate structures. Therefore, CUB recommends the Commission require the Cooperative to incorporate language making it clear that whether or not a member is extended service under this section will not predetermine which rate or rate class that member is assigned:

> Whether or not a member is extended service under this section will not predetermine which rate or rate class that member is assigned.

DEA included this language in the proposed tariff attached to the Cooperative's September 2, 2025, Response to Supplemental Comments.

Finally, CUB noted that legislation passed after DEA's filing, which directed the Commission to define "very large customer[s]" and develop separate rate classes or subclasses for those entities. While public utilities are the focus of this legislation, CUB believes DEA should engage in a similar process. CUB recommends the Commission require to file for approval a large load tariff or electric service agreement that complies with the newly-enacted provisions of Minn. Stat. § 216B.1622.

IV. CURE

In Supplemental Comments, CURE supported DEA's proposal to seek formal approval of its LOA

[11] CUB, Supplemental Comments, p. 5.

and E&C Agreement and notify the Commission of any substantive modifications at least 30 days prior to their effective date. CURE also supported DEA's modifications clarifying that the tariff applies to <u>both</u> large commercial and industrial members that require service delivery at a voltage other than the standard 12.5kV <u>and</u> those that are system intensive members taking service from the 12.5kV distribution system.

However, CURE offered a minor edit to DEA's modified tariff language, which refers to "members deemed subject to this section." CURE thought this could be confusing, so CURE proposed a change that included specific references to sections in the tariff. DEA incorporated this edit.

Additionally, CURE reiterated its concern (which was also raised by CUB) that the ultimate decision as to whether a potential member is "system intensive" lies solely with DEA. While CURE did not propose a decision option on this issue, CURE suggested the Commission contemplate a more flexible middle ground that could allow DEA having some discretion for system classification, but also ensure that "existing member-owners are not on the hook for future costs should service to the new member become more intensive or complex than anticipated."[12]

To explain its argument, CURE described a scenario in which a data center's demand could be met by existing available capacity, which DEA might not classify as system intensive. However, if a data center's expansion requires additional upgrade costs, since the data center would already be a member of DEA, those upgrade costs would likely be borne by all other members. Under this scenario, CURE argued that there should be tariff language requiring that the <u>cumulative impact of all demand</u>, not just the incremental addition, should be assessed.

DEA RESPONSES TO PARTIES' CONCERNS

As noted above, parties generally agreed that there was a lack of specificity in certain aspects of DEA's original proposal, in particular the CIAC payments. To address parties' concerns, DEA's July 29, 2025, Reply Comments incorporated significant modifications. For example, DEA proposed the following language regarding the calculation of CIAC payments:

> The contribution in aid of construction and construction <u>(CIAC)</u> and energization requirements are detailed in the Association's Letter of Authorization and <u>Engineering and Construction</u> Agreements.
>
> <u>For members deemed subject to this section, the CIAC will represent the estimated total costs that the Association will incur</u>

[12] CURE, Supplemental Comments, p. 2.

to plan, design, procure, construct, and purchase electric facilities, infrastructure, or related equipment associated with, and necessary, to serve this member. Association will track actual project costs as they are incurred and CIAC will be trued-up upon completion of the project.

For members deemed subject to this section, the CIAC shall be paid to the Association under the following schedule:

Payment No. 1 - 40% of estimated CIAC amount is due within thirty (30) business days of member's receipt of an invoice from Association, which will be issued promptly following full execution of the Engineering and Construction agreement.

Payment No. 2 - 30% of estimated CIAC amount is due within twenty (20) business days of member's receipt of an invoice from Association which will be issued when Dakota Electric Association completes utility substation design or system design and member completes circuit engineering design.

Payment No. 3 - 20% of estimated CIAC amount is due within twenty (20) business days of member's receipt of an invoice from Dakota Electric which will be issued approximately two (2) months prior to commencement of construction of the Association's distribution substation or system upgrades.

Payment No. 4 - 5% of estimated CIAC amount is due within twenty (20) business days of member's receipt of an invoice from Association which will be issued approximately two (2) months prior to delivery of power transformers to the project.

Payment No. 5 - 5% of estimated CIAC amount is due within twenty (20) business days of Customer's receipt of an invoice from Dakota Electric which will be issued when Association declares that the project's electrical infrastructure is ready for commissioning.

