

During the 2019 South Dakota legislative session, electric cooperatives are seeking fairness in territory integrity.

CO-OPS SEEK TERRITORIAL INTEGRITY

Fairness Sought When Government Takes Over

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As the 2019 South Dakota legislative session hits full stride this month, South Dakota electric cooperatives are seeking a fix to a decades-old issue: territory integrity.

The issue has been an ongoing one. It comes to a head periodically when municipal governments take over the territories of cooperatives or investor-owned utilities. For cooperatives, these are areas where the co-ops have served for decades and have incorporated into long-range planning.

What are the issues?

There are two sets of rules that govern changes in South Dakota electric service territory. By law, electric cooperatives and investor-owned utilities (IOU) must collaborate and agree upon changes in service territory between the two. Municipal governments, on the other hand, have the authority to expand their electric service boundaries and take territory from incumbent electric providers. These

differences in the rules favor government-taking of private enterprise.

Electric cooperatives have built the infrastructure needed to serve all areas of their territories. When municipal utilities take away the electric service areas of those co-ops, the infrastructure, including generation, transmission, substations and distribution assets, that has been put into place to serve the load becomes useless. The municipal-taking of incumbent utility territory also greatly limits the incumbent's ability to plan for the future in areas neighboring a municipal utility because the territory is so easily seized by the local government.

Ultimately, South Dakota's consumers are the ones being hurt when the service areas of electric cooperatives are reduced. The left-behind cooperative members bear a greater share of the fixed operating costs, increasing their electric bill. There are fewer members to cover infrastructure and generation costs when a territory is reduced in size. This is especially detrimental to affordability for the members of not-for-profit electric cooperatives.

Why now?

This is an ongoing issue that has never been resolved. Yes, there have been a few amendments made to the law over the years. These amendments have attempted to provide compensation for seized electric service territory. However, the compensation formula doesn't work. Additionally, the efforts of electric cooperatives to work collaboratively with municipals in resolving this issue have been consistently rebuffed, co-op leaders say.

“Applying the same rules to all electric utilities operating in the state will NOT impede municipal annexations. It will force municipal governments to engage in the same conversations about fairness and equity that an investor-owned utility and a cooperative must consider when making individual customer exchanges or making permanent changes to the boundaries,” said Ed Anderson, general manager of the South Dakota Rural Electric Association.

Territorial Integrity is Essential

Current System is Flawed:

Munis can. We can't.

- Municipal utilities can take utility service territory.
- Rural electrics and IOUs can't.

Government Takeover of Private Property.

- Munis can annex and extend service with no negotiations or PUC oversight.
- Selective “taking” of prime territory.
- Cooperatives are ready to serve and can offer highly competitive rates.

Negative Impacts on Utilities, Consumers and Economic Development.

- Upsets long-term planning and duplicates services.
- Reduces growth opportunities and ability to spread costs to a greater number of consumers – it impacts the entire membership.
- Hinders economic development.

Solution:

PROTECT assigned service territories

RETAIN privately negotiated agreements with Public Utilities Commission approval

NO RESTRICTIONS on annexation

South Dakota Laws on Electric Service Territory Boundaries

The original law passed in 1975 established the purchase price for electric facilities in areas annexed by municipalities. The law gave the city 90 days following annexation to offer to purchase the facilities and services rights. The portion of the formula that covers the purchase of wires and poles has not changed over the years. What has changed is the compensation for service rights portion of the formula. As initially placed in statute, the purchasing municipal electric system had to pay 25 percent of gross receipts from power sales to consumers within the annexed area for a period of five years at the municipal utility rate.

- The 1975 law, which was very similar to laws passed in many states at roughly the same time, was designed to protect consumers from the costs and confusion associated with rapid growth and duplication of services associated with that growth. Since then, few states have opened this essential service to full competition and industrial customers, not the average residential or small business customer, have benefited from those changes. South Dakota chose to address the specific needs of large industrial customers by making those loads competitive.
- The 1992 amendment changed that part of the formula to: 25 percent of gross receipts from power sales to consumers within the annexed area for a period of seven years at the incumbent utility rate and extended the time given to the municipality to decide whether they want to purchase from 90 days to one year.
- The 2009 amendment changed that part of the formula to: as compensation for service rights, an annual amount equal to the sum of 25 percent of the gross revenues received from power sales to consumers of electric power within the annexed area. The obligation of the annexing municipality to compensate the utility for service rights shall continue for 11 years from the date of the offer to purchase by the annexing municipality. During the 11-year period, compensation for service rights to any one customer location within the annexed area shall be paid by the annexing municipality for a period of seven years or until the expiration of the 11-year period, whichever is less. Gross revenues received shall be determined by applying the rate in effect by the municipality at the time of purchase. So, the latest amendment extended the overall window from seven to 11 but retained the seven-year cap per customer and went back to the muni rate at the time of purchase.