

SERVICE TERRITORY DISPUTE BETWEEN REAs AND MUNIs

ISSUE: Service territory dispute between South Dakota Rural Electric Coops (REA) and cities that provide electric utilities (Municipalities).

BACKGROUND: Finding a resolution to what should happen when a municipal electric utility annexes an area, and customers formerly served by a local REA, has been occurring for at least six decades in South Dakota. Discussion and legislation dates back to at least the 1960s.

The S.D. Legislature has visited the issue at least five times during that time frame, trying to find a solution that meets the needs of all parties.

Present law was first passed in 1975, when the S.D. Legislature directed the S.D. Public Utilities Commission, to establish territory boundaries for each of the three utility providers in this state – REAs, MUNIs, and Investor Owned Utilities (IOUs). The main reason this was done was to avoid duplication of services, which would result in higher costs for consumers.

In 1975, a formula was set in law to compensate local REAs, when one of the 35 municipal electric utilities annexed an area, including any existing customers, which was being served by a local REA. The compensation formula directs payments by the MUNI to the local REA, with a length of 5 years. Subsequently that period of compensation has been lengthened to 7; and presently to a maximum of 11 years. Similar compensation laws exist in North Dakota and Wyoming.

ROLE OF THE SD PUC: The SD PUC Commission is directed by SDL 49-34A-51 to settle disputes in this area. The PUC Commission reports there has never been an instance where this statute has been used. PUC also digitized the territory maps in 2008 for additional clarity and accurate info.

CURRENT: In 2019, SB 66 was introduced in the Legislature, designed to freeze electric service territories at their present boundaries. The REAs supported SB 66 and the MUNIs opposed the bill.

Arguments for SB 66

1. In current law, municipalities are the only one of the 3 electric providers in this state allowed by law to annex territory and customers. IOUs and REAs are not allowed such practice.
2. When service territory and customers are lost by an REA, the remaining customers have to divide any costs that were previously allocated over a larger base.
3. The compensation formula has an ending period, while the customer base annexed is lost forever.
4. MUNIs have the ability to select territory and customers to annex.
5. REAs and IOUs point to challenges for long-term planning for investments in infrastructure, improvements and growth when market share could be taken away unexpectedly by MUNIs.

Arguments against SB 66

1. The 35 cities in the state with municipal electric service consider electricity a vital part of their economic development package. When recruiting an industry, business or a housing development etc., MUNIs consider electricity a key part of the package offering.
2. Because MUNIs service a more compact/dense area, the cost of electricity is lower when compared to REAs who have many times less customers per mile served.
3. In many cases, a developer or new industry or business will request annexation and a complete package of utility services.
4. MUNIs maintain there was give and take in the 1975 law and in the changes since. Freezing territory ties their hands and puts them at a disadvantage when compared to cities, which do not operate their own electric utility.

SDFB POLICY: None

DISCUSSION:

1. Are there changes in present law that would continue a working relationship for all parties?
2. Is it possible that some type of mediation or arbitration could be used to resolve the issues? If so, should the mediation or arbitration be within state government, or by the private sector?
3. Is there a formula or formal negotiation process be established that would allow growth/planning for all parties?
4. Other thoughts or ideas for resolution that would result in improved conditions for all parties?