In the event that a member subject to this section delays for an extended period the design or construction of the project, Association may stop work and member shall reimburse Dakota Electric for all outstanding costs. In the event that a member subject to this section terminates the project prior to payment of all estimated CIAC, the member shall provide Dakota Electric reasonable notice of termination and compensate Association for all commercially reasonable and documented expenses, including outstanding CIAC payments for purchased equipment or infrastructure, incurred by or billed to Dakota Electric for work through the effective date of termination.

Further, Table 2 below shows a hypothetical example DEA provided in its Reply Comments, which illustrates how CIAC would be calculated under the E&C Agreement:

Table 2. CIAC Calculation under the E&C Agreement

Item	Quantity	Unit	Estimated Project Cost
Transformers	2		$10,750,000
Switchgear	2		$2,652,000*
Breakers and Switches	10		$625,000*
Bus	20		$23,000
Conduit	700	feet	$6,800
Communications and Relays	6		$18,000
Cable	4,265	feet	$21,500
Contract Costs			$1,905,000
DEA Labor			$2,325,000
Totals			**$18,326,300**
***Pre-Paid Items**			**$3,277,000**
Total CIAC Amount			$15,049,300
Cost Escalator	1.20	percent	$3,009,860
Totals			**$18,059,160**

After reviewing DEA's clarifications and additional modifications, parties' Supplemental Comments were, generally speaking, significantly more supportive of DEA's proposal, although a few concerns remained. DEA's September 2, 2025, Response to Supplemental Comments summarized the parties' remaining concerns as follows:

1. Both the OAG and CUB raised minor clarifying changes regarding member eligibility.

2. Both the OAG and CUB expressed concern with the Cooperative's proposed treatment of the LOA and E&C Agreement; however, both parties agreed that providing substantive changes 30 days prior to implementation was appropriate, and CUB noted

that formal approval in this docket and annual contract filings would mitigate their concerns regarding Commission oversight.

3. The OAG recommended including costs associated with the acquisition of land, easements, or rights-of-way for facilities, equipment, or infrastructure to serve prospective load, and the OAG recommended tariff language to address these concerns.
4. CUB opposed the Cooperative having sole discretion to determine whether the "system intensive" classification applies to a load.
5. CUB and CURE voiced concern about a circumstance where an existing member or a "system intensive" load adds significant load in the future.
6. CUB recommended that DEA submit a large load tariff or electric service agreement that complies with Minn. Stat. § 216B.1622.

Below, Staff summarizes these six topics in greater detail.

1. Member Eligibility

DEA agreed with the OAG and CUB that minor clarifying changes regarding member eligibility would better clarify application of the tariff. Additionally, the modifications were minor presentation changes (i.e., paragraph breaks). DEA therefore recommends that the Commission accept the OAG's proposed modifications. Staff notes that since DEA incorporated the edits, the Commission can accept these modifications through approval of the revised tariff.

2. Treatment of the LOA and E&C Agreement

The OAG and CUB were concerned with DEA's proposed treatment of the LOA and E&C Agreement. CUB noted that formal approval in this docket and annual contract filings would mitigate their concerns regarding Commission oversight. Both parties agreed that DEA should provide any substantive changes 30 days prior to implementation.

The Department recommends the Commission "acknowledge receipt" of DEA's LOA and E&C agreements, which is a distinction between CUB, CURE, and the OAG's recommendation.

DEA prefers that the Commission acknowledge receipt of its LOA and E&C agreements, but does not oppose formal Commission approval of the agreement. DEA further agreed that a 30-day negative check-off process for any substantive changes, or an annual compliance filing with the current contract language, would be appropriate.

3. Land Acquisition Costs

DEA agreed with the OAG that all land costs should properly accounted for, and DEA incorporated these costs in the CIAC payments as follows (the red font reflects changes included in DEA's Reply Comments, and the blue font reflects additional changes in DEA's Response to Supplemental Comments):

> For members deemed subject to this section, the CIAC will represent the estimated total costs that the Association will incur to plan, design, procure, construct, and purchase electric facilities, infrastructure, ~~or~~ related equipment, or land rights associated with, and necessary, to serve this member.

4. Sole Discretion of "System Intensive" Classification

In contrast to CUB's position, DEA believes that the Cooperative will exercise reasonable discretion to determine whether the "system intensive" classification applies to a load. DEA explained:

> In terms of rate class assignment, the Cooperative believes it is our responsibility and expectation to place a consumer in the appropriate tariffed rate class … The "system intensive" designation is *not* a screening tool for determining the appropriate rate class. That being said, the Cooperative agrees with CUB that memorializing this fact may be appropriate.

To address CUB's concern, DEA proposed the following tariff adjustment:

> Extraordinary Large Commercial and Industrial and System Intensive Members
>
> > Whether or not a member is extended service under this section will not predetermine which rate or rate class that member is assigned.

5. Future Load Modifications

CUB and CURE described a hypothetical scenario where an existing member or "system intensive" load could add significant load in the future. In this circumstance, the tariff provision would not apply to these future load modifications, and upgrade costs would be shifted to other members. DEA responded that the incremental load would be screened to determine if the additional load is considered "system intensive" regardless of whether a load is associated with an existing member. To address the parties' concern, DEA proposed the following modification, which intends to ensure it is clear that screening a load for whether they are "system intensive" is not dependent on their membership status.

> Dakota Electric Association will provide electric service, to the extent capacity is available, to large commercial and industrial members requiring: 1) service delivery at a voltage other than the Association's regular and customary service of 12.5 kV and 2) system intensive members, in accordance with established

> applicable rates and charges or a Commission-approved Electric Service Agreement, when the anticipated revenue from the load ~~prospective member~~ justifies the expenditure.

6. Minn. Stat. § 216B.1622

CUB recommends the Commission require DEA to file for approval a large load tariff or electric service agreement that complies with the provisions of Minn. Stat. § 216B.1622. While CUB recognizes that the statute is geared towards public utilities, CUB believes a similar process could be employed for DEA, which is rate-regulated by the Commission. CUB argued the Commission's role under the statute is to "ensure the costs of serving large loads are appropriately allocated so other customers are not placed at risk."[13]

DEA disagreed with CUB's recommendation, arguing that CUB's recommendation has its own costs, is premature, and does not acknowledge DEA's existing tariff provisions. DEA stated:

> Minn. Stat. § 216B.1622 only applies to public utilities; Dakota Electric is a rate-regulated electric distribution cooperative. Although the Cooperative understands, and shares, CUB's concerns, namely that all members are protected, their recommendation is not without costs, is premature, and does not acknowledge the fact that Dakota Electric has existing tariff provisions in place that can help mitigate these concerns. A separate large load tariff may be necessary if the number of loads reaches a certain threshold, but the Cooperative's existing Contract Rate Service, approved by the Commission in 2017, provides the Commission, and other members, with sufficient protections, including those noted by CUB, at this time.[14]

STAFF DISCUSSION

I. Issues Raised in DEA's Response to Supplemental Comments

As stated in the previous section, DEA's Response to Supplemental Comments addressed parties' remaining concerns, which were filed in response to DEA's modified proposal in the Cooperative's Reply Comments. DEA identified the following issues parties raised in their Supplemental Comments:

1. Clarifications to member eligibility;

2. Treatment of the LOA and E&C Agreement;

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[13] Minn. Stat. § 216B.1622, Subd. 2.

[14] DEA, Response to Supplemental Comments, p. 6.

3. Inclusion of land rights costs;

4. Future incremental load;

5. Sole discretion for DEA to determine "system intensive" classification; and

6. Filing of a large load tariff or electric service agreement to comply with Minn. Stat. § 216B.1622.

As Staff understands it, the first three issues listed above have been resolved. First, DEA clarified and provided additional tariff modifications regarding member eligibility, which seem to have addressed parties' concerns on this issue. Second, DEA proposed to file any substantive modifications to the LOA and E&C agreements at least 30 days prior to their effective date(s) and annually file its LOA and C&E agreements in the instant docket; moreover, DEA is willing to accept (although it is not DEA's preference) formal Commission approval of the LOA and E&C Agreement. Third, DEA incorporated the OAG's recommendation regarding land rights costs into the tariff.

The next section will discuss the remaining issues on the list, which seem to still be in dispute; these pertain to future incremental load/data center expansion; DEA's discretion in applying the "system intensive" classification; and Minn. Stat. § 216B.1622.

II. Remaining Disputed Issues

A. Future Incremental load

CUB and CURE described a scenario in which an existing or "system intensive" member may add significant incremental load in the future, but <u>if system intensive classification is not applied at the outset</u>, other members could bear the costs if construction of new infrastructure is required.[15] To address this concern, DEA proposed the following additional modification, which DEA believes will "ensure that it is clear that screening a load for whether they are system intensive is not dependent on their membership status."[16]

> Dakota Electric Association will provide electric service, to the extent capacity is available, to large commercial and industrial members requiring: 1) service delivery at a voltage other than the Association's regular and customary service of 12.5 kV and 2) system intensive members, in accordance with established applicable rates and charges or a Commission-approved Electric Service Agreement, when the anticipated revenue from the load ~~prospective member~~ justifies the expenditure.

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[15] CUB, Supplemental Comments, p. 5.

[16] DEA, Response to Supplemental Comments, p. 5.

CUB argued that it remains unclear whether this addresses the possible expansion of service. Thus, CUB recommended the following addition, which expands upon DEA's addition above:

> If members taking service under this section require subsequent system modifications, design, and/or engineering studies after the initial extension of service, such members are responsible for bearing those costs. An engineering study and economic analysis will be conducted for any member requesting a change in service that necessitates materially significant system investments. Such members will be required to execute the Association's Letter of Authorization and Engineering and Construction agreements, and must provide payment of a CIAC for distribution equipment and upgrades necessary for the continuation or expansion of service.

CUB's recommendation may warrant additional conversation among the parties, but from Staff's perspective, it would not necessarily require DEA to file another tariff revision; the Commission could adopt this language, or some version of it, as a future requirement.

B. Sole Discretion

DEA's proposed tariff states that the Cooperative "will exercise reasonable discretion, based on internal workflows and load characteristics, to determine what member is considered system intensive."

CUB argued that DEA's sole discretion to determine what constitutes "system intensive" weakens member protections. CUB also argued that there is no quantitative or objective basis for when a member should fall into this category. Therefore, CUB recommended the Commission:

> Require Dakota Electric to develop tariff language that requires members above a specified megawatt threshold to execute LOA and C&E agreements regardless of whether providing service necessitates system modifications, design, and/or engineering. Such members would not be required to pay a CIAC or other non-refundable deposits if no costs are incurred by the Cooperative to extend service. Under this provision, Dakota Electric will retain flexibility to determine whether loads below the threshold should be classified as system intensive.

CURE echoed CUB's concerns, advocating for the need for "some flexibility while ensuring that existing member-owners are not on the hook for future costs should service to the new member become more intensive or complex than anticipated."[17]

[17] CURE, Supplemental Comments, p. 2.

Staff notes that the main purpose of DEA's multi-step proposal in these tariff modifications – which was modified significantly based on input from the parties – was to ensure existing members and the Cooperative are protected. While Staff is not suggesting DEA's proposal is perfect and no future issues related to cost shifting will arise, Staff believes the proposal that has evolved during this proceeding such that DEA will be able to exercise reasonable discretion for system intensive designation, and the requirements set forth in the E&C Agreement will reasonably ensure that existing members are insulated from shouldering unfair costs. Additionally, this step in the process is not the end of the line, and the Commission can still address these issues in future ESA filings.

In other words, Staff agrees with parties DEA's proposal is generally reasonable, and since the primary purpose of the proposed process is to avoid the very problem CUB and CURE identified, Staff does not believe that DEA will be unable to exercise reasonable discretion to determine whether loads should be classified as system intensive. Along these lines, DEA stated:

> Dakota Electric is a member-owned, not-for-profit cooperative, and we have an obligation to treat all members equitably. <u>The purpose of the proposed tariff change is to ensure that risks to existing members are minimized</u> while facilitating potential development in a manner that is appropriately supported, financially, by these loads.[18]

To be clear, Staff does not intend to dismiss CUB's argument that there should be some quantitative or objective basis for when a member would fall into the system intensive category. CUB recommends the Commission require DEA to revise the tariff to specify a megawatt threshold, which from Staff's perspective does not seem unreasonable. Additionally, Staff's understanding is that this option could be adopted without removing DEA's ability to retain sole discretion over rate class designation.

C. Large Load Tariff

Briefly stated, CUB recognizes that Minn. Stat. § 216B.1622 is geared towards public utilities, but DEA is rate-regulated by the Commission, and the Commission's role under the statute is to ensure appropriate cost allocation and avoid placing risk on existing customers. DEA argued Minn. Stat. § 216B.1622 only applies to public utilities, and DEA is a rate-regulated electric distribution cooperative. Moreover, CUB's recommendation is not without costs and is premature.

DEA contends that its existing Contract Rate Service, which was approved by the Commission in 2017, is currently adequate to accomplish Minn. Stat. § 216B.1622's objectives. While the objectives of the Contract Rate Service tariff are not identical to Minn. Stat. § 216B.1622, it isn't clear how a proposed tariff for extraordinarily large customers would have any substantial

[18] DEA, Reply Comments, p. 7.

differences to DEA’s existing contract rate framework.

Perhaps more importantly, under the current framework, if DEA proposes to serve an extraordinarily large customer, the Commission would have to review the proposed service terms and approve, modify, or reject the Cooperative’s proposal. During that review process, the Commission would have the opportunity to decide if it is necessary for the terms of Minn. Stat. § 216B.1622 to apply, and it could evaluate that issue with the benefit of additional information.

Staff defers to legal staff to evaluate any legal arguments raised on this issue.

III. Acknowledge or Approval the LOA and E&C Agreements

While not necessarily a disputed issue, CUB, CURE, and the OAG recommend the Commission “approve” the LOA and E&C agreements, whereas the Department recommends the Commission “acknowledge” the LOA and E&C agreements, as DEA originally proposed. DEA prefers the Commission acknowledge the agreements but is fine with formal approval.

Staff has no preference whether the Commission acknowledges or approves the agreements. However, Staff notes that, when taken together with other decision options and the process as a whole, whether the Commission acknowledges or approves the agreements, DEA will still need to annually file its LOA and E&C agreements and file any substantive modifications to the agreements at least 30 days prior to their effective date(s). In addition, the rates that will be charged and the service characteristics of extraordinarily large loads will be addressed in future ESA filings. Therefore, Staff does not believe that, as a whole, there will be a lack of regulatory oversight if the Commission simply acknowledges the agreements for the purposes of this docket, rather than formally approving them. That said, formal approval does not appear to place any burden on the Cooperative.

DECISION OPTIONS

Tariff Modifications

1. Approve the modification to the Cooperative's Extension of Service tariff attached to DEA's September 2, 2025, Response to Supplemental Comments. (DEA, Department, CUB, CURE, OAG). *(Staff notes that adopting this decision option would incorporate the OAG's recommendations from its August 21, 2025, Supplemental Comments.)*

2. Require Dakota Electric to develop tariff language that requires members above a specified megawatt threshold to execute LOA and E&C agreements regardless of whether providing service necessitates system modifications, design, and/or engineering. Such members would not be required to pay a CIAC or other non-refundable deposits if no costs are incurred by the Cooperative to extend service. Under this provision, Dakota Electric will retain flexibility to determine whether loads below the threshold should be classified as system intensive. (CUB, CURE)

3. Require DEA to make the following modifications to its proposed Extension of Service tariff:

   a. If members taking service under this section require subsequent system modifications, design, and/or engineering studies after the initial extension of service, such members are responsible for bearing those costs. An engineering study and economic analysis will be conducted for any member requesting a change in service that necessitates materially significant system investments. Such members will be required to execute the Association's Letter of Authorization and Engineering and Construction agreements, and must provide payment of a CIAC for distribution equipment and upgrades necessary for the continuation or expansion of service. (CUB)

   b. Members requesting, or requiring, ~~this type of service~~ system intensive service or service at voltages other than 12.5 kV 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 Engineering and Construction 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 these types of services and a contribution in aid of construction will be required for necessary distribution equipment and upgrades. (CUB)

   c. Whether or not a member is extended service under this section will not predetermine which rate or rate class that member is assigned. (CUB) *(Staff notes that this recommendation is from CUB's August 21, 2025, Supplemental*

Comments. Staff believes DEA incorporated in this language into its revised tariff attached to the Cooperative's September 2, 2025, Response to Supplemental Comments; therefore, Staff believes adopting this decision option is unnecessary.)

LOA and E&C Agreements

4. Acknowledge receipt of DEA's LOA and E&C Agreement (DEA preference, Department)

<u>OR</u>

5. Approve DEA's LOA and E&C Agreement; (OAG, CUB, CURE)

<u>AND</u>

6. Require Dakota Electric to annually file its LOA and C&E agreements in the instant docket.

<u>AND</u>

7. Require Dakota Electric to file any substantive modifications to the LOA and E&C agreements at least 30 days prior to their effective date(s). Delegate authority to the Executive Secretary to approve the agreements if no objections are filed within 30 days of Dakota Electric's filing, or to open a comment period if a timely objection is filed. (OAG, CUB, CURE)

Large Load Tariff

8. Require Dakota Electric to file for approval a large load tariff or electric service agreement that complies with the provisions of Minn. Stat. § 216B.1622. (CUB)